# MASTER POLICY BOOK


# CITY OF THE DALLES

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**CITY OF THE DALLES**
**POLICY MANUAL**

**SECTION I – CONTRACTS**

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

March 14, 2018

# PROCEDURE FOR ISSUING CONTRACTS

1. Contact Legal for a contract number.
2. Determine date of publication and arrange for advertisement in the Chronicle and other appropriate publications.
3. Contact the City Clerk to schedule bid opening date and time.
4. Prepare the Contract Documents:
   - Advertisement
   - Invitation to Bidders/Proposers
   - Pre-qualification formif desired
   - Proposal or Bid Form
   - Bid Bond (construction contracts only)
   - Notice of Award
   - Performance and Payment Bonds (construction contracts only)
   - Contract
   - Notice to Proceed
   - Division 0 for Engineering Services or Division 1 for Construction
   - Technical Specifications
   - Drawings
5. Forward the Contract Documents to the City Attorney for review.
6. Advertise and issue the Contract Documents.
7. Evaluate and act on pre-qualification package with the assistance of the City Attorney (if required) prior to receipt of bids or proposals.
8. Notify unqualified proposers/bidders.
9. Open and evaluate bids or proposals (except those from unqualified bidders/proposers).
10. Send Agenda Request to City Clerk to Schedule item on Council agenda.
11. Prepare Agenda Staff Report and fact sheet for City Manager/Council.
12. Present fact sheet to Council.
13. Prepare P.O. and obtain required signatures if Council authorizes contract.
14. Send P.O., Notice of Award, and unsigned contract to successful bidder/proposer.
15. Wait 10 days for receipt of bonds, insurance, and signed contract.
16. Forward items listed in line 19 to City Attorney for approval, keep one set for project file. Attorney will get necessary signatures, return a copy of fully executed contract for file, and send the other to the contractor.

17. Fill out and send BOLI project notification form.

18. Send the Notice to Proceed to the contractor.

19. When Notice to Proceed is acknowledged, bind all executed contract documents together (two sets, one ours one to contractor). Keep the executed contract in the project file.

20. Schedule pre-work meeting if required.

CITY OF THE DALLES
313 COURT STREET
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# LOCAL CONTRACT

# REVIEW BOARD

# RULES

# 2011

# DIVISION 1

## GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING



### Contract Preferences



### Cooperative Procurement

# DIVISION 1

# GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

## 01-0100

## Application; Federal Law Supremacy

(1) The Model Rules adopted by the Attorney General do not apply to the City of The Dalles, except where they have been incorporated into these Rules. These Rules set forth the rules of procedure for the City of The Dalles. These Rules consist of the following five divisions:

(a) This division 1, which is applicable to all Public Contracting;

(b) Division 2, which describes procedures for Public Contracting for Goods or Services, as defined in ORS 279B.005.

(c) Division 3, which describes procedures for Public Contracting for Architectural, Engineering and Land Surveying Services and Related Services; and

(d) Division 4, which describes procedures for Public Contracting for Construction Services.

(e) Division 5, which describes procedures for Personal Services Contracts for services other than architectural, engineering, land surveying services and related services covered in Division 3.

(2) In the event of conflict between rules in this division 1 and rules in divisions 2, 3, 4 and 5, the rules in divisions 2, 3 4, and 5 take precedence over the rules in this division 1.

(3) Except as otherwise expressly provided in ORS 279C.800 through ORS 279C.870, and notwithstanding ORS Chapters 279A, 279B, and ORS 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS Chapters 279A, 279B, and ORS 279C.005 through 279C.670 or these rules, or require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, and ORS 279C.005 through 279C.670 or these Rules.

(4) These division 1 rules become effective on March 1, 2005 and apply to Public Contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.

**01-0110**

**Definitions for the Rules**

Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in the Rules will have the meaning set forth in the division of the Rules in which they appear, and if not defined there, the meaning set forth in these division 1 rules, and if not defined there, the meaning set forth in the Code. The following terms, when capitalized in these Rules, shall have the meaning set forth below:

(1) "**Addendum**" or "**Addenda**" means an addition or deletion to, a material change in, or general interest explanation of a Solicitation Document.

(2) "**Administering Contracting Agency**" has the meaning set forth in ORS 279A.200(1) and for Interstate Cooperative Procurements includes the entities specified in ORS 279A.220(4).

(3) "**Award**" means, as the context requires, either the act or occurrence of the City's identification of the Person with whom the City will enter into a Contract following the resolution of any protest of the City's selection of that Person, and the completion of all Contract negotiations.

(4) "**Bid**" means a Written response to an Invitation to Bid.

(5) "**Closing**" means the date and time announced in a Solicitation Document as the deadline for submitting Offers.

(6) "**Code**" means the Public Contracting Code, as defined in ORS 279A.010.

(7) "**Competitive Range**" means the Proposers with whom the City will conduct discussions or negotiations if the City intends to conduct discussions or negotiations in accordance with Rule 02-0261 or Rule 04-0650.

(8) "**Contract**" means a "Public Contract," as defined in ORS 279A.010.

(9) "**Contract Price**" means, as the context requires, (i) the maximum payments that the City will make under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract, (ii) the maximum not-to-exceed amount of payments specified in the Contract, or (iii) the unit prices for Goods or Services or Personal Services set forth in the Contract.

(10) "**Contract Review Authority**" means the City Council acting as the Local Contract Review Board pursuant to ORS 279A.060.

(11) "**Contractor**" means the Person with whom the City enters into a Contract.

(12) "**Descriptive Literature**" means Written information submitted with the Offer that addresses the Goods and Services included in the Offer.

(13) "**Goods**" means supplies, equipment, materials, or any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, or any combination of these items.

(14) "**Invitation to Bid**" or "**ITB**" means all documents used for soliciting Bids in accordance with either ORS 279B.055, or 279C.335.

(15) "**Offer**" means a Written response to a Solicitation Document.

(16) "**Offeror**" means a Person who submits an Offer.

(17) "**Opening**" means the date, time and place announced in the Solicitation Document for the public opening of Written sealed Offers.

(18) "**Person**" means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(19) "**Personal Services**" as used in division 2 and as used in division 1 when applicable to division 2 means the services performed under a Personal Services Contract. "Personal Services" as used in division 3 and division 4, and as used in this division 1 when applicable to division 3 or division 4, or both, has the meaning set forth in ORS 279C.100.

(20) "**Personal Services Contract**" or "**Contract for Personal Services**" means a contract or member of a class of contracts, other than a contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), that the City's Local Contract Review Board has designated as a Personal Services Contract pursuant to ORS 279A.055.

(21) "**Product Sample**" means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(22) "**Proposal**" means a Written response to a Request for Proposals.

(23) "**Recycled Materials**" means recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled plastic resin products and recycled products (as defined in ORS 279A.010(1)(gg)).

(24) "**Request for Qualifications**" or "RFQ" means a Written document issued by the City to which Contractors respond in Writing by describing their experience with the qualifications for

the Services, Personal Services or Architectural, Engineering or Land Surveying Services, or Related Services, described in the document.

(25) "**Request for Quotes**" means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Goods or perform Services, Personal Services or Public Improvements described in the request.

(26) "**Responsible**" means meeting the standards set forth in Rule 02-0640 or Rule 04-0370(2), and not debarred or disqualified by the City under Rule 02-0575 or Rule 04-0350.

(27) "**Responsible Offeror**" means as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in Rule 02-0640 or Rule 04-0370(2), and who has not been debarred or disqualified by the City under Rule 02-0575 or Rule 04-0350.

(28) "**Responsive**" means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(29) "**Responsive Offer**" means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable solicitation requirements.

(30) "**Request for Proposals**" or "**RFP**" means all documents used for soliciting Proposals in accordance with either ORS.279B.060, 279C.110 or Rule 04-0650.

(31) "**Services**" means services other than Personal Services.

(32) "**Signature**" means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a document to which the Person intends to be bound.

(33) "**Signed**" means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(34) "**Solicitation Document**" means an Invitation to Bid, Request for Proposals or other document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or 279C.

(35) "**Specification**" means any description of the physical or functional characteristics, or of the nature of the Goods or Services, including any requirement for inspecting, testing or preparing the Goods or Services for delivery and the quantities or qualities of the Goods and Services to be furnished under a Contract. Specifications generally will state the result to be obtained and occasionally may describe the method and manner of performance.

(36) "**Writing**" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intended to present or convey particular ideas or meanings. "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(37) "**Written**" means existing in Writing.

**01-0120**

**Policy**

The City shall conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these Rules.

**01-0130**

**Application of the Code and Rules; Exceptions**

(1) Except as set forth in this section, the City shall exercise all rights, powers and authority related to Public Contracting in accordance with the Code and the Rules.

(2) Except as otherwise provided in these rules, the powers and duties of the local contract review board under the Public Contracting Code shall be exercised and performed by the City Council and all powers and duties given or assigned to the contracting agencies by the Public Contracting Code shall be exercised or performed by the City Manager or the City Manager's designee.

(3) Procedures for screening and selecting persons to perform Contracts for Personal Services for Architectural, Engineering, and Surveying Services and Related Services are set forth in division 3 of these Rules. Procedures for screening and selecting persons to perform Contracts for Personal Services other than Architectural, Engineering, and Surveying Services and Related Services are set forth in division 5 of these Rules.

(4) Neither the Code nor these Rules apply to the contracts or the classes of contracts described in ORS 279A.025(2), a copy of which is attached as Exhibit "A".

(5) Neither the Code nor these Rules apply to the Public Contracting activities of the Contracting Agencies listed in ORS 279A.025(3), a copy of which is attached as Exhibit "A".

(6) Neither the Code nor these Rules apply to contracts for the management of timber removal pursuant to a management program within the City of The Dalles Watershed.

(7) The City may enter into Public Contracts under a federal program described in ORS 279A.180 without following the procedures set forth in ORS 279B.050 through 279B.085, provided that the City enters into the Public Contract pursuant to rules adopted by the City pursuant to ORS 279A.180.

(8) The City may enter into contracts for Goods or Services with non-profit agencies providing employment opportunities for disabled individuals pursuant to ORS 279.835 through 279.855 without following the source selection procedures set forth in either ORS 279A.200 through 279A.225, or 279B.050 through 279B.085. However, the City must enter into such contracts in accordance with administrative rules promulgated by the State of Oregon.

(9) Any public contract where the amount of purchase exceeds $50,000.00 shall be awarded by the Contract Review Authority. The Contract Review Authority shall have authorized the purchase through the budget process or by other special action. Following staff review of the bids or proposals received and staff's recommendation concerning the contract award, the Contract Review Authority shall award the contract to the lowest responsible bidder or the best proposer who has submitted the proposal which is in the best interest of the City, based upon the criteria set forth in the request for proposal.

## Contract Preferences

**01-0300**

**Preference for Oregon Goods and Services; Nonresident Bidders**

(1) Tiebreaker Preference and Award When Offers are Identical. Under ORS 279A.120, when the City receives Offers identical in price, fitness, availability and quality, and chooses to award a Contract, the City must award the Contract based on the following order of precedence:

(a) The City must award the Contract to the Offeror among those submitting identical offers that is offering Goods or Services or Personal Services that are manufactured or produced in Oregon.

(b) If two or more Offerors submit identical Offers, and both offer Goods or Services or Personal Services manufactured or produced in Oregon, the City must award the Contract by drawing lots among the identical Offers offering Goods or Services or Personal Services that have been manufactured or produced in Oregon. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice of the date, time and location of the drawing of the lots, and an opportunity to be present when the lots are drawn.

(c) If the City receives identical Offers, and none of the identical Offers offer Goods or Services or Personal Services manufactured or produced in Oregon, then the City must award the Contract by drawing lots among the identical Offers. The

Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice of the date, time and location of the drawing of lots, and an opportunity to be present when the lots are drawn.

(2) **Determining if Offers are Identical.** The City shall consider Offers identical in price, fitness, availability and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services or Personal Services described in the Invitation to Bid at the same price.

(b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.

(c) Proposals received in response to a Special Procurement conducted under ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the Contract Review Authority, the City determines, in writing, that two or more Proposals are equally advantageous to the City.

(3) **Determining if Goods or Services or Personal Services are Manufactured or Produced in Oregon.** In applying Section 1 of this Rule, the City must determine whether a contract is predominantly for Goods, Services or Personal Services and then use the predominant purpose to determine if the Goods, Services or Personal Services are manufactured or produced in Oregon. In applying Section 1 of this Rule, the City may request, either in a Solicitation Document, following Closing, or at any other time determined appropriate by the City, any information the City determines is appropriate and necessary to allow the City to determine if the Goods or Services or Personal Services are manufactured or produced in Oregon. The City may use any reasonable criteria to determine if Goods or Services or Personal Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the City applies those criteria equally to each Bidder or Proposer.

(4) Procedure for Drawing Lots. In any instance when this Section calls for the drawing of lots, the City shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of being selected, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(5) Discretionary Preference and Award. Under ORS 279A.128, the City may provide in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than ten percent for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon. When the City provides for a preference under this Section, and more than one Offeror qualifies for the preference, the City may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. The City may establish a preference percentage higher than ten percent by written order that finds good cause to establish a higher percentage and which explains the City's reasons and evidence for finding good cause to establish a higher percentage. The City may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 279C.320.

**01-0310**

**Reciprocal Preferences**

When evaluating Bids pursuant to Rule 02-0255, Rule 02-0257 or Rule 04-0370, the City shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides. The City may rely on the list prepared and maintained by the Oregon Department of Administrative Services pursuant to ORS 279A.120(4) to determine both (i) whether the Nonresident Bidder's state gives preference to in-state bidders, and (ii) the amount of such preference.

**01-0320**

**Preference for Recycled Materials**

(1) Notwithstanding provisions of law requiring the City to award a Contract to the lowest responsible bidder or best proposer or provider of a quotation, and in accordance with subsection (2) of this section, the City shall give preference to the procurement of goods manufactured from recycled materials.

(2) In comparing goods from two or more Bidders or Proposers, if at least one Bidder or Proposer offers goods manufactured from recycled materials, and at least one Bidder or Proposer does not, the City shall select the Bidder or Proposer offering goods manufactured from recycled materials if each of the following four conditions exists:

(a) The recycled product is available;

(b) The recycled product meets applicable standards;

(c) The recycled product can be substituted for a comparable non-recycled product; and

(d) The recycled product's costs do not exceed the costs of non-recycled products by more than five percent, or a higher percentage if a written determination is made by the City and set forth in the Solicitation Document. For purposes of making the foregoing determination, the City shall consider the costs of the goods following any adjustments the City makes to the price of the goods for purposes of evaluation pursuant to Rule 01-0310.

(3) For the purposes of this Section, the City shall determine if goods are manufactured from recycled materials in accordance with standards established by the City.

## Cooperative Procurement

**01-0400**

**Authority for Cooperative Procurements**

(1) Contracting Agencies may participate in, sponsor, conduct or administer Joint Cooperative Procurements, Permissive Cooperative Procurements and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225.

(2) A solicitation and award process uses source selection methods substantially equivalent to those identified in ORS 279B.055, 279B.060 or 279B.085 when it has the characteristics set forth in ORS 279A.200(2). Each Participating City shall determine, in writing, whether the solicitation and award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, 279B.060 or 279B.085 in accordance with ORS 279A.200(2).

**01-0410**

**Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies**

(1) If a Contracting Agency is an Administering Contracting Agency of a Cooperative Procurement, the Contracting Agency may establish the conditions under which Persons may participate in the Cooperative Procurements administered by the Administering Contracting Agency. Such conditions may include, without limitation, whether each Person that participates in the Cooperative Procurement must pay administrative fees to the Administering Contracting Agency, whether the participants must enter into a written agreement with the Administering Contracting Agency, or any other matters related to the administration of the Cooperative Procurement and the resulting Original Contract. A Contracting Agency that acts as an Administering Contracting Agency may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement or advertise the Solicitation Document in a manner to assist Purchasing Contracting Agencies' compliance with the Code or these Rules.

(2) If a Contracting Agency, acting as a Purchasing Contracting Agency, enters into a Contract or Price Agreement based on a Cooperative Procurement, the Contracting Agency shall comply with the Code and these Rules, including without limitation those sections of the Code and these Rules that govern:

(a) The extent to which the Purchasing Contracting Agency may participate in the Cooperative Procurement;

(b) The advertisement of the solicitation document related to the Cooperative Procurement; and

(c) Public notice of the Purchasing Contracting Agency's intent to establish Contracts or Price Agreements based on a Cooperative Procurement.

**01-0420**

**Joint Cooperative Procurements**

A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Joint Cooperative Procurement may do so only in accordance with ORS 279A.210.

**01-0430**

**Permissive Cooperative Procurements**

A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Permissive Cooperative Procurement may do so only in accordance with ORS 279A.215.

**01-0440**

**Advertisements of Intent to Establish Contracts or Price Agreements through a Permissive Cooperative Procurement**

(1) For purposes of determining whether a Purchasing Contracting Agency must give notice of intent to establish a Contract through a Permissive Cooperative Procurement as required by ORS 279A.215(2)(a), the estimated amount of the procurement will exceed $250,000 if:

(a) The Purchasing Contracting Agency's Contract arising out of the Permissive Cooperative Procurement expressly provides that the Purchasing Contracting Agency will make payments over the term of the Contract that will, in aggregate, exceed $250,000, whether or not the total amount or value of the payments is expressly stated;

(b) The Purchasing Contracting Agency's Contract arising out of the Permissive Cooperative Procurement expressly provides for payment, whether in a fixed amount or up to a stated maximum amount, that exceeds $250,000; or

(c) At the time the Purchasing Contracting Agency enters into the Contract, the Purchasing Contracting Agency reasonably contemplates, based on historical or other data available to the Purchasing Contracting Agency, that the total payments it will make for Goods or Services, or both, or Personal Services, under the Contract will, in aggregate, exceed $250,000 over the anticipated duration of the Contract.

(2) An Administering Contracting Agency that intends to establish a Contract arising out of the Permissive Cooperative Procurement it administers may satisfy the notice requirements set forth in ORS 279A.215(2)(a) by including the information required by ORS 279A.215(2)(b) in the Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to the Administering Contracting Agency's intent to establish a Contract through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with ORS 279A.215(2), 279A.215(3) and these Rules.

(3) The Purchasing City shall respond to any comments on its intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement as set forth in ORS 279A.215(3)(c).

**01-0450**

**Interstate Cooperative Procurements**

A Contracting Agency that chooses to participate in, sponsor, conduct or administer an Interstate Cooperative Procurement may do so only in accordance with ORS 279A.220.

**01-0460**

**Advertisements of Interstate Cooperative Procurements**

(1) The Solicitation Document for an Interstate Cooperative Procurement is advertised in Oregon for purposes of ORS 279A.220(2)(a) if it is advertised in Oregon in compliance with ORS 279B.055(4) or 279B.060(4) by:

(a) The Administering Contracting Agency;

(b) The Purchasing Contracting Agency;

(c) The Cooperative Procurement Group, or a member of the Cooperative Procurement Group, of which the Purchasing Contracting Agency is a member; or

(d) Another Purchasing Contracting Agency that is subject to the Code, so long as such advertisement would, if given by the Purchasing Contracting Agency, comply with ORS 279B.055(4) or 279B.060(4) with respect to the Purchasing Contracting Agency.

(2) A Purchasing Contracting Agency or the Cooperative Procurement Group of which the Purchasing Contracting Agency is a member satisfies the advertisement requirement under ORS 279A.220(2)(b) if the notice is advertised in the same manner as provided in ORS 279B.055(4)(b) and (c).

**01-0470**

**Protests and Disputes**

(1) An Offeror or potential Offeror wishing to protest the procurement process, the contents of a solicitation document related to a Cooperative Procurement or the award or proposed award of an Original Contract shall make the protest in accordance with ORS 279B.400 through 279B.425 unless the Administering Contracting Agency is not subject to the Code. If the Administering Contracting Agency is not subject to the Code, then the Offeror or potential Offeror shall make the protest in accordance with the processes and procedures established by the Administering Contracting Agency.

(2) Any other protests related to a Cooperative Procurement, or disputes related to a Contract arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.

(3) The failure of a Purchasing Contracting Agency to exercise any rights or remedies it has under a Contract or Price Agreement entered into through a Cooperative Procurement shall not affect the rights or remedies of any other Contracting Agency that participates in the Cooperative Procurement, including the Administering Contracting Agency, and shall not prevent any other Purchasing Contracting Agency from exercising any rights or seeking any remedies that may be available to it under its own Contract or Price Agreement arising out of the Cooperative Procurement.

**01-0480**

**Contract Amendments**

A purchasing Contracting Agency may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in Rule 02-0800.

# DIVISION 2

## PUBLIC PROCUREMENTS FOR GOODS OR SERVICES

### General Provisions



### Source Selection



### Procurement Process



### Bid and Proposal Preparation



### Qualifications and Duties

**Offer Evaluation and Award**



**Legal Remedies**

## DIVISION 2

## PUBLIC PROCUREMENTS FOR GOODS OR SERVICES

### General Provisions

**02-0000**

**Application**

These division 2 rules implement ORS Chapter 279B, Public Procurements and apply to the Procurement of Goods or Services. Local Contracting Agencies, pursuant to ORS 279B.050(4)(a), may also adopt these division 2 rules to govern the Procurement of Personal Services Contracts or elect to award Personal Services Contracts under procedures set forth in ORS 279B.055 through 279B.085. These division 2 rules become effective on March 1, 2005 and apply to Contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.

**02-0100**

**Definitions**

(1) "**Advantageous**" means in the City's best interests, as assessed according to the judgment of the City.

(2) "**Affected Person**" or "**Affected Offeror**" means a Person whose ability to participate in a Procurement is adversely affected by a City decision.

### Source Selection

**02-0250**

**Methods of Source Selection**

Except as permitted by ORS 279B.065 through 279B.085 and ORS 279A.200 through 279A.225, the City shall Award a Public Contract for Goods or Services, or both, based on Offers received in response to either competitive sealed Bids pursuant to ORS 279B.055 and Rule 02-0255 or competitive sealed Proposals pursuant to ORS 279B.060 and Rule 02-0260.

**02-0255**

**Competitive Sealed Bidding**

(1) Generally. The City may procure Goods or Services by competitive sealed bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a competitive sealed bidding solicitation and shall contain the information required by ORS 279B.055(2) and by section 2 of this rule. The City shall provide public notice of the competitive sealed bidding solicitation as set forth in Rule 2-0300.

(2) Invitation to Bid. In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid shall include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(I) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the City's representatives at the conference are not binding upon the City unless confirmed by Written Addendum.

(B) The form and instructions for submission of Bids and any other special information;

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1); and

(F) How the City will notify Bidders of Addenda and how the City will make Addenda available (See Rule 02-0430).

(b) City Need. The character of the Goods or Services the City is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements.

(c) Bidding and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The City shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall be reasonable estimates of actual future costs based on information the City has available concerning future use; and

(C) If the City intends to Award Contracts to more than one Bidder pursuant to Rule 02-0600(4)(c), the City shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.

(d) Applicable preferences pursuant to ORS 279B.055(6)(b).

(e) For Contracting Agencies subject to ORS 305.385, Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the delivery of the Goods or Services without prior written approval from the City.

**02-0257**

**Multistep Sealed Bids**

(1) Generally. The City may procure Goods or Services by using multistep competitive sealed Bids under ORS 279B.055(12).

(2) Phased Process. Multistep bidding is a phased process that seeks necessary information or unpriced technical Bids in the first phase combined with regular competitive sealed bidding, inviting Bidders who submitted technically eligible Bids in the first phase to submit competitive sealed price Bids on the technical Bids in the second phase. The Contract must be Awarded to the lowest Responsible Bidder. If time is a factor, the City may require Bidders to submit a separate sealed price Bid during the first phase to be opened after the technical evaluation.

(3) Public Notice. Whenever the City uses multistep sealed Bids, the City must give public notice for the first phase in accordance with Rule 02-0300. Public notice is not required for the second phase. However, the City must give notice of the second phase to all Bidders and inform Bidders of the right to protest Addenda issued after initial Closing under Rule 02-0430 and inform Bidders excluded from the second phase of the right, if any, to protest their exclusion under Rule 02-0720.

(4) Procedures Generally. In addition to the procedures set forth in Rule 02-0300 through 02-0490, the City must employ the procedures set forth in this rule for multistep bidding and in the Invitation to Bid.

(5) Procedure for Phase One of Multistep Sealed Bids.

(a) Form. Multistep sealed bidding must be initiated by the issuing an Invitation to Bid in the form and manner required for competitive sealed Bids except as provided in this Rule. In addition to the requirements set forth in Rule 02-0255(2), the multistep Invitation to Bid must state:

(A) That the solicitation is a multistep sealed Bid Procurement and describe the process the City will use to conduct the Procurement;

(B) That the City requests unpriced Technical Bids and that the City will consider Price Bids only in the second phase and only from those Bidders whose unpriced technical Bids are found eligible in the first phase;

(C) Whether Bidders must submit price Bids at the same time as unpriced technical Bids and, if so, that Bidders must submit the price Bids in a separate sealed envelope;

(D) The criteria to be used in the evaluation of un-priced technical Bids;

(b) Evaluation. The City must evaluate unpriced technical Bids in accordance with the criteria set forth in the Invitation to Bid.

(6) Procedure for Phase Two of Multistep Sealed Bidding.

(a) After the completion of phase one, if the City does not cancel the Solicitation, the City shall invite each eligible Bidder to submit a price Bid.

(b) The City shall conduct phase two as any other competitive sealed Bid Procurement except:

(A) As specifically set forth in this rule or the Invitation to Bid;

(B) No public notice need be given of the invitation to submit price Bids because such notice was previously given.

**02-0260**

**Competitive Sealed Proposals**

(1) Generally. The City may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. The City must use a Request for Proposal to initiate a competitive sealed Proposal solicitation. The Request for Proposal must contain the information required by ORS 279B.060(2) and by section 2 of this rule. The City must provide public notice of the competitive sealed Proposal solicitation as set forth in Rule 02-0300.

(2) Request for Proposal. In addition to the provisions required by ORS 279B.060(2), the Request for Proposal shall include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(I) The time, date and location of any pre-Offer conference; and

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the City's representatives at the conference are not binding upon the City unless confirmed by Written Addendum.

(B) The form and instructions for submission of Proposals and any other special information;

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed; and

(E) How the City will notify Proposers of Addenda and how the City will make Addenda available (See Rule 02-0430).

(b) City Need to Purchase. The character of the Goods or Services the City is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by ORS 279B.060(2)(c), the City's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the City awards one;

(B) Outline the anticipate duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric, mapping, transportation planning, or land surveying services, or related services that are subject to ORS 279C.100 to 279C.125, or the City for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the City is purchasing.

(c) Proposal and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The City must set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(3)(e). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates of actual future costs based on information available to the City; and

(C) If the City's solicitation process calls for the City to establish a Competitive Range, the City must generally describe in the Solicitation Document, the criteria or parameters the City will apply to determine the Competitive Range. The City, however, subsequently may determine or adjust the number of Proposers in the Competitive Range in accordance with Rule 02-0262(1)(a)(B).

(d) Applicable Preferences described in ORS 279A.120, ORS 279A.125(2) and 282.210.

(e) For Contracting Agencies subject to ORS 305.385, the Proposer's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) All contractual terms and conditions the City determines are applicable to the Procurement. The City's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the City will not include in the Request for Proposal because the City either will reserve them for

negotiation, or will request Proposers to offer or suggest those terms or conditions. See Rule 02-0260(3).

(g) As required by ORS 279.B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The City's reduction or withholding or payment under the Contract;

(B) The City's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting Contract; and

(C) The City's rights, which the City may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) The City may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract. Further, the City may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under Rule 02-0550(3), but the City may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The City shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under Rule 02-0420.

(4) For multiple Award Contracts, the City may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The City shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under Rule 02-0420.

(5) Good Cause. For purposes of this Rule, "Good Cause" means a reasonable explanation for not requiring the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods and Services under the Contract, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the City. The City must document in the Procurement file the basis for the determination of Good Cause for specifying otherwise. The City will have Good Cause to specify otherwise when the City determines"

(a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or on-going Services with with the Goods or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution or products, performance techniques, or scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) That other circumstances exist in which the City's interest in achieving economy, efficiency, compatibility or availability in the Procurement of Goods or Services reasonably outweighs the City's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

**02-0261**

**Multi-tiered and Multistep Proposals**

(1) Generally. The City may use any combination of the methods of Contractor selection as set forth in ORS 279B.060(8) and this rule to procure Goods and Services. In addition to the procedures set forth in Rule 02-0300 through 02-0490 for methods of Contractor selection, the City may provide for a multi-tiered or multistep selection process that permits award to the highest ranked Proposer at any tier or step, call for the establishment of a Competitive Range, or permits either serial or competitive simultaneous discussions or negotiations with one or more Proposers. The City may use one or more, or any combination, of the procedures set forth in this rule for Competitive Range, multi-tiered and multistep Proposals.

(2) ORS 279B.060(3)(d)(e) and (8) authorize the City to employ methods of Contractor selection that include, but are not limited to, multi-tiered or multistep processes that embrace:

(a) The evaluation of Proposals only, including the evaluations of serial Proposals (a series of more than one Proposal from each Proposer that remains eligible in the competition at the particular tier of the competition);

(b) The use of Proposals in connection with discussions with Proposers that lead to best and final Offers;

(c) The use of Proposals in connection with serial negotiations with Proposers that lead to best and final Offers or to the award of a Contract;

(d) The use of Proposals in connection with competitive negotiations with Proposers that lead to best and final Offers or to the award of a Contract; and

(e) The use of Proposals in multi-tiered competition designed to identify, at each stage of the competition, a class of Proposers that fall within a Competitive Range of Proposers that have a reasonable chance of being determined the most Advantageous Proposer or, in multiple award situations, a reasonable chance of being determined an awardee of a Public Contract. Multi-tiered and multistep competitions may use any combination or series of Proposals, discussions, negotiations, demonstrations, offers, or other means of soliciting information from Proposers that bears on the selection of a Contractor or Contractors. In multi-tiered and multistep competitions, the City may use these means of soliciting information from prospective Proposers in any sequence or order, as determined in the discretion of the City.

(3) When the City's Request for Proposals prescribes a multi-tiered or multistep Contractor selection process, the City nevertheless may, at the completion of any stage in the competition and on determining the Most Advantageous Proposer (or, in multiple award situations, on determining the awardees of the Public Contracts), award a Contract (or Contracts) and conclude the Procurement without proceeding to subsequent stages. The City also may, at any time, cancel the Procurement under ORS 279B.100.

(4) Exclusion Protest. The City may provide, before the notice of an intent to Award, an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multistep sealed Proposals as set forth in Rule 02-0720.

(5) Award Protest. The City shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and Rule 02-0740. An Affected Offeror may protest, for any of the reasons set forth in Rule 02-0720(2), its exclusion from the Competitive Range or from any phase of a multi-tiered or multistep sealed Proposal process, or may protest an Addendum issued following initial Closing, if the City did not previously provide Proposers the opportunity to protest such exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Contracting Agency.

(6) Competitive Range. When the City's solicitation process conducted under ORS 279B.060(8) calls for the City to establish a Competitive Range at any stage in the Procurement process, the City may do so as follows:

(a) Determining Competitive Range.

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

(B) The City may establish the number of Proposers in the Competitive Range in light of whether the City's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most Advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive, or have a reasonable chance of being determined the most Advantageous Proposer.

(b) Protesting Competitive Range. The City must provide Written notice to all Proposers identifying Proposers in the Competitive Range. The City may provide an opportunity for Proposers excluded from the Competitive Range to protest the City's evaluation and determination of the Competitive Range in accordance with Rule 02-0720.

(7) Discussions. The City may initiate oral or written discussions with all "eligible Proposers" on subject matter within the general scope. In conducting discussions, the City:

(a) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(b) May disclose other eligible Proposer's Proposals or discussions only in accordance with 279B.060(8)(b) or (c);

(c) May adjust the evaluation of a Proposal as a result of discussions. The conditions, terms, or price of the Proposal may be altered or changed during the course discussions provided the changes are within the scope of the Request for Proposals.

(d) At any time during the time allowed for discussions, the City may:

(A) Continue discussions with a particular eligible Proposer;

(B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

(C) Conclude discussions with all remaining eligible Proposers and provide to the then-eligible Proposers, notice requesting best and final Offers

(8) Negotiations. Initiating Negotiations. The City may commence serial negotiations with the highest-ranked eligible Proposers or commence simultaneous negotiations with all eligible Proposers. The City may negotiate:

(a) The statement of Work;

(b) The Contract Price as it is affected by negotiating the statement of Work and other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and

(c) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals or Addenda thereto. Proposers shall not submit for negotiation, and the City shall not accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for Proposals or any Addendum..

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(9) Terminating Negotiations. At any time during discussions or negotiations that the City conducts in accordance with sections (2) or (3) of this rule, the City may terminate discussions or negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the City reasonably believes that:

(a) The Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.
;

(c) Continuing Serial Negotiations. If the City is conducting serial negotiations and the City terminates negotiations with a Proposer, the City may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the sequential process until the City has either:

(A) Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(B) Decided to cancel the Procurement under ORS 279B.100.

(d) Competitive Simultaneous Negotiations. If the City chooses to conduct competitive negotiations, the City may negotiate simultaneously with competing Proposers. The City:

(A) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(B) May disclose other Proposer's Proposals or the substance of negotiations with other Proposers only if the City notifies all of the Proposers with whom the City will engage in negotiations of the City's intent to disclose before engaging in negotiations with any Proposer.

(e) Any oral modification of a Proposal resulting from negotiations must be reduced to Writing by the Proposer.

(10) Best and Final Offers. If the City requires best and final Offers, the City must establish a common date and time by which eligible Proposers must submit best and final Offers. If the City is dissatisfied with the best and final Offers, the City may make a written determination that it is in the City's best interest to conduct additional discussions, negotiations or change the City's requirements and require another submission of best and final Offers. The City must inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best the final Offer. The City shall evaluate Offers as modified by the best and final Offer. The City shall conduct the evaluations as described in Rule 02-0600. The City may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

(11) Multistep Sealed Proposals. The City may procure Goods or Services by using multistep competitive sealed Proposals pursuant to ORS 279B.060(8)(b)(G). Multistep sealed Proposals is a phased Procurement process that seeks necessary information or un-priced technical Proposals in the first phase, and in the second phase, invites Proposers who submitted technically qualified Proposals to submit competitive sealed price Proposals on the technical Proposals. The City must award the Contract to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the second phase.

(a) Public Notice. When the City uses multistep sealed Proposals, public notice for the first phase shall be given in accordance with Rule 02-0300. Public notice is not required for the second phase. However, the City shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the subsequent phases of the right, if any, to protest exclusion under Rule 02-0720.

(b) Procedure for Phase One of Multistep Sealed Proposals. The City must initiate a multistep sealed Proposals Procurement by issuing a Request for Proposals in the form and manner required for competitive sealed Proposals except as provided in

this rule. In addition to the requirements required for competitive sealed Proposals, the multistep Request for Proposal must state:

(A) That un-priced technical Proposals are requested;

(B) That the solicitation is a multistep sealed Proposal Procurement, and that in the second phase, priced Proposals will be accepted only from those Proposers whose un-priced technical Proposals are found qualified in the first phase;

(C) The criteria for the evaluation of un-priced technical Proposals; and

(D) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposals

( c) Addenda to the Request for Proposals. After receipt of un-priced technical Proposals, Addenda to the Request for Proposals shall be distributed only to Proposers who submitted un-priced technical Proposals.

(d) Receipt and Handling of Un-priced Technical Proposals. Un-priced technical Proposals need not be opened publicly.

(e) Evaluation of Un-Priced Technical Proposals. Un-priced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposals.

(f) Discussion of Un-priced Technical Proposals. The City may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the City shall not disclose any information derived from one un-priced technical Proposal to any other Proposer.

(g) Methods of Contractor Selection for Phase One. In conducting phase one, the City may employ any combination of the methods of Contractor selection that call for the establishment of a Competitive Range or include discussions, negotiations, or best and final offers as set forth in this Rule

(12) Procedure for Phase Two.

(a) Initiation. Upon the completion of phase one, the City shall invite each qualified Proposer to submit price Proposals.

(b) Conduct. The City shall conduct phase two as any other competitive sealed Proposal Procurement except:

(A) As specifically set forth in this rule; and

(B) No public notice need be given of the request to submit price Proposals because such notice was previously given.

**02-0265**

**Small Procurements**

(1) Generally. For Procurements of Goods or Services less than or equal to $50,000 the City may Award a Contract as a small Procurement pursuant to ORS 279B.065 and in accordance with rules promulgated by the City pursuant to ORS 279A.070.

(a) For purchases up to the sum of $1,000.00, an authorized City employee may use a field purchase order to purchase needed items, without any other approval.

(b) For purchases in an amount in excess of $1,000.00, and up to $5,000.00, a department head can approve a purchase only after obtaining at least three (3) competitive quotes from responsible and responsive bidders.

(c) For purchases in an amount in excess of $5,000.00 and up to $15,000.00, a department head can approve a purchase only after obtaining at least three (3) written quotes from responsible and responsive bidders.

(d) For purchases in an amount in excess of $15,000.00, and up to $50,000.00, a purchase order must be approved by the City Manager only after at least three (3) written quotes have been obtained from responsible and responsive bidders.

(e) In soliciting quotes under this rule, City staff members shall endeavor to obtain quotes from bidders who have paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding the submission of the quote, and who have a business address in Wasco County.

(f) The selection criteria for deciding which quote to select for award of a small procurement purchase may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.

(2) Amendments. The City may amend a Public Contract Awarded as a small Procurement in accordance Rule 02-0800, but the cumulative amendments shall not increase the total Contract Price to greater than $60,000.

**02-0270**

**Sole-source Procurements**

(1) Generally. The City may Award a Public Contract without competition as a sole-source Procurement pursuant to the requirements of ORS 279B.075.

(2) Public Notice. If, but for the City's determination that it may enter into a Contract as a sole-source, the City would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or 279B.060, the City shall give public notice of the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in a manner similar to public notice of competitive sealed Bids under ORS 279B.055(4) and Rule 02-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor and include the date, time and place that protests are due. The City shall give such public notice at least seven (7) Days before Award of the Contract.

(3) Procedure. The City, prior to purchase must document the procurement file with the City's findings of current market research to support the determination that the product or service is available from only one seller or source. The City's findings must also include:

(a) A brief description of the contract or contracts to be covered, including volume of contemplated future purchases;

(b) Description of the product or service to be purchased; and

(c) The reasons the City is using this procurement method, which must include at least one of the following:

(A) Efficient utilization of existing supplies and services requires the acquisition of compatible supplies and services; or

(B) The goods and services required for the exchange of software or data with other public or private agencies are available from only one source; or

(C) The particular product is for use in a pilot or experimental project; or

(D) Other findings that support the conclusion that the goods or services are available from only one source.

(4) Protest. An Affected Person may protest the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with Rule 02-0710.

**02-0275**

**Emergency Procurements**

The City Manager or the City Manager's authorized designee may award a Public Contract as an Emergency Procurement, in an amount not to exceed $100,000, using a procurement method which encourages competition that is practicable under the circumstances. The award of Public Contract as an Emergency Procurement which exceeds the sum of $100,000 shall be awarded by the Contract Review Authority, using a procurement method which encourages competition that is practicable under the circumstances.

**02-0280**

**Special Procurements**

(1) Generally. The City may Award a Public Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

(2) Public Notice. The City shall give public notice of (1) its request for approval of a Special Procurement and (2) the Contract Review Authority's approval of a Special Procurement in a manner similar to public notice of competitive sealed Bids under ORS 279B.055(4) and Rule 02-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The City shall give such public notice of its request for approval of a Special Procurement at least seven (7) Days prior to the approval of the Special Procurement by the Contract Review Authority. The City shall give such public notice of the approval of a Special Procurement at least fourteen (14) Days before Award of the Contract.

(3) Pursuant to ORS 279B.085, the following contracts are classified as "special procurements", exempt from the requirements of traditional competitive bidding:

(a) Brand Names or Products.

(A) Solicitation specifications for public contracts must not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in subsections (2) and (3) of this rule.

(B) The City may specify a particular brand name, make or product suffixed by "or equal", "or approved equal", "or equivalent, "or approved equivalent", or similar language if there is no other practical method of specification.

(C) The City may specify a brand name, mark, or product without an "or equal" or equivalent suffix if there is no practical method of specification, after documenting in the procurement file the following information:

(I) A brief description of the solicitation(s) to be covered, including volume of contemplated future purchases;

(ii) The brand name, make, or product to be specified; and

(iii) The reasons the City is seeking this procurement method, which must include at least one of the following findings in the procurement file:

1) It is unlikely that specification of the brand name, mark or product will encourage favoritism in the award of public contracts or substantially diminish competition; or

2) Specification of the brand name, mark or product would result in substantial cost savings to the City; or

3) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

(b) Advertising Contracts. The City should use competitive methods wherever possible to achieve the best value, and document in the procurement file the reasons why a competitive process was deemed to be impractical.

(c) Contracts for Price Regulated Items.

(A) The City may, without competitive bidding, contract for the direct purchase of supplies and services being where the rate for the supplies and services being purchased is established by federal, state, or local regulatory authority.

(B) The City should use competitive methods wherever possible to achieve best value and document in the procurement file the reasons why a competitive process was deemed to be impractical.

(d) Purchase of Used Personal Property.

(A) The City may purchase used property or equipment without competitive bidding, if at the time of purchase, the City has determined and documented that the purchase will (i) be unlikely to encourage favoritism

or diminish competition, and (ii) result in substantial cost savings or promote the public interest.

(B) "Used personal property or equipment" means the property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant-trade or industry as qualifying the personal property or equipment as "used", at the time of the City purchase. "Used property or equipment" generally does not include property or equipment if the City was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(C) For purchases of used personal property or equipment costing an amount not exceeding $150,000, the City must, where feasible, obtain three competitive quotes, unless the City has determined and documented that a purchase without obtaining competitive quotes will result in cost savings to the City and will not diminish competition or encourage favoritism.

(D) For purchases of used personal property or equipment exceeding $150,000, the City must obtain and keep a written record of the source and amount of quotes received. If three quotes are not available, a written record must be made of the attempts to obtain quotes.

(e) Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalts. Contracts for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalts are exempt from formal competitive bidding requirements if the City seeks competitive quotes from a majority of vendors in the area, makes its purchases from the least expensive source, and retains written justification for the purchase made.

(f) Copyrighted Materials. If the contract is for the purchase of copyrighted materials and there is only one known supplier available for such goods, the City may contract for the purchase of the goods without competitive bidding.

(g) Periodicals. The City may purchase subscriptions for periodicals, including journals, magazines, and similar publications without competitive bidding.

(h) Investment Contracts. The City may, without competitive bidding, contract for the purpose of the investment of public funds or the borrowing of funds by the City when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or constitution.

(I) Insurance Contracts. Contracts for insurance shall be let by one of the following alternative procedures:

(A) Insurance Consultant. The City may solicit proposals from insurance agents to perform insurance services as the City's insurance consultant in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the insurance consultant is given responsibility:

(I) As part of the RFP process for selection of an insurance consultant, the City shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such selection. These efforts shall include a public advertisement in at least one newspaper of general circulation in The Dalles and in at least one insurance trade publication of general circulation in the state. The advertisement shall generally describe the nature of the insurance that the City will require.

(ii) Any contract period shall not exceed three years. An insurance consultant may serve more than one contract period. An insurance consultant of record shall qualify for a contract prior to each period as if each contract period were the first.

(iii) In selecting an insurance consultant, the City shall select the consultant or consultants most likely to perform the most effective services.

(B) Specific Proposals for Insurance Contracts. As an alternative to the process provided in section (I), the City may solicit proposals from insurance agents for the purpose of acquiring specific insurance contracts subject to the following conditions:

(I) The City shall make reasonable efforts to inform known insurance agents in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. These efforts shall include public advertisements in at least one newspaper of general circulation in The Dalles area and at least one insurance trade publication of general circulation in the state. The advertisement shall state the specific nature of the insurance acquired.

(ii) The City shall select an insurance agent on the basis of the most advantageous offer considering coverage, premium cost, and service to be provided.

(j) Oil or Hazardous Material Removal. The City may enter into public contracts without competitive bidding when ordered to cleanup oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS 466.605 through 466.680 and this order necessitates the prompt establishment and performance of the contract in order to comply with the statutes regarding spill or release of oil or hazardous materials. In exercising its authority under this exemption, the City shall:

(A) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;

(B) Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup;

(C) Record the measures taken under subsection (a) of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected; and

(D) Not contract pursuant to this exemption in the absence of an order from the Department of Environmental Quality to cleanup a site with a time limitation that would not permit hiring a contractor under the usual competitive bidding procedures.

(k) Goods purchased through the State of Oregon. Contracts for the purchase of goods or materials if competitive bids for the same goods or materials have been obtained by the State of Oregon, the contract is awarded to the same party that the State dealt with, and the price of the goods or materials is the same or lower than that paid by the State.

(l) Auction Sales of Personal Property. Personal property may be sold at auction, after the property has been declared surplus, if the City determines that the auction contemplated will probably result in a higher net return than if the property were sold by competitive written bid.

(m) Sales of Personal Property. The City may sell personal property after the property has been declared surplus, including recyclable or reclaimed materials, without formal competitive bidding if the City has determined that a negotiated sale will result in increased net revenue and the following conditions are complied with:

(A) When the current market value per item is deemed to be less than $1,000.00, the City may establish a selling price, schedule and advertise a sale date, and sell to the first qualified buyer meeting the sale terms; or

(B) When the current value per item is deemed to exceed $1,000.00, the personal property must be offered for competitive written bid and be advertised in accordance with ORS 279.025, or be offered for sale at public auction. If no bids are received or if a determination is made that the market value of the property exceeds the offer of the highest responsible bidder, all bids may be rejected and the City may negotiate a sale subject to the following conditions:

(I) An appraisal of the market value of the property is obtained and documented and the negotiated sale price exceeds the market value; or

(ii) The sale amount exceeds the highest bid received through the bidding or auction process.

(n) Donations of Personal Property.

(A) The City may transfer personal property after the property has been declared surplus, including recyclable or reclaimed materials, without remuneration or only nominal remuneration without competitive bids to the following activities;

(I) Another public agency; or

(ii) Any sheltered workshop, work activity center or group care home which operates under contract or agreement with, or grant from, any state agency and which is certified to receive federal surplus property; or

(iii) Any recognized non-profit activity which is certified to receive federal surplus property.

(B) The City may donate or sell, without competitive bids, surplus personal property to recognized private non-profit social or health service activities, subject to the following conditions:

(I) A determination has been made that the property is not needed for other public purposes;

(ii) If the property has a current market value of $250.00 or more, the donation or sale shall:

1) Be approved by the City Manager;

2) Be documented by the City to be clearly in the public interest;

(iii) The City determines this is the most efficient and cost-effective method for disposing of the property.

(C) The City shall maintain a record of all transfers, donations or sales authorized by sections (A) and (B) of this rule.

(o) Information technology contracts. The City may enter into a contract to acquire information technology hardware and software, without competitive bidding, subject to the following conditions:

(A) If the contract does not exceed $75,000, the City shall, at a minimum, follow the provisions of Rule 02-0265. Prior to selecting a contractor, reasonable efforts shall be made to solicit proposals from three or more vendors. Justification of the award shall be documented and become a public record of the City.

(B) If the contract amount exceeds $75,000, the City shall determine and use the best procurement method and shall solicit written proposals in accordance with the requirements of these Local Contract Review Board Rules. The City shall document the evaluation and award process, which will be part of the public record justifying the award.

(C) If the amount of the contract is estimated to exceed $500,000, the City shall provide proposers an opportunity to review the evaluation of their proposals before final selection.

(p) Telecommunications Systems Contracts. The City may enter into a contract to acquire telecommunications system hardware and software, without competitive bidding, subject to the following conditions:

(A) If the contract amount does not exceed $75,000, the City shall at a minimum obtain competitive quotes. Prior to selection of a contractor, reasonable efforts will be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the City.

(B) If the contract amount exceeds $75,000, the City shall determine the best procurement method and shall solicit written proposals in accordance with these Local Contract Review Board Rules.

(C) The telecommunications solicitation method authorized in subsection (p)(B) of this rule shall:

(I) State the contractual requirements in the solicitation document;

(ii) State the evaluation criteria to be applied in awarding the contract and the role of any evaluation committee. Criteria that would be used to identify the proposal that best meets the City's needs may include, but are not limited to, cost, quality, service and support, compatibility and interconnectivity with the City's existing telecommunications system, product or system reliability, vendor viability and financial stability, operating efficiency, and expansion potential;

(iii) State the provisions made for bidders or proposers to comment on any specifications which they feel limit competition; and

(iv) Be advertised in accordance with rule 02-0300.

(q) Banking services. The City may contract for banking services in accordance with
the following provisions:

(A) The City may solicit proposals from local banking institutions to provide banking services for the City. As part of the RFP process for the selection of a bank, the City shall make reasonable efforts to inform known banking institutions in the competitive market area that it is considering such a selection. These efforts shall include a public advertisement in at least one newspaper of general circulation in The Dalles and in at least one trade publication of general circulation in the state. The advertisement shall generally describe the nature of the banking services the City will require.

(B) Any contract period shall be at the City's discretion. A banking institution may serve more than one contract period. A banking institution of record shall qualify for a contract prior to each period as if each contract period were the first.

(C) In selecting a banking institution to provide services, the City shall select the institution most likely to perform the most effective services.

(4) Protest. An Affected Person may protest the approval of or request for approval of a Special Procurement in accordance with ORS 279B.400 and Rule 02-0700.

**02-0285**

**Cooperative Procurements**

The City may participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in ORS 279A.200 through 279A.225 and Rule 01-0400 through 01-0480.

## Procurement Process

**02-0300**

**Public Notice of Solicitation Documents**

(1) Notice of Solicitation Documents; Fee. The City shall provide public notice of every Solicitation Document in accordance with section (2) of this rule. The City may give additional notice using any method it determines appropriate to foster and promote competition, including:

(a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the City's Procurements;

(b) Placing notice on the City's Internet World Wide Web site.

(2) Advertising. The City shall advertise every notice of a Solicitation Document as follows:

(a) The City shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(4).

(3) Content of Advertisement. All advertisements for Offers shall set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Goods or Services to be acquired;

(c) The interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the City determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing be less then seven (7) Days as set forth in ORS 279B.055(4)(f). The City shall document the specific reasons for the shorter public notice period in the Procurement file;

(d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Goods or Services is one for which Persons must be prequalified;

(e) The office where Contract terms, conditions and Specifications may be reviewed;

(f) The name, title and address of the individual authorized by the City to receive Offers;

(g) The scheduled Opening; and

(h) Any other information the City deems appropriate.

(4) Posting Advertisement for Offers. The City shall post a copy of each advertisement for Offers at the principal business office of the City. A Proposer may obtain a copy of the advertisement for Offers upon request.

(5) Fees. The City may charge a fee or require a deposit for the Solicitation Document.

(6) Notice of Addenda. The City shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with Rule 02-0430.

**02-0310**

**Bids or Proposals are Offers**

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the City's acceptance for the period specified in Rule 02-0480. The City's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(2) Contingent Offers. Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to Rule 02-0261, a Proposer shall not make its Offer contingent upon the City's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) Offeror's Acknowledgment. By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under Rule 02-0261, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the City in Writing.

## Bid and Proposal Preparation

**02-0400**

**Offer Preparation**

(1) Instructions. An Offeror shall submit and Sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) Forms. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(3) Documents. An Offeror shall provide the City with all documents and descriptive literature required by the Solicitation Document.

**02-0410**

**Offer Submission**

(1) Product Samples and Descriptive Literature. The City may require product samples or descriptive literature if the City determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The City will dispose of product samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

(2) Identification of Offers.

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the City, whichever is applicable. If the City permits facsimile Offers in the Solicitation Document, the Offeror may submit and identify facsimile Offers in accordance with these division 2 rules and the instructions set forth in the Solicitation Document.

(b) The City is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(3) Receipt of Offers. The Offeror is responsible for ensuring the City receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

**02-0420**

**Pre-Offer Conferences**

(1) Purpose. The City may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information, or to conduct site inspections.

(2) Required Attendance. The City may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) Scheduled Time. If the City holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) Statements Not Binding. Statements made by the City's representative at the pre-Offer conference do not change the Solicitation Document unless the City confirms such statements with a Written Addendum to the Solicitation Document.

(5) Agency Announcement. The City must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Rule 02-0255(2) or Rule 02-0260(2).

**02-0430**

**Addenda to Solicitation Document**

(1) Issuance; Receipt. The City may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the City otherwise specifies in the Addenda.

(2) Notice and Distribution. The City shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the City will provide notice of Addenda and how the City will make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the City will engage in a multistep competitive sealed Bid process in accordance with Rule 02-0257, or a multi-tiered or multistep competitive sealed Proposal process in accordance with Rule 02-0261.

(3) Timelines; Extensions.

(a) The City shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The City may extend the Closing if the City determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by a countervailing

public interest, the City shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(b) Notwithstanding subsection 3(a) of this rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multistep sealed Bid or a multi-tiered or multistep sealed Proposal issued in accordance with ORS 279B.060(6)(d) and Rule 02-0261 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the City determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The City shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in Rule 02-0730, by the close of the City's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under Rule 02-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with Rule 02-0730, then the City may consider an Offeror's request for change or protest to the Addendum only, and the City shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this section (4) of this rule, the City is not required to provide a protest period for Addenda issued after initial Closing during a multi-tier or multistep Procurement process conducted pursuant to ORS 279B.055 or ORS 279B.060.

**02-0440**

**Pre-Closing Modification or Withdrawal of Offers**

(1) Modifications. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the City in accordance with Rule 02-0400 and Rule 02-0410, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

(2) Withdrawals.

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the City prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the City.

(b) The City may release an unopened Offer withdrawn under subsection 2(a) of this rule to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(3) Documentation. The City shall include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement file.

**02-0450**

**Receipt, Opening, and Recording of Offers; Confidentiality of Offers**

(1) Receipt. The City shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The City shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the City inadvertently opens an Offer or a modification prior to the Opening, the City shall return the Offer or modification to its secure and confidential state until Opening. The City shall document the resealing for the Procurement file (e.g. "City inadvertently opened the Offer due to improper identification of the Offer.").

(2) Opening and Recording. The City shall publicly open Offers including any modifications made to the Offer pursuant to Rule 02-0440(1). In the case of Invitations to Bid, to the extent practicable, the City shall read aloud the name of each Bidder, and such other information as the City considers appropriate. However, the City may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(5). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the City will not read Offers aloud.

**02-0460**

**Late Offers, Late Withdrawals and Late Modifications**

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. An Agency shall not consider late Offers, withdrawals or modifications except as permitted in Rule 02-0470 or Rule 02-0261.

**02-0470**

**Mistakes**

(1) Generally. To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, the City should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) City Treatment of Mistakes. The City shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the City discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the City may take the following action:

(a) The City may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) The City may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the City's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are

available in the Offer). In the event of a discrepancy, unit prices shall prevail over extended prices.

(c) The City may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the City does not grant the Offeror permission to withdraw the Offer;

(G) That the City's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the City or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the City.

(d) The criteria in subsection (2)(c) of this rule shall determine whether the City will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether the City will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the City based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the City, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) Rejection for Mistakes. The City shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) Identification of Mistakes after Award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 2 only to the extent permitted by applicable law.

**02-0480**

**Time for City Acceptance**

An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than thirty (30) Days following Closing unless otherwise specified in the Solicitation Document.

**02-0490**

**Extension of Time for Acceptance of Offer**

The City may request, orally or in Writing, that Offerors extend, in Writing, the time during which the City may consider their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

## Qualifications and Duties

**02-0500**

**Responsibility of Bidders and Proposers**

Before Awarding a Contract the City shall determine that the Bidder submitting the lowest Bid or Proposer submitting the most Advantageous Proposal is Responsible. The City shall use the standards set forth in ORS 279B.110 and Rule 02-0640(1)(c)(F) to determine if a Bidder or Proposer is Responsible. In the event the City determines a Bidder or Proposer is not Responsible it shall prepare a Written determination of non-Responsibility as required by ORS 279B.110 and shall reject the Offer.

**02-0525**

**Qualified Products Lists**

The City may develop and maintain a qualified products list pursuant to ORS 279B.115.

**02-0550**

**Prequalification of Prospective Offerors**

(1) The City may prequalify prospective Offerors pursuant to ORS 279B.120 and 279B.125.

(2) Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120(3), the City may determine that a prequalified Offeror is not Responsible prior to Contract Award.

(3) Offerors who have prequalified for the State of Oregon for similar work may be considered to be prequalified by the City. A determination of prequalification by the City is valid for a period of three years.

**02-0575**

**Debarment of Prospective Offerors**

(1) Generally. The City may Debar prospective Offerors for the reasons set forth in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.

(2) Responsibility. Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b), the City may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.

(3) Imputed Knowledge. The City may attribute improper conduct of a Person or its affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

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

## Offer Evaluation and Award

**02-0600**

**Offer Evaluation and Award**

(1) City Evaluation. The City shall evaluate Offers only as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The City shall not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) Nonresident Bidders. In determining the lowest Responsive Bid, the City shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and Rule 01-0310 for Nonresident Bidders.

(B) Public Printing. The City shall for the purpose of evaluating Bids apply the public printing preference set forth in ORS 282.210.

(C) Award When Bids are Identical. If the City determines that one or more Bids are identical under Rule 01-0300, the City shall Award a Contract in accordance with the procedures set forth in Rule 01-0300.

(b) Evaluation of Proposals.

(A) Award When Proposals are Identical. If the City determines that one or more Proposals are identical under Rule 01-0300, the City shall Award a Contract in accordance with the procedures set forth in Rule 01-0300.

(B) Public Printing. The City shall for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) Recycled Materials. When procuring Goods, the City shall give preference for recycled materials as set forth in ORS 279A.125 and Rule 01-0320.

(2) Clarification of Bids. After Bid Opening, the City may conduct discussions with apparent Responsive Bidders for the purpose of clarification to assure full understanding of the Bid. All Bids, in the City's sole discretion, needing clarification shall be accorded such an opportunity. The City shall document clarification of any Bidder's Bid in the Procurement file.

(3) Negotiations Prohibited.

(a) Bids. Except as permitted by section 2 of this rule, the City shall not negotiate with any Bidder. After Award of the Contract, the City and Contractor may only modify the Contract in accordance with Rule 02-0800.

(b) Requests for Proposals. The City may conduct discussions or negotiate with Proposers only in accordance with ORS 279B.060(6)(b) and Rule 02-0261 After Award of the Contract, the City and Contractor may only modify the Contract in accordance with Rule 02-0800.

(4) Award.

(a) General. If Awarded, the City shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The City may Award by item, groups

of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a "market basket" of items representative of the City's expected purchases, or grand total of all items.

(c) Multiple Awards -- Bids.

(A) Notwithstanding subsection 4(a) of this rule, the City may Award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. Multiple Awards shall not be made if a single Award will meet the City's needs, including but not limited to adequate availability, delivery, service, or product compatibility. A multiple Award may be made if Award to two or more Bidders of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any Invitation to Bid shall not preclude the City from Awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the City shall specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(d) Multiple Awards – Proposals.

(A) Notwithstanding subsection 4(a) of this rule, the City may Award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. Multiple Awards shall not be made if a single Award will meet the City's needs, including but not limited to adequate availability, delivery, service or product compatibility. A multiple Award may be made if Award to two or more Proposers of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to prospective Proposers that multiple Contracts may be Awarded for any Request for Proposals shall not preclude the City from Awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the City shall specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(e) Partial Awards. If after evaluation of Offers, the City determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The City may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The City may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) All or none Offers. The City may Award all or none Offers if the evaluation shows an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

**02-0610**

**Notice of Intent to Award**

(1) Notice of Intent to Award. The City shall provide Written notice of its intent to Award to all Bidders and Proposers pursuant to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the City determines that circumstances require prompt execution of the Contract, in which case the City may provide a shorter notice period. The City shall document the specific reasons for the shorter notice period in the Procurement file.

(2) Finality. The City's Award shall not be final until the later of the following:

(a) The expiration of the protest period provided pursuant to Rule 02-0740; or

(b) The City provides Written responses to all timely-filed protests denying the protests and affirming the Award.

**02-0620**

**Documentation of Award**

(1) Basis of Award. After Award, the City shall make a record showing the basis for determining the successful Offeror part of the City's Procurement file.

(2) Contents of Award Record. The City's record shall include:

(a) For Bids:

(A) Bids;

(B) Completed Bid tabulation sheet; and

(C) Written justification for any rejection of lower Bids.

(b) For Proposals:

(A) Proposals;

(B) The completed evaluation of the Proposals;

(C) Written justification for any rejection of higher scoring Proposals; and

(D) If the City engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and Rule 02-0261, Written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the City used to select a Proposer to which the City awarded a Contract.

**02-0630**

**Availability of Award Decisions**

(1) Contract Documents. To the extent required by the Solicitation Document, the City shall deliver to the successful Offeror a Contract, Signed purchase order, Price Agreement, or other Contract documents as applicable.

(2) Availability of Award Decisions. A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the City a Written request accompanied by payment. The requesting Person shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, the City may make available tabulations of Bids and Proposals through the City's website.

(3) Availability of Procurement Files. After notice of intent to Award, the City shall make Procurement files available in accordance with applicable law.

**02-0640**

**Rejection of an Offer**

(1) Rejection of an Offer.

(a) The City may reject any Offer as set forth in ORS 279B.100.

(b) The City shall reject an Offer upon the City's finding that the Offer:

(A) Is contingent upon the City's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public Procurement procedures.

(c) The City shall reject an Offer upon the City's finding that the Offeror:

(A) Has not been prequalified under ORS 279B.120 and the City required mandatory prequalification;

(B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified pursuant to Rule 01-0210(4);

(C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the City must have information that indicates that the Offeror meets the

applicable standards of Responsibility. To be a Responsible Offeror, the City must determine pursuant to ORS 279B.110 that the Offeror:

(I) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the Offeror to meet all contractual responsibilities; and

(ii) Has a satisfactory record of contract performance. The City should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the City should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The City may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The City shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if the City determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the City. The City may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. The City shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(c);

(iv) Is qualified legally to contract with the City; and

(v) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the City concerning Responsibility, the City shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

(2) Form of Business Entity. For purposes of this rule, the City may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

**02-0650**

**Rejection of All Offers**

(1) Rejection. The City may reject all Offers as set forth in ORS 279B.100. The City shall notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

(2) Criteria. The City may reject all Offers based upon the following criteria:

(a) The content of or an error in the Solicitation Document, or the Procurement process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The City cancels the Procurement or solicitation in accordance with Rule 02-0660; or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

**02-0660**

**Cancellation of Procurement or Solicitation**

(1) Cancellation in the Public Interest. The City may cancel a Procurement or solicitation as set forth in ORS 279B.100.

(2) Notice of Cancellation Before Opening. If the City cancels a Procurement or solicitation prior to Opening, the City shall provide Written notice of cancellation in the same manner that the City initially provided notice of the solicitation. Such notice of cancellation shall:

(a) Identify the Solicitation Document;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) Notice of Cancellation After Opening. If the City cancels a Procurement or solicitation after Opening, the City shall provide Written notice of cancellation to all Offerors who submitted Offers.

**02-0670**

**Disposition of Offers if Procurement or Solicitation Canceled**

(1) Prior to Opening. If the City cancels a Procurement or solicitation prior to Opening, the City shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the City shall open the Offer to determine the source and then return it to the Offeror.

(2) After Opening. If the City cancels a Procurement or solicitation after Opening, the City:

(a) May return Proposals in accordance with ORS 279B.060(5)(c); and

(b) Shall keep Bids in the Procurement file.

(3) Rejection of All Offers. If the City rejects all Offers, the City shall keep all Proposals and Bids in the Procurement file.

## Legal Remedies

**02-0700**

**Protests and Judicial Review of Special Procurements**

(1) Purpose. An Affected Person may protest the approval of or request for approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval or request for approval of a Special Procurement, an Affected Person must file a

Written protest with the Contract Review Authority for the City and exhaust all administrative remedies.

(2) Delivery.

(a) Protest of Request for Approval of a Special Procurement. An Affected Person must deliver a Written protest to the Contract Review Authority for the City within fourteen (14) Days after the first date of public notice of a proposed Special Procurement, unless a different protest period is provided in the public notice of the proposed Special Procurement.

(b) Protest of Approval of a Special Procurement. Notwithstanding the requirements for filing a writ of review under ORS Chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Contract Review Authority for the City within seven (7) Days after the first date of public notice of the approval of a Special Procurement by the Contract Review Authority for the City, unless a different protest period is provided in the public notice of the approval of a Special Procurement.

(3) Content of Protest. The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) Contract Review Authority Response.

(a) Protest of Request for Approval of a Special Procurement: The Contract Review Authority shall not consider an Affected Person's protest of the City's request for approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the request for approval of a proposed Special Procurement. The Contract Review Authority shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or deny the request for approval of the Special Procurement.

(b) Protest of Approval of a Special Procurement: The Contract Review Authority shall not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public

notice of the approval of a Special Procurement. The Contract Review Authority shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

(5) Judicial Review. An Affected Person may not seek judicial review of the Contract Review Authority's denial of a protest of a request for approval of a Special Procurement. An Affected Person may seek judicial review of the Contract Review Authority's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

**02-0710**

**Protests and Judicial Review of Sole-Source Procurements**

(1) Purpose. For sole-source Procurements requiring public notice under Rule 02-0270, an Affected Person may protest the determination of the Contract Review Authority or designee that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with the Contract Review Authority or designee and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the public notice of the sole-source Procurement, an Affected Person must deliver a Written protest to the Contract Review Authority or designee within seven (7) Days after the first date of public notice of the sole-source Procurement, unless a different protest period is provided in the public notice of a sole-source Procurement.

(3) Content of Protest. The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) Contract Review Authority Response. The Contract Review Authority or designee shall not consider an Affected Person's sole-source Procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the public notice of the sole-source Procurement. The Contract Review Authority or designee shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority or designee upholds the protest, in whole or in part, the City shall not enter into a sole-source Contract.

(5) Judicial Review. Judicial review of the Contract Review Authority's or designee's disposition of a sole-source Procurement protest shall be in accordance with ORS 279B.420.

**02-0720**

**Protests and Judicial Review of Multi-Tiered and Multistep Solicitations**

(1) Purpose. An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with the City and exhaust all administrative remedies.

(2) Basis for Protest. An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and but for the City's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. (For example, the protesting Offeror must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the Competitive Range because: their Proposals were not Responsive, or the City committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.)

(3) Delivery. Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a Written protest to the City within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers or steps.

(4) Content of Protest. The Affected Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(5) City Response. The City shall not consider an Affected Offeror's multi-tiered or multistep solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The City shall issue a Written disposition of the protest in a timely manner. If the City upholds the protest, in whole or in part, the City may in its sole discretion either issue an Addendum under Rule 02-0430 reflecting its disposition or cancel the Procurement or solicitation under Rule 02-0660.

(6) Judicial Review. Judicial review of the City's decision relating to a multi-tiered or multistep solicitation protest shall be in accordance with ORS 279B.420.

**02-0730**

**Protests and Judicial Review of Solicitations**

(1) Purpose.

(a) A prospective Offeror may protest the Procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2)(a). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the City and exhaust all administrative remedies.

(b) Contract-Specific Special Procurements. Notwithstanding section 1(a) of this rule, a Person may not protest, challenge, or review a Contract-Specific Special Procurement except upon the occurrence of the conditions set forth in ORS 279B.405(2)(b).

(2) Delivery. Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the City not less than ten (10) Days prior to Closing.

(3) Content of Protest. In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest shall include a statement of the desired changes to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) City Response. The City shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The City shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The City shall issue a Written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If the City upholds the protest, in whole or in part, the City may in its sole discretion either issue an Addendum reflecting its disposition under Rule 02-0430 or cancel the Procurement or solicitation under Rule 02-0660.

(5) Extension of Closing. If the City receives a protest from a prospective Offeror in accordance with this rule, the City may extend Closing if the City determines an extension is necessary to consider and respond to the protest.

(6) Clarification. Prior to the deadline for submitting a protest, a prospective Offeror may request that the City clarify any provision of the Solicitation Document. The City's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the City unless the City amends the Solicitation Document by Addendum.

(7) Judicial Review. Judicial review of the City's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

**02-0740**

**Protests and Judicial Review of Contract Award**

(1) Purpose. An Offeror may protest the Award of a Contract, or the intent to Award of a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with the City and exhaust all administrative remedies before seeking judicial review of the City's Contract Award decision.

(2) Delivery. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the City within seven (7) Days after the Award of a Contract, or issuance of the notice of intent to Award the Contract, whichever occurs first.

(3) Content of Protest. An Offeror's Written protest shall specify the grounds for the protest to be considered by the City pursuant to ORS 279B.410(2).

(4) City Response. The City shall not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The City shall issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the City upholds the protest, in whole or in part, the City may in its sole discretion either Award the Contract to the successful protestor or cancel the Procurement or solicitation.

(5) Judicial Review. Judicial review of the City's decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.

**02-0745**

**Protests and Judicial Review of Qualified Products List Decisions**

(1) Purpose. A prospective Offeror may protest the City's decision to exclude the prospective Offeror's Goods from the City's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of the City's qualified products list decision.

(2) Delivery. Unless otherwise stated in the City's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to the City within seven (7) Days after issuance of the City's decision to exclude the prospective Offeror's Goods from the qualified products list.

(3) Content of Protest. The prospective Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(4) City Response. The City shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the City's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list. The City shall issue a

Written disposition of the protest in a timely manner. If the City upholds the protest, it shall include the successful protestor's Goods on the qualified products list.

(5) Judicial Review. Judicial review of the City's decision relating to a qualified products list protest shall be in accordance with ORS 279B.425.

**02-0750**

**Judicial Review of Other Violations**

Any violation of ORS Chapter 279A or 279B by the City for which no judicial remedy is otherwise provided in the Public Contracting Code is subject to judicial review as set forth in ORS 279B.420.

**02-0760**

**Review of Prequalification and Debarment Decisions**

Review of the City's prequalification and Debarment decisions shall be as set forth in ORS 279B.425.

**02-0800**

**Contract Amendments**

(1) Generally. The City may amend a Contract without additional competition in any of the following circumstances:

(a) The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approval of the Special Procurement, if any. An amendment is not within the scope of the Procurement if the City determines that if it had described the changes to be made by the amendment in the Procurement Documents, it would likely have increased competition or affected award of the Contract.

(b) These Rules otherwise permit the City to Award a Contract without competition for the goods or services to be procured under the Amendment.

(c) The amendment is necessary to comply with a change in law that affects performance of the Contract.

(d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is advantageous to the City, subject to all of the following conditions:

(A) The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the unamended Contract.

(B) The City determines that, with all things considered, the amended Contract is at least as favorable to the City as the unamended Contract.

(C) The amended Contract does not have a total term greater than allowed in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approval of the Special Procurement, if any, after combining the initial and extended terms. For example, a one-year Contract described as renewable each year for up to four additional years may be renegotiated as a two to five year Contract, but not beyond a total of five years.

(2) Small Contract. The City may amend a Contract Awarded as small Procurement pursuant to sections 1 of this rule, provided also the total increase in Contract price does not exceed the amount set forth in Rule 02-0265 for small Procurements.

(3) Emergency Contract. The City may amend a Contract Awarded as an emergency Procurement if the emergency justification for entering into the Contract still exists, and the amendment is necessary to address the continuing emergency.

(4) Price Agreements. The City may amend a Price Agreement as follows:

(a) As permitted by the Price Agreement;

(b) If the circumstances set forth in ORS 279B.140(2) exist; or

(c) As permitted by applicable law.

## DIVISION 3

## CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED SERVICES CONTRACTS



### Selection Procedures



### Post-Selection Considerations

## DIVISION 3

## CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED SERVICES CONTRACTS

### 03-0100

### Application; Effective Date

(1) These division 3 rules apply to the screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors, and providers of Related Services under Contracts, and set forth the following procedures:

(a) Procedures through which the City selects Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services; and

(b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services for certain Public Improvements owned and maintained by a Local Government.

(2) Effective Date. These division 3 rules become effective on March 1, 2005 and apply to the above-described Contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.

### 03-0110

### Definitions

In addition to the definitions set forth in ORS 279A.010, ORS 279C.100, and Rule 01-0110, the following definitions apply to these division 3 rules:

(1) "**Consultant**" means an Architect, Engineer, Photogrammetrists, Transportation Planner, Land Surveyor, or provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing. Provided, however, when the City is entering into a direct Contract under Rule 03-022(1)(c) or (d), the "Consultant" must be an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor, as required by ORS 279C.115(1).

(2) "**Estimated Fee**" means the City's reasonably projected fee to be paid for a Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract

solicitation method and is distinct from the total amount payable under the Contract. The Estimated Fee shall not be used as a basis to resolve other Public Contracting issues, including without limitation, direct purchasing authority or Public Contract review and approval under ORS 291.047.

(3) **"Price Agreement"** for purposes of this Rule, is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions, including but not limited to terms and conditions of later work orders or task orders for Project-specific Services, and which may include Consultant compensation information, with:

(a) No guarantee of a minimum or maximum purchase; or

(b) An initial work order, task order or minimum purchase, combined with a continuing Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services in which the City does not guarantee a minimum or maximum additional purchase.

(3) "**Project**" means all components of the City's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services under a Contract.

(4) "**Proposer**" means a Consultant who submits a proposal to the City in response to a Request for Proposals.

(5) "**Request for Qualifications**" or "**RFQ**" means a written document issued by the City to which Consultants respond with a description of their experience with and qualifications for the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFQ and from which the City creates a list of Consultants who are qualified to perform those services, but which is not intended to result in a Contract between a Consultant and the City.

(6) **"Transportation Planning Services"** are defined in ORS 279C.100. Transportation Planning Services include only Project-specific transportation planning involved in the preparation of categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not directly associated with an individual Project that will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.

**03-0120**

**List of Interested Consultants; Performance Record**

(1) Consultants who are engaged in the lawful practice of their profession and who are interested in providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services may annually submit a statement describing their qualifications and related performance information to the City's office addresses. The City shall use this information to create a list of prospective Consultants and shall update this list at least once every two years.

(2) The City may compile and maintain a record of each Consultant's performance under Contracts with the City, including information obtained from Consultants during an exit interview. Upon request and in accordance with the Oregon Public Records Law (ORS 192.410 through 192.505) the City may make available copies of the records.

**03-0130**

**Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest**

(1) When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the City shall follow the applicable selection procedure under either Rule 03-0210 (Informal Selection Procedure), Rule 03-0220 (Formal Selection Procedure), or Rule 03-0200 (Direct Appointment Procedure). The City shall not solicit or use pricing policies and pricing proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a Consultant's compensation until after the City has selected the most qualified Consultant in accordance with the applicable selection procedure.

(2) When selecting Consultants to perform Related Services, the City shall follow one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, the City shall follow the applicable selection procedure under either Rule 03-0210 (Informal Selection Procedure), Rule 03-0220 (Formal Selection Procedure) or Rule 03-0200 (Direct Appointment Procedure);

(b) When selecting a Consultant on the basis of price competition alone, the City shall follow either the provisions under division 2 for obtaining and evaluating Bids, or Rule 03-0200 (Direct Appointment Procedure) if the requirements of Rule 02-0200(1) apply; and

(c) When selecting a Consultant on the basis of price and qualifications, the City shall follow either the provisions under Division 2 for obtaining and evaluating Proposals, or Rule 03-0200 (Direct Appointment Procedure) if the requirements of Rule 02-0200(1) apply. The City may request and consider a Proposer's pricing policies, pricing proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, submitted with a Proposal.

(3) The City is not required to follow the procedures in Section (1) or Section (2) of this Rule, when the City has established Price Agreements with more than one Consultant and is establishing the criteria and procedures the City will use to select a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures the City uses to select a single Consultant, when the City has established Price Agreements with more than one Consultant, must meet the requirements of Rule 03-0270 (Price Agreements).

(4) The City may use electronic methods to screen and select a Consultant in accordance with the procedures described in sections (1) and (2) of this rule. If the City uses electronic methods to screen and select a Consultant, the City shall first promulgate rules for conducting the screening and selection procedure by electronic means, substantially in conformance with OAR 137-047-0330 (Electronic Procurement).

(5) For purposes of the Division 03 Rules, a "mixed" contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. The City's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract by determining which of the Services involves the majority of the compensation to be paid under the Contract. If the majority of the total compensation under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the City shall comply with the requirements of ORS 279C.110 and section (1) of this rule. If the majority of the total compensation under the Contract is for Related Services, the City shall comply with the requirements of ORS 279C.120 and section 2 of this rule. If the majority of the total compensation under the Contract is for some other Services or Goods under the Public Contracting Code, the City shall comply with the applicable provisions of the Public Contracting Code and Divisions 1, 2, and 5 of the Model Rules that match the predominant purpose of the Contract.

(6) Where a Consultant will be performing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for the City, by providing analysis, testing services, testimony or similar services for a Project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit, mediation, arbitration, or other form

of action or alternative dispute resolution process, whether legal, equitable, administrative or otherwise, the City must comply with these Division 03 rules in procuring those Services.

(7) In applying these rules, the City shall support the state's goal of promoting a sustainable economy in the rural areas of the state.

(8) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C110 through 279C.125, the following provisions apply to proposals received by the City for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:

(a) The term "competitive proposal" for purposes of ORS 279C.107 includes proposals under Rule 03-0200 (Direct Appointment Procedure), Rule 03-0210 (Informal Selection Procedure), Rule 03-0220 (Formal Selection Procedure) or Rule 03-0130(2)(c) (selection based on price and qualifications) and any proposals submitted in response to a selection process for a work order or task order under Rule 08-0270 (Price Agreements),

(b) For purposes of proposals received by the City under Rule 03-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, while the City may make proposals under Rule 03-0200 (Direct Appointment Procedure) open for public inspection following the City's decision to begin Contract negotiations with the selected Consultant, Rule 03-0200 proposals are not required to be open for public inspection until after the City has executed a Contract with the selected Consultant.

(c) In the limited circumstances permitted by ORS 279C.110, 279C.115, and 279C.120, where the City is conducting discussions or negotiations with proposers who submit proposals that the City has determined to be closely competitive or to have a reasonable chance of being selected for award, the City may open proposals to as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, the City may open proposals in such a way as to avoid disclosure of the contents until after the City executes a Contract with the selected Consultant. If the City determines that it is in the best interest of the City to do so, the City may make proposals available for public inspection following the City's issuance of a notice of intent to award a Contract to a Consultant.

(d) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

(9) As required by ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, the City may not:

(a) Procure the Personal Services identified in ORS 279C.307 from a Contractor or an affiliate of a Contractor who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation, or oversight by means of the Personal Services; or

(b) Procure the Personal Services identified in ORS 279C.307 through the Public Contract that is subject to administration, management, inspection, evaluation or oversight by means of the Personal Services.

(10) The requirements of ORS 279C.307 and section 9 of this Rule apply in the following circumstances, except as provided in section 11 of this Rule:

(a) The City requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract of performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS chapter 279C.

(b) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, which involve overseeing of monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a Project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing, or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section 10 of this Rule.

(11) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

(a) To the City's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in Rule 04-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to the City's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement.

(b) To the City's Procurement of both pre-construction services and construction services through a single "Construction Manager/General Contractor" Procurement, as defined in Rule 04-0610. Provided, however, the restrictions of ORS 279C.307 do apply to the City's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Contract or performance under such a Contract resulting from a Construction Manager/General Contractor Procurement.

## Selection Procedures

**03-0200**

**Direct Appointment Procedure**

(1) The City may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these rules if:

(a) The City finds that an Emergency exists; or

(b) Small Estimated Fee. The Estimated Fee to be paid under the Contract does not exceed $100,000; or

(c) Continuation of Project With Intermediate Estimated Fee. Where a Project is being continued, as more particularly described below, and where the Estimated Fee will not exceed $250,000, Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services to be performed under the Contract must meet the following requirements:

(A) The Services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services that have been substantially described, planned or otherwise previous studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services rendered under the earlier Contract; and

(B) The Estimated Fee to be made under the Contract does not exceed $250,000; and

(C) The City used either the formal selection procedure under Rule 03-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of the original selection to select the Consultant for the earlier contract.

(d) Continuation of Project With Extensive Estimated Fee. Where a project is being continued, as more particularly described below, and where the Estimated Fee is expected to exceed $250,000, Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services to be performed under the Contract must meet the following requirements:

(A) The Services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services that have been substantially described, planned or otherwise previous studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services rendered under the earlier Contract; and

(B) The City used either the formal selection procedure under Rule 03-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of the original selection to select the Consultant for the earlier contract; and

(C) The City makes written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing contract or a separate Contract for the additional scope of services, will:

(i) Promote efficient use of public funds and resources and result in substantial cost savings to the City; and

(ii) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favortism or substantially diminishing competition in the award of the Contract.

(2) The City may select Consultants for Contracts under this rule from the following sources:

(a) The City's list of Consultants that is created under Rule 03-0120 (List of Interested Consultants; Performance Record);

(b) Another Contracting Agency's list of Consultants that the Contracting Agency has created under Rule 03-0120 (List of Interested Consultants; Performance Record), with written consent of that Contracting Agency; or

(c) All Consultants offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services that the City reasonably can identify under the circumstances.

(3) The City shall direct negotiations with Consultants selected under this rule toward obtaining written agreement on:

(a) The Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services required under the Contract that is fair and reasonable to the City as determined solely by the City, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services; and

(c) Any other provisions the City believes to be in the City's best interest to negotiate.

**03-0210**

**Informal Selection Procedure**

(1) The City may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed $250,000.

(2) When using the informal selection procedure the City shall:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) The date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services;

(ii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the Request for Proposals;

(iii) Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering,

Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and Contract administration practices;

(iv) Approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the Request for Proposals and design philosophy, if applicable;

(v) A Consultant's geographic proximity to and familiarity with the physical location of the Project;

(vi) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

(vii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(viii) If the City is selecting a Consultant to provide Related Services, pricing policies, proposals and other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.

(F) A Statement that Proposers responding to the RFP do so solely at their expense, and the City is not responsible for any Proposer expenses associated with the RFP; and

(G) A statement directing Proposers to the protest procedures set forth in these division 3 rules.

(b) Provide a Request for Proposals to a minimum of five prospective Consultants drawn from:

(A) The City's list of Consultants that is created and maintained under Rule 03-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under Rule 03-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that the City reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, or any combination of the foregoing.

(c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals, and select the three highest ranked Proposers.

(3) If the City does not cancel the RFP after it reviews and ranks each Proposer, the City will begin negotiating a Contract with the highest ranked Proposer. The City shall direct negotiations toward obtaining written agreement on:

(a) The Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services required under the Contract that is fair and reasonable to the City as determined solely by the City, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and

(c) Any other provisions the City believes to be in the City's best interest to negotiate.

(4) The City shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the City and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The City may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with section (3) of this rule, until negotiations result in a Contract. If negotiations with any of the top three Proposers do not result in a Contract within a reasonable amount of time, the City may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under Rule 03-0220 (Formal Selection Procedure).

(5) The City shall terminate the informal selection procedure and proceed with the formal selection procedure under Rule 03-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed $250,000.

**03-0220**

**Formal Selection Procedure**

(1) Subject to Rule 03-0130 (Applicable Selection Procedures; Pricing Information), the City shall use the formal selection procedure described in this rule to select Consultants if the Consultants cannot be selected under either Rule 03-0200 (Direct Appointment Procedure) or

under Rule 03-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at The City's discretion.

(2) The City shall obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by a Request for Proposals.

(a) Except as provided in subsection (b) of this section, the City shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.

(A) The City shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFP or RFQ.

(B) The City shall include a brief description of the following items in the advertisement:

(i) The Project;

(ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services the City seeks;

(iii) How and where Consultants may obtain a copy of the RFP or RFQ; and

(iv) The deadline for submitting a Proposal or response to the RFQ.

(b) The City may send notice of the RFP or RFQ directly to all Consultants on the City's list of Consultants that is created and maintained under Rule 03-0120 (List of Interested Consultants; Performance Record).

(3) Request for Qualifications Procedure. The City may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the City may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ.

(a) The City shall include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which the City is seeking Consultants;

(B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services the City seeks for the Project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services the City seeks;

(F) The RFQ evaluation criteria, including weights, points or other classification applicable to each criterion;.

(G) A statement whether or not the City will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Proposers responding to the RFQ do so solely at their expense, and that the City is not responsible for any Proposer expenses associated with the RFQ.

(b) The City may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultant's general qualifications and related performance information;

(B) A description of Consultant's specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ including Consultant's committed resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services

and references concerning past performance, and a copy of all records, if any, of Consultant's performance under Contracts with any other City;

(D) The number of Consultant's experienced staff available to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;

(E) Approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ and design philosophy, if applicable;

(F) Consultant's geographic proximity to and familiarity with the physical location of the Project;

(G) Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(H) If the City is selecting a Consultant to provide Related Services, Consultant's pricing policies, proposals and other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and

(I) Consultant's ability to assist the City in complying with the solar energy technology requirements of ORS 279C.527: and

(I) Any other information the City deems reasonably necessary to evaluate Consultants' qualifications.

(c) RFQ Evaluation Committee. The City shall establish an RFQ evaluation committee of at least two individuals to review, score and rank the responding Consultants according to the evaluation criteria. The City may appoint to the evaluation committee City employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Related Services, construction services or Public Contracting. If City procedure permits, the City may include on the evaluation committee private practitioners of architecture, engineering, photogrammetry, transportation planning, land surveying or related professions. The City shall designate one member of the evaluation committee as the evaluation committee chairperson.

(d) The City may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to:

(A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFP.

(e) After the evaluation committee reviews, scores and ranks the responding Consultants, the City shall establish a short list of at least three qualified Consultants, provided however, that if four or fewer Consultants responded to the RFQ, then:

(A) The City may establish a short list of fewer than three qualified Consultants; or

(B) The City may cancel the RFQ and issue an RFP.

(f) No Consultant will be eligible for placement on the City's short list established under subsection (3)(d) of this rule if Consultant or any of Consultant's principals, partners or associates are members of the City's RFQ evaluation committee.

(g) Except when the RFQ is cancelled, the City shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for Proposals. The City shall use the procedure described in section (4) of this rule when issuing an RFP for a Contract described in section (1) of this rule.

(a) RFP Required Contents. The City using the formal selection procedure shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services sought for the Project, the estimated Project cost, the estimated time

period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services sought will be performed.

(B) The RFP evaluation process and criteria which will be used to select the most qualified Proposer, including the number of points applicable to each criterion. If the City does not indicate the applicable number of points, then each criterion is worth the same number of points. Evaluation criteria may include, but are not limited to, the following:

(I) Proposer's availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;

(ii) Experience of Proposer's key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposer has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;

(iv) The recent, current and projected workloads of the staff and resources referenced in section (4)(a)(B)(iii), above;

(v) The proportion of time Proposer estimates that the staff referenced in section (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP;

(vi) Proposer's demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under Rule 03-0120 (List of Interested Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposer's performance history in meeting deadlines, submitting accurate estimates, producing high quality work, and meeting financial obligations;

(ix) Status and quality of any required license or certification;

(x) Proposer's knowledge and understanding of the Project and Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP as shown in Proposer's approach to staffing and scheduling needs for the Architectural, Engineering, or Land Surveying Services, or Related Services and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;

(xiii) If the City is selecting a Consultant to provide Related Services, Consultant's pricing policies, proposals and other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and

(xiv) Any other criteria that the City seems relevant to the Project and Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) Whether interviews are possible and if so, the weight or points applicable to the potential interview;

(E) The date and time Proposals are due, and the delivery location for Proposals;

(F) Reservation of the right to seek clarifications of each Proposal;

(G) Reservation of the right to negotiate a final Contract that is in the best interest of the City;

(H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest as determined by the City;

(I) A Statement that Proposers responding to the RFP do so solely at their expense, and the City is not responsible for any Proposer expenses associated with the RFP;

(J) A statement directing Proposers to the protest procedures set forth in these rules;

(K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;

(L) A statement whether or not the City will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(M) A request for any information the City deems reasonably necessary to permit the City to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP; and

(N) A sample form of the Contract.

(b) RFP Evaluation Committee. The City shall establish a committee of at least three individuals to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the City may include the same members who served on the RFQ evaluation committee. The City may appoint to the evaluation committee City employees or employees of other public agencies with experience in , Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Related Services, construction services or Public Contracting. At least one member of the evaluation committee must be the City employee. If City procedure permits, the City may include on the evaluation committee private practitioners of architecture, engineering, photogrammetric mapping, transportation planning, land surveying or related professions. The City shall designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of City's RFP evaluation committee for the Contract;

(B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award up to the number of points indicated in the RFP for the anticipated interview; and

(C) The evaluation committee shall provide to the City the results of the scoring and ranking for each Proposer.

(c) If the City does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the City will begin negotiating a Contract with the highest ranked Proposer. The City shall direct negotiations toward obtaining written agreement on:

(A) Consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services required under the Contract that is fair and reasonable to the City as determined solely by the City, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and

(C) Any other provisions the City believes to be in the City's best interest to negotiate.

(d) The City shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the City and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The City may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with section (4)(c) of this rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the City may end the particular formal solicitation. Nothing in this rule precludes the City from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP that failed to result in a Contract.

**03-0230**

**Ties Among Proposers**

(1) If the City is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the City may select a candidate through any process that the City believes will result in the best value for the City taking into account the scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services. Provided, however, the tie breaking process established by the City under this section (1) cannot be based on the Consultant's pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead. The process shall instill public confidence through ethical and fair dealing, honesty and good faith on the part of the City and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the City and the selected Proposer shall proceed with negotiations under Rule 03-0210(3) or Rule 03-0220(4)(c), as applicable.

(2) If the City is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the City shall follow the procedure set forth in Rule 02-0300, (Preferences for Oregon Goods and Services; Nonresident Bidders), to select the Consultant.

**03-0240**

**Protest Procedures**

(1) RFP Protest and Request for Change. Consultants may submit a written protest of anything contained in an RFP and may request a change to any provision, specification or Contract term contained in an RFP, no later than seven (7) calendar days prior to the date Proposals are due unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or Contract terms. The City may not consider any protest or request for change that is submitted after the submission deadline.

(2) Protest of Consultant Selection.

(a) Single Award. In the event of an award to a single Proposer, the City shall provide to all Proposers a copy of the selection notice that the City sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the City no later than seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning and Land Surveying Services or Related Services described in the RFP.

(b) Multiple Award. In the event of an award to more than one Proposer, the City shall provide to all Proposers copies of the selection notices that the City sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to the City no later than seven (7) calendar days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers to include the protesting Proposer in the group of highest ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers to include the protesting Proposer in the group of highest ranked Proposers, otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning and Land Surveying Services or Related Services described in the RFP.

(3) Resolution of Protests. A duly authorized representative of the City shall resolve all timely submitted protests within a reasonable time following the City's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the City shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

(4) Judicial Review. Proposers may be able to obtain judicial review of the City's protest disposition pursuant to ORS 34.010 through 34.100.

**03-0250**

**Solicitation Cancellation, Delay of Suspension; Rejection of All Proposals or Responses; Consultant Responsibility for Costs**

The City may cancel, delay or suspend a solicitation, RFQ or other preliminary Procurement document, whether related to a Direct Appointment Procedure (Rule 03-0200), the Informal Selection Procedure (Rule 03-0210), and the Formal Selection Procedure (Rule 08-0220) or reject all Proposals or responses to RFQs, responses to other preliminary Procurement documents, or any combination of the foregoing, if the City believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the City is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, suspension, delay or rejection. Consultants responding to either solicitations, RFQ's or other preliminary Procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs or responses to other preliminary Procurement documents..

**03-0260**

**Two-Tiered Selection Procedure for City Public Improvement Projects**

(1) If the City requires an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services for a Public Improvement owned and maintained by the City, and a State Agency will serve as the lead Contracting Agency and will enter into Contracts with Architects, Engineers, Photogrammetrists, Transportation Planners or Land Surveyors for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, for that Public Improvement, the State Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers, Photogrammetrists, Transportation Planners or Land Surveyors.

(2) Tier One. City shall, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP that was issued under the applicable selection procedures described in Rule 03-0210 (Informal Selection Procedure) and 03-0220 (Formal Selection

Procedure), or from among Architects, Engineers, Photogrammetrists, Transportation Planners or Land Surveyors.identified under Rule 03-0200 (Direct Appointment Procedure), and shall notify the City of the Engineers, Photogrammetrists, Transportation Planners or Land Surveyors. selected.

(3) Tier Two. In accordance with the qualifications based selection requirements of ORS 279C.110, the City shall either:

(a) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor from the list of Proposers provided from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services for the City's Public Improvement; or

(b) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services for the City's Public Improvement through an alternative process adopted by the City, consistent with the provisions of the applicable RFP, if any, and these division 3 rules. The City's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the City, and may include provisions to allow the City to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The City's alternative process may include, but is not limited to, one of more of the following methods:

(A) A general written direction from the City to the State Contracting Agency, prior to the advertisement of a Procurement or series of Procurements or during the course of the Procurement or series of Procurements, that the City's tier two selection shall be the highest-ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the City is required. However, the City may provide written notice to the State Contracting Agency that the City's general written direction is not to be applied for a particular Procurement and describe the process that the City will utilize for the particular Procurement. In order for a written direction from the City consistent with this subsection to be effective for a particular Procurement, it must be received by the State Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the Procurement. In the event of a multiple award under the terms of the applicable Procurement, the written direction from the City may apply to the highest ranked firms that are selected under the terms of the Procurement document.

(B) An intergovernmental agreement between the City and the State Contracting Agency outlining the alternative process that the City has adopted for a Procurement or series of Procurements.

(C) Where multiple Local Government Agencies are involved in a two-tiered selection procedure, the Local Government Agencies may name one of more authorized representative(s) to act on behalf of all the Local Government Agencies, whether the Local Government Agencies are acting collectively or individually, to select the Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services under the tier two selection process. In the event of a multiple award under the terms of the applicable Procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the Local Contracting Agencies to select the highest ranked firms that are required under the terms of the Procurement document, as part of the tier two selection process.

(4) The State Contracting Agency shall thereafter begin Contract negotiations with the selected Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor in accordance with the negotiation provisions in Rule 03-0200 (Direct Appointment Procedure), Rule 03-0210 (Informal Selection Procedure) or Rule 03-0220 (Formal Selection Procedure) as applicable.

(5) Nothing in these Division 3 rules should be construed to deny or limit the City's ability to enter into a Contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4), through a selection process established by the City.

**03-0270**

**Price Agreements**

(1) The City may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, when the City cannot determine the precise quantities of those Services which the City will require for a Project or closely related group of Projects over a specified time period.

(2) When establishing Price Agreements under this rule, the City shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with Rule 03-0130(1) or Rule 03-0130(2), as applicable. The City may select a single Consultant, when a Price Agreement is awarded to obtain services for a specific Project or a closely related group of Projects.

(3) In addition to any other applicable solicitation requirements set forth in these Division 03 Rules, solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services must:

(a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a prospective bidder or proposer to decide whether to submit a bid or proposal;

(b) Specify whether the City intends to award a Price Agreement to one Consultant or to multiple Consultants. If the City will award a Price Agreement to more than one Consultant, the solicitation document and Price Agreement shall describe the criteria and procedures the City will use to select a Consultant for each individual work order or task order. Subject to the requirements of these Division 03 rules, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services are at the City's sole discretion; provided, however, in circumstances where direct contracts are not permitted, the selection criteria cannot be based on pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the Services required, expenses, hourly rates and overhead. In accordance with Rule 03-0130(2) applicable to Related Services procurements, the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or combination of both qualifications and pricing information. Pricing information may include the number of hours proposed for the Services required, expenses, hourly rates and overhead and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of Rule 03-0200.

(c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.

(4) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a written work order or task order issued by the City. Any work orders or task orders assigned under a Price Agreement must include, at a minimum, the following:

(a) A clearly defined statement of work and schedule for any deliverables:

(b) A maximum, not-to-exceed price, or fixed price amount for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land

Surveying Services or Related Services specified and authorized under the work order or task order; and

(c) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order.

## Post-Selection Considerations

**03-0300**

**Prohibited Payment Methodology; Purchase Restrictions**

(1) Except as otherwise allowed by law, the City shall not enter into any Contract which includes compensation provisions that expressly provide for payment of:

(a) Consultant's costs under the Contract plus a percentage of those costs; or

(b) A percentage of the Project construction costs or total Project costs.

(2) Except as otherwise allowed by law, the City shall not enter into any Contract in which:

(a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the Project and reimbursable expenses incurred during the performance of work on the Project (sometimes referred to as a "time and materials" Contract); and

(b) The Contract does not include a maximum amount payable to Contractor for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services required under the Contract.

(3) Except in cases of Emergency or in the particular instances noted in the subsections below, the City shall not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for the City from any Consultant under a Contract with the City to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:

(a) The Consultant is providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services under a Contract with the City to perform Design-Build services or Energy Savings Performance Contract services (see Rule 04-0670 and Rule 04-0680).

(b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to the Consultant pursuant to applicable law governing the award of such Contracts.

**03-0310**

**Expired or Terminated Contracts: Reinstatement**

(1) If the City enters into a Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services and that Contract subsequently expires or is terminated, the City may proceed as follows, subject to the requirements of subsection (2) of this rule:

(a) Expired Contracts. If the Contract has expired as the result of Project delay caused by the City or caused by any other occurrence outside the reasonable control of the City or the Consultant, and if no more than one year has passed since the Contract expiration date, the City may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering, Photogrammetric, Mapping, Transportation Planning or Land Surveying Services, or Related Services required under the Contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the City and the Consultant shall continue performance under the Contract as amended; or

(b) Terminated Contracts. If the City or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the City may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering, Photogrammetric, Mapping, Transportation Planning or Land Surveying Services, or Related Services not completed under the Original Contract, or to perform any remaining Architectural, Engineering, Photogrammetric, Mapping, Transportation Planning or Land Surveying Services, or Related Services not completed under the Contract as adjusted to reflect a material alteration of the Project.

(2) The City may proceed under either subsection (1)(a) or subsection (1)(b) of this rule only after making written findings that amending the existing Contract or entering into a new Contract with the Consultant will:

(a) Promote efficient use of public funds and resources and result in substantial cost savings to the City:

(b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement process by not encouraging favortism or substantially diminishing competition in the award of Contracts; and

(c) Result in a Contract that is still within the scope of the final form of the original Procurement document.

**03-0320**

**Contract Amendments**

(1) Contracts totaling $100,000 or less. The City may amend any Contract with an initial value of $100,000 or less awarded under Rule 03-0220 if the City, in its sole discretion, determines that the amendment is within the scope of services contemplated under the RFP.

(2) Contracts totaling more than $100,000. The City may amend any Contract with an initial value in excess of $100,000 if the City, in its sole discretion, determines that the amendment is within the scope of services contemplated under the RFP, and that the amendment would not materially impact the field of competition for the Architectural, Engineering, Photogrammetric, Mapping, Transportation Planning or Land Surveying Services, or Related Services services described in the final form of the original Procurement Document. In making this determination, the City shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the Solicitation Document, if the City reasonably believes that the number of Proposers would not significantly increase if the Procurement document were re-issued to include the additional services.

(3) The City may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, that affect performance of the original Contract.

(4) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and the City and must receive all required approvals before the amendments will be binding on the City.

# DIVISION 4

## GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES



### Formal Procurement Rules

## Alternative Contracting Methods



## Contract Provisions

## DIVISION 4

## GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

### 04-0100

### Application

(1) These division 4 rules apply to Public Improvement Contracts as well as Public Contracts for ordinary construction Services that are not Public Improvements. Rules that apply specifically to Public Improvement Contracts are so identified.

(2) These division 4 rules address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Land Surveying and Related Services, all of which are addressed in division 3 of these Rules).

(3) These division 4 rules became effective on March 1, 2005 and apply to the Contracts described in section (1) above first advertised, but if not advertised then entered into, on or after March 1, 2005. The latest amendments to the model rule become effective December 12, 2011.

### 04-0110

### Policies

In addition to the general Code policies set forth in ORS 279A.015, the 279C.300 policy on competition and the ORS 279C.305 policy on least-cost for Public Improvements apply to these division 4 rules.

### 04-0120

### Definitions

(1) "**Conduct Disqualification**" means a Disqualification pursuant to ORS 279C.440.

(2) "**Disqualification**" means the preclusion of a Person from contracting with the City for a period of time in accordance with Rule 04-0350. Disqualification may be a Conduct Disqualification or DBE Disqualification.

(3) "**Foreign Contractor**" means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See Rule 04-0460.

(4) "**Notice**" means any of the alternative forms of public announcement of Procurements, as described in Rule 04-0210.

(5) "**Work**" means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

**04-0130**

**Competitive Bidding Requirement**

The City shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required pursuant to ORS 279C.335 on Competitive Bidding exceptions and exemptions, 279A.030 on federal law overrides or 279A.100 on affirmative action. Also see Rule 04-0600 to Rule 04-0690 regarding the use of Alternative Contracting Methods and the exemption process.

**04-0140**

**Contracts for Construction Other Than Public Improvements**

(1) **Procurement Under ORS Chapter 279B**. Pursuant to ORS 279C.320, Public Contracts for construction Services that are not Public Improvement Contracts, other than Emergency Contracts regulated under ORS 279C.335(6) and Rule 04-0150, may be procured and amended as general trade services under the provisions of ORS Chapter 279B rather than under the provisions of ORS Chapter 279C and these division 4 rules.

(2) **Application of ORS Chapter 279C**. Non-procurement provisions of ORS Chapter 279C and these division 4 rules may still be applicable to the resulting Contracts. See, for example, particular statutes on Disqualification (ORS 279C.440, 445 and 450); Legal Actions (ORS 279C.460 and 465); Required Contract Conditions (ORS 279C.505, 515, 520 and 530); Hours of Labor (ORS 279C.540 and 545); Retainage (ORS 279C.550, 560 and 565); Subcontracts (ORS 279C.580); Action on Payment Bonds (ORS 279C.600, 605, 610, 615, 620 and 625); Termination (ORS 279C.650, 655, 660 and 670); and all of the Prevailing Wage Rates requirements (ORS 279C.800 through 870) for Public Works Contracts.

**04-0150**

**Emergency Contracts; Bidding and Bonding Exemptions**

(1) **Emergency Declaration**. Pursuant to ORS 279C.335(6) and this rule, the City may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration shall be made at an administrative level consistent with the City's internal policies, by a written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration shall exempt the Public Contract from the competitive bidding requirements of ORS 279C.335(1) and shall thereafter be kept on file as a public record.

(2) **Competition for Contracts**. The City shall ensure competition for an Emergency Contract as reasonable and appropriate under the Emergency circumstances, and may include written requests for Offers, oral requests for Offers or direct appointment without competition in cases of extreme necessity, in whatever Solicitation time periods the City considers reasonable in responding to the Emergency.

(3) **Contract Scope**. Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(4) **Contract Modification**. Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional work necessary and appropriate for related Emergency circumstances.

(5) **Excusing Bonds**. Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the City waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration those bonding requirements are excused for the procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. See Rule 04-0815 and BOLI rules at 839-025-0015.

**04-0160**

**Intermediate Procurements; Competitive Quotes and Amendments**

(1) **General**. Public Improvement Contracts estimated by the City not to exceed $100,000, or not to exceed $50,000 in the case of Contracts for highways, bridges and other transportation projects, may be Awarded in accordance with intermediate level procurement procedures for competitive quotes established by this rule.

(2) **Selection Criteria**. The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.

(3) **Request for Quotes**. The City shall utilize written requests for quotes whenever reasonably practicable. Written request for quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote the City shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral quotations may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.

(4) **Number of Quotes; Record Required**. The City shall seek at least three competitive quotes, and keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available the City shall make a written record of the effort made to obtain those quotes.

(5) **Award**. If Awarded, the City shall Award the Contract to the prospective contractor whose quote will best serve the interests of the City, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the City shall make a written record of the basis for Award.

(6) **Price Increases**. Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of Award by City issuance of a Change to the Work or Amendment, pursuant to Rule 04-0910, within the following limitations:

(a) Up to an aggregate Contract Price increase of 25% over the original Contract amount when the City Manager or the Manager's authorized designee determines that a price increase is warranted for additional reasonably related Work, and;

(b) Up to an aggregate Contract Price increase of 50% over the original Contract amount, when the City Manager or the Manager's authorized designee determines that a price increase is warranted for additional reasonably related Work and the Local Contract Review Authority approves the increase.

(7) **Amendments**. Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in section (1) are specifically authorized by the code, when made in accordance with this rule. Accordingly, such amendments are not considered new procurements and do not require an exemption from competitive bidding.

**04-0200**

**Solicitation Documents; Required Provisions; Assignment or Transfer**

(1) **Solicitation Document**. Pursuant to ORS 279C.365 and this rule, the Solicitation Document shall include the following:

(a) **General Information.**

(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;

(B) Notice of any pre-Offer conference as follows:

(I) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by the City's representatives at the conference are not binding upon the City unless confirmed by Written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(D) The name and title of the authorized City employee designated for receipt of Offers and contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or electronic means;

(F) The time, date and place of Opening;

(G) The time and date of Closing after which the City will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement. If the City is issuing an Invitation to Bid

("ITB") that may result in a Public Improvement Contract with a value in excess of $100,000, the City shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and Rule 04-0360. For timing issues relating to Addenda, see Rule 04-0250;

(H) The office where the Specifications for the Work may be reviewed;

(I) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120;

(J) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), a statement that no Offer will be received or considered by the City unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.840 or 40 U.S.C. 276a.";

(K) A statement that the City will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as specified in Rule 04-0230;

(L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;

(M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 04-0420(3));

(N) How the City will notify Offerors of Addenda and how the City will make Addenda available (See Rule 04-0250); and

(O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in Rule 04-0340.

(b) **Evaluation Process**:

(A) A statement that the City may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, and may reject for good cause all Offers upon the City's finding that it is in the public interest to do so;

(B) The anticipated Solicitation schedule, deadlines, protest process and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that the City will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized under ORS 279C.335 and Rule 04-0620), along with the process the City will use to determine acceptability of the Work;

(I) If the Solicitation Document is an Invitation to Bid, the City shall set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the City has available concerning future use;

(ii) If the Solicitation Document is a Request for Proposals, the City shall refer to the additional requirements of Rule 04-0650; and

(c) **Contract Provisions**. The City shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the City considers appropriate for the Public Improvement project. The City must also include all applicable Contract provisions required by Oregon law as follows:

(A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2);

(E) Payment of claims by public officers (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(I) Environmental and natural resources regulations (279C.525);

(J) Payment for medical care and attention to employees (ORS 279C.530(1));

(K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject Workers who Work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));

(L) Maximum hours, holidays and overtime (ORS 279C.540);

(M) Time limitation on claims for overtime (ORS 279C.545);

(N) Prevailing wage rates (ORS 279C.800 to 279C.870);

(O) Fee paid to BOLI (ORS 279C.830);

(P) BOLI Public Works bond (ORS 279C.830(3));

(Q) Retainage (ORS 279C.550 to 279C.570);

(R) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(S) Contractor's relations with subcontractors (ORS 279C.580);

(T) Notice of claim (ORS 279C.605);

(U) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and

(V) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) **Assignment or Transfer Restricted**. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the City's prior Written consent. Unless otherwise agreed by the City in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the City consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the City for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in Writing.

**04-0210**

**Notice and Advertising Requirements; Posting**

(1) **Notice and Distribution Fee**. The City shall furnish "Notice" as set forth below in subsections (a) or (b), to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice shall indicate where, when, how and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. The City may charge a fee or require a deposit for the Solicitation Document. The City may furnish Notice using any method determined to foster and promote competition, including:

(a) Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the City's Procurements; or

(b) Placing Notice on the City's Internet Web site.

(2) **Advertising**. Pursuant to ORS 279C.360 and this rule, the City shall advertise every Solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the Contract Review Authority has exempted the Solicitation from the advertisement requirement as part of a competitive Bidding exemption under ORS 279C.335.

(a) The City shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the City may determine to be necessary or desirable to foster and promote competition.

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

(c) All advertisements for Offers shall set forth:

(A) The Public Improvement project;

(B) The office where Contract terms, conditions and Specifications may be reviewed;

(C) The date that Persons must file applications for prequalification under ORS 279C.430, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;

(D) The scheduled Closing, which shall not be less than five Days after the date of the last publication of the advertisement;

(E) The name, title and address of the City employee authorized to receive Offers;

(F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276(a)).

**04-0220**

**Prequalification of Offerors**

(1) **Prequalification**. Pursuant to ORS 279C.430 and this rule, two types of prequalification are authorized:

(a) Mandatory Prequalification. The City may, by rule, resolution, ordinance or other law or regulation, require mandatory prequalification of Offerors on forms prescribed by the City's Contract Review Authority. The City must indicate in the Solicitation Document if it will require mandatory prequalification. Mandatory prequalification is when the City conditions a Person's submission of an Offer upon the Person's prequalification. The City shall not consider an Offer from a Person that is not prequalified if the City required prequalification.

(b) Permissive Prequalification. The City may prequalify a Person for the City's Solicitation list on forms prescribed by the City's Contract Review Authority, but

in permissive prequalification the City shall not limit distribution of a Solicitation to that list. The City's determination of prequalification shall be valid for a period of three years.

(2) **Prequalification Presumed**. If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be rebuttably presumed qualified to perform similar Work for the City.

(3) **Standards for Prequalification**. A Person may prequalify by demonstrating to the City's satisfaction:

(a) That the Person's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;

(b) The Person's record of performance;

(c) The Person's record of integrity;

(d) The Person is qualified to contract with the City. (See, Rule 04-0370(2) regarding standards of responsibility.)

(4) **Notice Of Denial**. If a Person fails to prequalify for a mandatory prequalification, the City shall notify the Person, specify the reasons under section (3) of this rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450.

**04-0230**

**Eligibility to Bid or Propose; Registration or License**

(1) **Construction Contracts**. The City shall not consider a Person's Offer to do Work as a contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the Offer is made.

(2) **Landscape Contracts**. The City shall not consider a Person's Offer to do Work as a landscape contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Board at the time the offer is made.

(3) **Noncomplying Entities**. The City shall deem an Offer received from a Person that fails to comply with this rule nonresponsive and shall reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.

**04-0240**

**Pre-Offer Conferences**

(1) **Purpose**. The City may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information or to conduct site inspections.

(2) **Required attendance**. The City may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of an offering firm is present.

(3) **Scheduled time**. If the City holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) **Statements Not Binding**. Statements made by the City's representative at the pre-Offer conference do not change the Solicitation Document unless the City confirms such statements with a Written Addendum to the Solicitation Document.

(5) **City Announcement**. The City must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Rule 04-0200(1)(a)(B).

**04-0250**

**Addenda to Solicitation Documents**

(1) **Issuance; Receipt**. The City may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the City otherwise specifies in the Addenda or in the Solicitation Document.

(2) **Notice and Distribution**. The City shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in Rule 04-0210(1). The Solicitation Document shall specify how the City will provide notice of Addenda and how the City will make the Addenda available (see, Rule 04-0200(1)(a)(N).

(3) **Timelines; Extensions**. The City shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The City may extend the Closing if the City determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the City shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(4) **Request for Change or Protest**. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in Rule 04-0260, by the close of the City's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under Rule 04-0260, whichever date is later. The City shall consider only an Offeror's request for change or protest to the Addendum; the City shall not consider a request for change or protest to matters not added or modified by the Addendum, unless the Offeror submits the request for change or protest before the deadline for the City's receipt of request for change or protests as set forth in Rule 04-0260(2) and (3).

**04-0260**

**Request for Clarification or Change; Solicitation Protests**

(1) **Clarification**. Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the City clarify any provision of the Solicitation Document. The City's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the City unless the City amends the Solicitation Document by Addendum.

(2) **Request for Change**.

(a) Delivery. An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the City not less than 10 Days prior to Closing;

(b) Content of Request for Change.

(A) An Offeror's Written request for change shall include a statement of the requested change(s) to the Contract terms and conditions, including any Specifications, together with the reason for the requested change.

(B) An Offeror shall mark its request for change as follows:

(I) "Contract Provision Request for Change"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) **Protest**.

(a) Delivery. An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver

a Written protest on those matters to the City not less than 10 Days prior to Closing;

(b) Content of Protest.

(A) An Offeror's Written protest shall include:

(I) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the Offeror; and

(iii) A statement of the desired changes to the Contract terms and conditions, including any Specifications.

(B) An Offeror shall mark its protest as follows:

(I) "Contract Provision Protest"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(4) **City Response**. The City is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The City shall provide notice to the applicable Person if it entirely rejects a protest. If the City agrees with the Person's request or protest, in whole or in part, the City shall either issue an Addendum reflecting its determination under Rule 04-0260 or cancel the Solicitation under Rule 04-0270.

(5) **Extension of Closing**. If the City receives a Written request for change or protest from an Offeror in accordance with this rule, the City may extend Closing if the City determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

**04-0270**

**Cancellation of Solicitation Document**

(1) **Cancellation in the Public Interest**. The City may cancel a Solicitation for good cause if the City finds that cancellation is in the public interest. The City's reasons for cancellation shall be made part of the Solicitation file.

(2) **Notice of Cancellation**. If the City cancels a Solicitation prior to Opening, the City shall provide Notice of cancellation in accordance with Rule 04-0210(1). Such notice of cancellation shall:

(a) Identify the Solicitation;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) **Disposition of Offers.**

(a) Prior to Offer Opening. If the City cancels a Solicitation prior to Offer Opening, the City shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the City shall open the Offer to determine the source and then return it to the Offeror.

(b) After Offer Opening. If the City rejects all Offers, the City shall retain all such Offers as part of the City's Solicitation file.

**04-0280**

**Offer Submissions**

(1) **Offer and Acceptance**. The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract.

(a) In competitive Bidding, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the City's acceptance for the period specified in Rule 04-0390. The City's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) In competitive Proposals, the Solicitation Document shall describe whether Offers are to be made and considered as "Firm Offers" that may be accepted without negotiation, as in the case of competitive Bidding, or whether Offers are subject to discussion, negotiation or otherwise are not to be considered as final offers. See Rule 04-0650 on Requests for Proposals and Rule 04-0290 on Bid or Proposal Security.

(2) **Responsive Offer**. The City may Award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) **Contingent Offers**. Except to the extent that an Offeror is authorized to propose certain terms and conditions pursuant to Rule 04-0650, an Offeror shall not make an Offer contingent upon the City's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(4) **Offeror's Acknowledgment**. By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under Rule 04-0650, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the City in Writing.

(5) **Instructions**. An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.

(6) **Forms**. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(7) **Documents**. An Offeror shall provide the City with all documents and descriptive literature required under the Solicitation Document.

(8) **Product Samples and Descriptive Literature**. The City may require Product Samples or descriptive literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The City will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.

(9) **Identification of Offers**.

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the City, whichever is applicable.

(b) The City is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(10) **Receipt of Offers**. The Offeror is responsible for ensuring that the City receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

**04-0290**

**Bid or Proposal Security**

(1) **Security Amount**. If the City requires Bid or Proposal security, it shall be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal

together with all additive alternates. The City shall not use Bid or Proposal security to discourage competition. The City shall clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required Performance Bond and Payment Bond and, in the case of Proposal security, with any required proof of insurance. See ORS 279C.365(4) and 279C.385.

(2) **Requirement for Bid Security (Optional for Proposals)**. Unless the City has otherwise exempted a Solicitation or class of Solicitations from Bid security pursuant to ORS 279C.390, the City shall require Bid security for its Solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the City, of more than $100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than $50,000. See ORS 279C.365(5). The City may require Bid security even if it has exempted a class of Solicitations from Bid security. The City may require Proposal security in RFPs when Award of a Public Improvement Contract may be made without negotiation following receipt of a Firm Offer as described in Rule 04-0280(1(b). See ORS 279C.400(5).

(3) **Form of Bid or Proposal Security**. The City may accept only the following forms of Bid or Proposal security:

(a) A surety bond from a surety company authorized to do business in the State of Oregon;

(b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

(c) A cashier's check or Offeror's certified check.

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

**04-0300**

**Pre-Closing Modification or Withdrawal of Offers**

(1) **Modifications**. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the City in accordance with Rule 04-0280, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(2) **Withdrawals.**

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the City prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in Person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority.

(b) The City may release an unopened Offer withdrawn under subsection 2(a) to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(3) **Documentation**. The City shall include all documents relating to the modification or withdrawal of Offers in the appropriate Solicitation file.

**04-0310**

**Receipt, Opening and Recording of Offers; Confidentiality of Offers**

(1) **Receipt**. The City shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The City shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the City inadvertently opens an Offer or a modification prior to the Opening, the City shall return the Offer or modification to its secure and confidential state until Opening. The City shall document the resealing for the Procurement file (e.g. "City inadvertently opened the Offer due to improper identification of the Offer").

(2) **Opening and Recording**. The City shall publicly open Offers including any modifications made to the Offer pursuant to Rule 04-0320. In the case of Invitations to Bid, to

the extent practicable, the City shall read aloud the name of each Bidder, the Bid price(s), and such other information as the City considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the City will not read Offers aloud.

(3) **Availability**. After Opening, the City shall make Bids available for public inspection, but pursuant to ORS 279C.410 Proposals are not subject to disclosure until after notice of intent to award is issued. In any event, the City may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); 646.461 to 646.475. To the extent the City determines such designation is not in accordance with applicable law, the City shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other nonconfidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary.

**04-0320**

**Late Bids, Late Withdrawals and Late Modifications**

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The City shall not consider late Offers, withdrawals or modifications except as permitted in Rule 04-0330 or Rule 04-0370.

**04-0330**

**Mistakes**

(1) **Generally**. To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, the City should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) **City Treatment of Mistakes**. The City shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the City discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the City may take the following action:

(a) The City may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) The City may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the City's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices shall prevail over extended prices.

(c) The City may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the City does not grant the Offeror permission to withdraw the Offer;

(G) That the City's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the City or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the City.

(d) The criteria in subsection (2)(c) of this rule shall determine whether the City will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether the City will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the City based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the City, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes**. The City shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award**. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 4 only to the extent permitted by applicable law.

**04-0340**

**First-Tier Subcontractors; Disclosure and Substitution**

(1) **Required Disclosure**. Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the City to exceed $100,000, all Bidders shall submit to the City a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

(a) Five percent of the total Contract Price, but at least $15,000; or

(b) $350,000, regardless of the percentage of the total Contract Price.

(2) **Bid Closing, Disclosure Deadline and Bid Opening**. For each ITB to which this rule applies, the City shall:

(a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;

(b) Open Bids publicly immediately after the Bid Closing; and

(c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the City.

(3) **Bidder Instructions and Disclosure Form**. For the purposes of this rule, the City in its Solicitation shall:

(a) Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and

(b) Provide instructions in a notice substantially similar to the following: "Instructions for First-Tier Subcontractor Disclosure". Bidders are required to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is greater than $100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (I) 5% of the project Bid, but at least $15,000, or (ii) $350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:

(A) The subcontractor's name;

(B) The category of Work that the subcontractor would be performing; and

(C) The dollar value of the subcontract. If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

THE CITY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see Rule 04-0340).

(4) **Submission**. A Bidder shall submit the disclosure form required by this rule either in its Bid submission, or within two Working hours after Bid Closing in the manner specified by the ITB.

(5) **Responsiveness**. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract Award.

(6) **City Role**. The City shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. The City shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. The City is not

required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) **Substitution**. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. The City shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, The City does not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

**04-0350**

**Disqualification of Persons**

(1) **Authority**. The City may disqualify a Person from consideration of Award of the City's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (2) and (4) of this rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, the City may disqualify a Person for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a contract provision that is regarded by the City to be so serious as to justify Conduct Disqualification. A violation under this subsection 1(a)(D) may include but is not limited to material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

(b) Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, the City may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g. subcontractors) as follows:

(A) For a DBE Disqualification under ORS 200.065, the City may disqualify a Person upon finding that:

(I) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise; or

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Person has been disqualified by another City pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the City may disqualify a Person upon finding that:

(I) The Person has entered into an agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified pursuant to ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

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

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

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

(C) For a DBE Disqualification under ORS 279A.110, the City may disqualify a Person if the City finds that the Person discriminated against minority, women or emerging small business enterprises in awarding a subcontract under a contract with that City.

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

(a) State that the City intends to disqualify the Person;

(b) Set forth the reasons for the Disqualification;

(c) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the City does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

(d) Include a statement of the authority and jurisdiction under which the hearing will be held;

(e) Include a reference to the particular sections of the statutes and rules involved;

(f) State the proposed Disqualification period; and

(g) State that the Person may be represented by legal counsel.

(3) **Hearing**. The City shall schedule a hearing upon the City receipt of the Person's timely request. The City shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

(4) **Notice of Disqualification**. The City will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:

(a) The effective date and period of Disqualification;

(b) The grounds for Disqualification; and

(c) A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the disqualified person must notify the City in Writing within three business Days

after receipt of the City's notice of Disqualification if the Person intends to appeal the City's decision.

**04-0360**

**Bid or Proposal Evaluation Criteria**

(1) **General.** A Public Improvement Contract, if Awarded, shall be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. See Rule 04-0370, and Rules for Alternative Contracting Methods at Rule 04-0600 to Rule 04-0690.

(2) **Bid Evaluation Criteria.** Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.

(a) Lump Sum. If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the City elects not to award additive or deductive alternates, Bids shall be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price shall be calculated by adding to or deducting from the base Bid those alternates selected by the City, for the purpose of comparing Bids.

(b) Unit Price. If the Bid includes unit pricing for estimated quantities, the total Bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the City, for the purpose of comparing Bids. The City shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price shall govern. See Rule 04-0330(2)(b).

(3) **Proposal Evaluation Criteria.** If the City's Contract Review Authority has exempted the Procurement of a Public Improvement from the competitive Bidding requirements of ORS 279C.335(1), and has directed the City to use an Alternative Contracting Method under ORS 279C.335(3), the City shall set forth the evaluation criteria in the Solicitation Documents. See Rule 04-0640, Rule 04-0650, ORS 279C.335 and 279C.405.

**04-0370**

**Offer Evaluation and Award; Determination of Responsibility**

(1) **General.** If Awarded, the City shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the

best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract. See ORS 279C.375(2)(a). The City may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(2) **Determination of Responsibility**. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the City must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279.375(2)(b). To be a Responsible Offeror, the City must determine that the Offeror:

(a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all contractual responsibilities;

(b) Has a satisfactory record of contract performance. The City should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the City should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The City may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The City shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;

(c) Has a satisfactory record of integrity. An Offeror may lack integrity if the City determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the City. The City may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under Rule 04-0370 may be used to determine an Offeror's integrity. The City shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;

(d) Is qualified legally to contract with the City; and

(e) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) **Documenting City Determinations**. The City shall document its compliance with ORS 279C.375(3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in ORS 279C.375(3)(c), and file that form with the Construction Contractors Board within 30 days after Contract Award.

(4) **City Evaluation**. The City shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The City shall not evaluate an Offer using any other requirement or criterion.

(5) **Offeror Submissions**.

(a) The City may require an Offeror to submit Product Samples, descriptive literature, technical data, or other material and may also require any of the following prior to Award:

(A) Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The City shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The City shall reject an Offer providing any product that does not meet the Solicitation Document requirements. The City's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) **Evaluation of Bids**. The City shall use only objective criteria to evaluate Bids as set forth in the ITB. The City shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

(a) Nonresident Bidders. In determining the lowest Responsive Bid, the City shall, in accordance with Rule 01-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.

(b) Clarifications. In evaluating Bids, the City may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.

(c) Negotiation Prohibited. The City shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.

(7) **Evaluation of Proposals**. See Rule 04-0650 regarding rules applicable to Requests for Proposals.

**04-0380**

**Documentation of Award; Availability of Award Decisions**

(1) **Basis of Award**. After Award, the City shall make a record showing the basis for determining the successful Offeror part of the City's Solicitation file.

(2) **Contents of Award Record for Bids**. The City's record shall include:

(a) All submitted Bids;

(b) Completed Bid tabulation sheet; and

(c) Written justification for any rejection of lower Bids.

(3) **Contents of Award Record for Proposals**. Where the use of Requests for Proposals is authorized as set forth in Rule 04-0650, the City's record shall include:

(a) All submitted Proposals.

(b) The completed evaluation of the Proposals;

(c) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and

(d) If the City permitted negotiations in accordance with Rule 04-0650, the City's completed evaluation of the initial Proposals and the City's completed evaluation of final Proposals.

(4) **Contract Document**. The City shall deliver a fully executed copy of the final Contract to the successful Offeror.

(5) **Bid Tabulations and Award Summaries**. Upon request of any Person the City shall provide tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge which may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. The City may also provide tabulations of Bids and Proposals Awarded on designated Web sites.

(6) **Availability of Solicitation Files**. The City shall make completed Solicitation files available for public review at the City.

(7) **Copies from Solicitation Files**. Any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

**04-0390**

**Time for City Acceptance; Extension**

(1) **Time for Offer Acceptance**. An Offeror's Bid, or Proposal submitted as a Firm Offer (see Rule 04-0280), is irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.

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

**04-0395**

**Notice of Intent to Award**

(1) **Notice**. At least seven days before the Award of a Public Improvement Contract, the City shall issue to each Bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to ORS 279C.410(7)), or post electronically or otherwise, a notice of the City's intent to Award the Contract. This requirement does not apply to Award of a small procurement or emergency Public Improvement Contract awarded under ORS 279C.335(1)(c) or (d) or (6).

(2) **Form and Manner of Posting**. The form and manner of posting notice shall conform to customary practices within the City's procurement system, and may be made electronically.

(3) **Finalizing Award**. The City's Award shall not be final until the later of the following:

(a) Seven Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or

(b) The City provides a Written response to all timely-filed protests that denies the protest and affirms the Award.

(4) **Prior Notice Impractical**. Posting of notice of intent to award shall not be required when the City determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Contract file as to the reasons for that determination, and posts notice of that action as soon as reasonably practical.

**04-0400**

**Negotiation With Bidders Prohibited**

(1) **Bids**. Except as permitted by ORS 279C.340 and Rule 04-0410 when all bids exceed the cost estimate, the City shall not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the City and Contractor may modify the Contract only by change order or amendment to the Contract in accordance with Rule 04-0910.

(2) **Requests for Proposals**. The City may conduct discussions or negotiations with Proposers only in accordance with the requirements of Rule 04-0650.

**04-0410**

**Negotiation When Bids Exceed Cost Estimate**

(1) **Generally**. In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the City's Cost Estimate, prior to Contract Award the City may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the City's Cost Estimate. The subcontractor disclosure and substitution requirements of Rule 04-0340 do not apply to negotiations under this rule.

(2) **Definitions**. The following definitions apply to this administrative rule:

(a) "**Cost Estimate**" means the City's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) "**Other Options**" means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in Rule 04-0650, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

(c) "**Project**" means a Public Improvement.

(d) "**Value Engineering**" means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract

requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

(3) **Rejection of Bids.** In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the City, shall be excluded from consideration.

(4) **Scope of Negotiations.** The City shall not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the City to participate in the Bidding process had the change been made during the Solicitation process rather than during negotiation. This rule shall not be construed to prohibit resolicitation of trade subcontracts.

(5) **Discontinuing Negotiations.** The City may discontinue negotiations at any time, and shall do so if it appears to the City that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.

(6) **Limitation.** Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.

(7) **Public Records.** To the extent that a Bidder's records used in Contract negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.410 to 192.505.

**04-0420**

**Rejection of Offers**

(1) **Rejection of an Offer.**

(a) The City may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement process or that rejecting the Offer is in the public interest.

(b) The City shall reject an Offer upon the City's finding that the Offer:

(A) Is contingent upon the City's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications);

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;

(D) Offers Work or goods that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Documents;

(G) Is not in substantial compliance with all prescribed public Solicitation procedures.

(c) The City shall reject an Offer upon the City's finding that the Offeror:

(A) Has not been prequalified under ORS 279C.430 and the City required mandatory prequalification;

(B) Has been Disqualified;

(C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;

(D) Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement;

(E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;

(F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(G) Has failed to provide the certification required under section 3 of this rule;

(H) Is not Responsible. See Rule 04-0370(2) regarding City determination that the Offeror has met statutory standards of responsibility.

(2) **Form of Business**. For purposes of this rule, the City may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and Rule 04-0370.

(3) **Certification of Non-Discrimination**. The Offeror shall certify and deliver to the City Written certification, as part of the Offer that the Offeror has not discriminated and will not discriminate against minority, women or emerging small business enterprises in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

(4) **Rejection of all Offers**. The City may reject all Offers for good cause upon the City's Written finding it is in the public interest to do so. The City shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(5) **Criteria for Rejection of All Offers**. The City may reject all Offers upon a Written finding that:

(a) The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct and inadvertent or intentional errors in the Solicitation Document;

(e) The City cancels the Solicitation in accordance with Rule 04-0270; or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

**04-0430**

**Protest of Contractor Selection, Contract Award**

(1) **Purpose**. An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the City's Contractor selection or Contract Award decision.

(2) **Notice of Competitive Range**. Unless otherwise provided in the RFP, when the competitive proposal process is authorized under Rule 04-0650, the City shall provide Written notice to all Proposers of the City's determination of the Proposers included in the Competitive Range. The City's notice of the Proposers included in the Competitive Range shall not be final until the later of the following:

(a) 10 Days after the date of the notice, unless otherwise provided therein; or

(b) Until the City provides a Written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.

(3) **Notice of Intent to Award**. The City shall provide Written notice to all Offerors of the City's intent to Award the Contract, as provided by Rule 04-0395.

(4) **Right to Protest Award**.

(a) An adversely affected or aggrieved Offeror may submit to the City a Written protest of the City's intent to Award within seven Days after issuance of the notice of intent to Award the Contract, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:

(A) Because their Offers were nonresponsive; or

(B) The City committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and

would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The City shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest the City's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(5) **Right to Protest Competitive Range.**

(a) An adversely affected or aggrieved Proposer may submit to the City a Written protest of the City's decision to exclude the Proposer from the Competitive Range within seven Days after issuance of the notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at Rule 04-0650.)

(b) The Proposer's protest shall be in Writing and must specify the grounds upon which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range, i.e., the protesting Proposer must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:

(A) Their Proposals were not responsive; or

(B) The City committed a substantial violation of a provision in the RFP or of an applicable Procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

(d) The City shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest the City's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(6) **Authority to Resolve Protests.** The City Manager, or the Manager's designee, may settle or resolve a Written protest submitted in accordance with the requirements of this rule.

(7) **Decision**. If a protest is not settled, the City Manager, or the Manager's designee, shall promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) **Award**. The successful Offeror shall promptly execute the Contract after the Award is final. The City shall execute the Contract only after it has obtained all applicable required documents and approvals.

**04-0440**

**Performance and Payment Security; Waiver**

(1) **Public Improvement Contracts**. Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of emergency under ORS 279C.380(4), or unless the City's Contract Review Authority exempts a Contract or classes of contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to the City a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. This requirement applies only to Public Improvement Contracts with a value, estimated by the City, of more than $100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than $50,000. See ORS 279C.380(5). Also see Rule 04-0815 and BOLI rules at OAR 839-025-0015 regarding the separate requirement for a Public Works bond.

(2) **Other Construction Contracts**. The City may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements shall be expressly set forth in the Solicitation Document.

(3) **Requirement for Surety Bond**. The City shall accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e., the City may accept a cashier's check or certified check in lieu of all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond must be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full contract price.

(4) **Time for Submission**. The apparent successful Offeror must promptly furnish the required performance security upon the City's request. If the Offeror fails to furnish the performance security as requested, the City may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the City's discretion, the Offeror shall forfeit its Bid or Proposal security.

**04-0450**

**Substitute Contractor**

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

**04-0460**

**Foreign Contractor**

If the Contract Price exceeds $10,000 and the Contractor is a Foreign Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the City. The City shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

## Alternative Contracting Methods

**04-0600**

**Purpose**

Rules 04-0600 to 04-0690 are intended to provide guidance to Contracting Agencies regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by the City's Contract Review Authority under ORS 279C.335. Those methods include, but are not limited to, Design-Build, Energy Savings Performance Contract (ESPC) and Construction Manager/General Contractor (CM/GC) forms of contracting. As to ESPC contracting, Rules 04-0600 to 04-0690 implement the requirements of ORS 279C.335 pertaining to the adoption of model rules appropriate for use by all Contracting Agencies to govern the procedures for entering into ESPCs.

**04-0610**

**Definitions for Alternative Contracting Methods**

The following definitions shall apply to these Rules 04-0600 to 04-0690 rules, unless the context requires otherwise:

(1) **Alternative Contracting Methods** means innovative Procurement techniques for obtaining Public Improvement Contracts, utilizing processes other than the traditional method of Design-Bid-Build (with Award based solely on price, in which a final design is issued with

formal Bid documents, construction services are obtained by sealed Bid Awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting and ESPCs, which are specifically addressed in Rules 04-0600 to 04-0690, as well as other developing techniques such as general "performance contracting" and "cost plus time" contracting, for which procedural requirements are identified under Rules 04-0600 to 04-0690.

(2) **Construction Manager/General Contractor (or "CM/GC")** means a form of Procurement that results in a Public Improvement Contract for a Construction Manager/General Contractor to undertake project team involvement with design development; constructability reviews; value engineering, scheduling, estimating and subcontracting services; establish a Guaranteed Maximum Price to complete the Contract Work; act as General Contractor; hold all subcontracts, self-perform portions of the Work as may be allowed by the City under the CM/GC Contract; coordinate and manage the building process; provide general Contractor expertise; and act as a member of the project team along with the City, architect/engineers and other consultants. CM/GC also refers to a Contractor under this form of Contract, sometimes known as the "Construction Manager at Risk."

(3) **Design-Build** means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the City, and manages both design and construction. In this form of Contract, a single Person provides the City with all of the services necessary to both design and construct the project.

(4) **Energy Conservation Measures (or "ECMs") (also known as "energy efficiency measures")** means, as used in ESPC Procurement, any equipment, fixture or furnishing to be added to or used in an existing building or structure, and any repair, alteration or improvement to an existing building or structure that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future contract-labor costs and materials costs associated with maintenance of the building or structure. For purposes of Rules 04-0600 to 04-0690, use of either or both of the terms "building" or "structure" shall be deemed to include existing energy, water and waste disposal systems connected or related to or otherwise used for the building or structure when such system(s) are included in the project, either as part of the project together with the building or structure, or when such system(s) are the focus of the project. Maintenance services are not Energy Conservation Measures, for purposes of Rules 04-0600 to 04-0690.

(5) **Energy Savings Guarantee** means the energy savings and performance guarantee provided by the ESCO under an ESPC Procurement, which guarantees to the City that certain energy savings and performance will be achieved for the project covered by the RFP, through the installation and implementation of the agreed-upon ECMs for the project. The Energy Savings Guarantee shall include, but shall not be limited to, the specific energy savings and performance levels and amounts that will be guaranteed, provisions related to the financial remedies available

to the City in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the City after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.

(6) **Energy Savings Performance Contract (or "ESPC")** means a Public Improvement Contract between the City and a Qualified Energy Service Company for the identification, evaluation, recommendation, design and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.

(7) **Guaranteed Maximum Price (or "GMP")** means the total maximum price provided to the City by the Contractor, and accepted by the City, that includes all reimbursable costs of and fees for completion of the Contract Work, as defined by the Public Improvement Contract, except for material changes in the scope of Work. It may also include particularly identified contingency amounts.

(8) **Measurement and Verification (or "M & V")** means, as used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.

(9) **Project Development Plan** means a secondary phase of services performed by an ESCO in an ESPC Procurement when the ESCO performs more extensive design of the agreed-upon ECMs for the project, provides the detailed provisions of the ESCO's Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO's services during this secondary phase of the Work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the Work; The term "Project Development Plan" can also refer to the report or plan provided by the ESCO at the conclusion of this phase of the Work.

(10) **Qualified Energy Service Company (or "ESCO")** means, as used in ESPC Procurement, a company, firm or other legal Person with the following characteristics: demonstrated technical, operational, financial and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement Energy Conservation Measures and other Work on building systems or building components that are directly related to the ECMs in existing buildings and structures; a prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to the project under consideration by the City; and the financial strength to effectively guarantee energy savings and performance under the ESPC for the project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that project.

(11) **Technical Energy Audit** means, as used in ESPC Procurement, the initial phase of services to be performed by an ESCO that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the City of the ESCO's Findings during this initial phase of the Work; the term "Technical Energy Audit" can also refer to the report provided by the ESCO at the conclusion of this phase of the Work.

**04-0620**

**Use of Alternative Contracting Methods**

(1) **Competitive Bidding Exemptions**. ORS Chapter 279C requires a competitive Bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted or an individual Contract has been exempted in accordance with ORS 279C.335 and any applicable City rules. Use of Alternative Contracting Methods may be directed by the City's Contract Review Authority as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with the Code and Rules 04-0600 to 04-0690. See Rule 04-0630 regarding required Findings and restrictions on class exemptions.

(2) **Energy Savings Performance Contracts**. Unlike other Alternative Contracting Methods covered by Rules 04-0600 to 04-0690, ESPCs may be exempted from the competitive Bidding process for Public Improvement Contracts pursuant to ORS 279C.335, if the City complies with the procedures set forth in Rules 04-0600 to 04-0690 related to the Solicitation, negotiation and contracting for ESPC services.

(3) **Post-Project Evaluation**. ORS 279C.355 requires that the City prepare a formal post-project evaluation of Public Improvement projects in excess of $100,000 for which the competitive Bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the City's best interest to use an Alternative Contracting Method. The evaluation must be delivered to the City's Contract Review Authority within 30 Days of the date the City "accepts" the Public Improvement project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Work. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

(a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

**04-0630**

**Findings, Notice and Hearing**

(1) **Cost Savings Factors**. When Findings are required under ORS 279C.335 to exempt a Contract or class of Contracts from competitive Bidding requirements, the "substantial cost savings" criterion at ORS 279C.335(2)(b) allows consideration of the type, cost, amount of the Contract, number of Entities available to Bid, and "such other factors as may be deemed appropriate."

(2) **Required Information**. Likewise, the statutory definition of "Findings" at ORS 279.330 means the justification for the City conclusion that includes, "but is not limited to," information regarding eight identified areas.

(3) **Addressing Cost Savings**. Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings" requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including an analysis or reasonable forecast of future cost savings as well as present cost savings; and

(b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings shall relate back to the specific characteristics of the project or projects at issue in the exemption request.

(4) **Favoritism and Competition**. The criteria at ORS 279C.335(2)(a) that it is "unlikely" that the exemption will "encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, Award made based upon identified selection criteria and an opportunity to protest that Award.

(5) **Descriptions**. Findings supporting a competitive bidding exemption must describe with specificity the Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one step (Request for Proposals) or two step (beginning with Requests for Qualifications) solicitation process will be utilized. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. However, the purpose of an exemption from competitive bidding is limited to a determination of the Procurement method. Any unnecessary or incidental descriptions of the specific details of the

anticipated Contract within the supporting Findings are not binding upon the City. The parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document.

(6) **Class Exemptions**. In making the findings supporting a class exemption the City shall clearly identify the class with respect to its defining characteristics. Those characteristics shall include some combination of Project descriptions or locations, time periods, contract values or method of procurement or other factors that distinguish the limited and related class of Projects from the City's overall construction program. Classes shall not be defined solely by funding sources, such as a particular bond fund, or by method of procurement, but must be defined by characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2).

(7) **Public Hearing**. Before final adoption of Findings exempting a Public Improvement Contract from the requirement of competitive bidding, the City shall give notice and hold a public hearing as required by ORS 279C.335(4). The hearing shall be for the purpose of receiving public comment on the City's draft Findings.

**04-0640**

**Competitive Proposals; Procedure**

Contracting Agencies may utilize the following RFP process for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, only in accordance with ORS 279C.400 to 279C.410 and Rules 04-0600 to 04-690, unless other applicable statutes control the City's use of competitive Proposals for Public Improvement Contracts. Also see the subdivision of rules in this division entitled Rules 04-0200 to 04-0460, and RFP related rules under the Alternative Contracting Methods subdivision at Rules 04-0640 to 04-0660. For ESPCs, the following RFP process shall be utilized if the City desires the Procurement process to be exempt from the competitive Bidding requirements of ORS 279C.335. The RFP process for the Alternative Contracting Methods identified in Rules 04-0600 to 04-0690 includes the following steps:

(1) City staff shall obtain prior approval of the Contract Review Authority to use any of the Alternative Contract Methods, except for a Request for Proposal issued in accordance with Rule 04-0650.

(2) **Proposal Evaluation**. Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. For ESPC Proposal evaluations, the City may provide in the RFP that qualifications-based evaluation factors will outweigh the City's consideration of price-related factors, due to the fact that prices for the major components of the Work to be performed during the ESPC process contemplated by the RFP will likely not be determinable at the time of Proposal evaluation. Proposal evaluation shall be as objective as possible. Evaluation

factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

(a) Be reasonable estimates based on information available to the City;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the City. See ORS 279C.305.

(3) **Evaluation Factors.**

(a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality.

(b) In CM/GC contracting, in addition to (a) above, those factors may also include the ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters that affect cost or quality.

(c) In Design-Build contracting, in addition to (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.

(d) In ESPC contracting, in addition to the factors set forth in subsections (a), (b) and (c) above, those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint venturers comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee Contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques and equipment that the ESCO will use in the performance of the Work under the ESPC, the ESCO's team members and consultants to be assigned to the project, the ESCO's experience in

the Energy Savings Performance Contracting field, the ESCO's experience acting as the prime contractor on previous ESPC projects (as opposed to a sub-contractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the City and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work and the ESCO's fee structure for all phases of the ESPC.

(4) **Contract Negotiations**. Contract terms may be negotiated to the extent allowed by the RFP and Rules 04-0600 to 04-0690, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See Rule 04-0650. Terms that may be negotiated consist of details of Contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality. In ESPC contracting, terms that may be negotiated also include the scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the scope of services to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and scope of Work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the Work, consistent with the requirements of Rule 04-0680 below.

**04-0645**

**Requests for Qualifications (RFQ)**

As provided by ORS 279C.410(9), the City may utilize Requests for Qualifications (RFQs) to obtain information useful in the preparation or distribution of a Request for Proposals (RFPs). When using RFQs as the first step in a two step solicitation process, in which distribution of the RFPs will be limited to the firms identified as most qualified through their submitted statements of qualification, the City shall first advertise and provide notice of the RFQ in the same manner in which RFPs are advertised, specifically stating that RFPs will be distributed only to the qualified firms in the RFQ process. In such cases the City shall also provide within the RFQ a protest provision substantially in the form of Rule 04-0430(5) regarding protests of the Competitive Range. Thereafter, the City may distribute RFPs to those qualified firms without further advertisement of the solicitation.

**04-0650**

**Requests for Proposals (RFP)**

(1) **Generally**. The use of competitive proposals must be specially authorized for a Public Improvement Contract under the competitive bidding requirement of ORS 279C.335(1), Rule 04-0130 and Rules 04-0600 to 04-0690. Also see ORS 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals, and Rule 04-0640 regarding competitive Proposal procedures.

(2) **Solicitation Documents**. In addition to the Solicitation Document requirements of Rule 04-0200, this rule applies to the requirements for Requests for Proposals. RFP Solicitation Documents shall conform to the following standards:

(a) The City shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. See Rule 04-0640. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to the City. Subject to ORS 279C410(4), the Solicitation Document may provide for discussions with Proposers to be conducted for the purpose of Proposal evaluation prior to award or prior to establishing any Competitive Range;

(b) When the City is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions, the City must identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the City has identified as authorized for negotiation. The City must describe the evaluation and discussion and negotiation processes, including how the City will establish the Competitive Range, if any;

(c) The anticipated size of any Competitive Range shall be stated in the Solicitation Document, but may be decreased if the number of Proposers that submit responsive Proposals is less than the specified number, or may increased as provided in Rule 04-0650(4)(a)(B);

(d) When the City intends to Award Contracts to more than one Proposer, the City must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The City shall also include the criteria it

will use to determine how the City will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide goods or services from those Contractors Awarded Contracts.

(3) **Evaluation of Proposals.**

(a) Evaluation. The City shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The City shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, the City may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

(B) Limited Negotiation. If the City did not permit negotiation in its Request for Proposals, the City may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(i) Statement of Work; and

(ii) Contract Price as it is affected by negotiating the statement of Work.

The process for discussions or negotiations that is outlined and explained in subsections (5)(b) and (6) of this rule does not apply to this limited negotiation.

(b) Discussions; Negotiations. If the City permitted discussions or negotiations in the Request for Proposals, the City shall evaluate Proposals and establish the Competitive Range, and may then conduct discussions and negotiations in accordance with this rule.

(A) If the Solicitation Document provided that discussions or negotiations may occur at City's discretion, the City may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.

(B) If the City proceeds with discussions or negotiations, the City shall establish a negotiation team tailored for the acquisition. The City's team may include legal, technical and negotiating personnel.

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

(4) **Competitive Range; Protest; Award.**

(a) Determining Competitive Range.

(A) If the City does not cancel the Solicitation, after the Opening the City will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the City will determine and rank the Proposers in the Competitive Range.

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

(b) Protesting Competitive Range. The City shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the City's evaluation and determination of the Competitive Range in accordance with Rule 04-0430.

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

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

(i) An unsuccessful Proposer may protest the City's intent to Award in accordance with Rule 04-0430.

(ii) After the protest period provided in accordance with Rule 04-0430 expires, or after the City has provided a final response to any protest, whichever date is later, the City shall commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or

(B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the Competitive Range.

(5) **Discussions; Revised Proposals.** If the City chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the City shall proceed as follows:

(a) Initiating Discussions. The City shall initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the City identified in the RFP as the subject of discussions. The City may conduct discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the City would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the City to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The City may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The City may terminate discussions with any Proposer in the Competitive Range at any time. However, the City shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with City before the City notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting discussions, the City:

(i) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(ii) Shall not discuss other Proposers' Proposals;

(iii) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal.

(B) At any time during the time allowed for discussions, the City may:

(i) Continue discussions with a particular Proposer;

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or

(iii) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) Revised Proposals. If the City does not cancel the Solicitation at the conclusion of the City's discussions with all remaining Proposers in the Competitive Range, the City shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the City's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the City's notice.

(A) Upon receipt of the revised Proposals, the City shall score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the City's scoring.

(B) The City may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(d) Intent to Award; Protest. The City shall provide Written notice to all Proposers in the Competitive Range of the City's intent to Award the Contract. An unsuccessful Proposer may protest the City's intent to Award in accordance with Rule 04-0430. After the protest period provided in accordance with that rule expires, or after the City has provided a final response to any protest, whichever date is later, the City shall commence final Contract negotiations.

(6) **Negotiations.**

(a) Initiating Negotiations. The City may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:

(A) Initial determination of the Competitive Range; or

(B) Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.

(b) Conducting Negotiations.

(A) Scope. The City may negotiate:

(i) The statement of Work;

(ii) The Contract Price as it is affected by negotiating the statement of Work; and

(iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals. Accordingly, Proposers shall not submit, and the City shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals.

(c) Continuing Negotiations. If the City terminates negotiations with a Proposer, the City may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the City has;

(A) Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(B) Completed one round of discussions or negotiations with all Proposers in the Competitive Range, unless the City provided for more than one round of discussions or negotiations in the Request for Proposals, in which case the City may proceed with any authorized further rounds of discussions or negotiations

(7) Terminating Discussions or Negotiations. At any time during discussions or negotiations conducted in accordance with this rule, the City may terminate discussions or negotiations with the Proposer with whom it is currently conducting discussions or negotiations, if the City reasonably believes that:

(a) The Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner..

**04-0660**

**RFP Pricing Mechanisms**

(1) A Request for Proposals may result in a lump sum Contract Price, as in the case of competitive Bidding. Alternatively, a cost reimbursement Contract may be negotiated.

(2) Economic incentives or disincentives may be included to reflect stated City purposes related to time of completion, safety or other Public Contracting objectives, including total least cost mechanisms such as life cycle costing.

(3) A Guaranteed Maximum Price (GMP) is used as the pricing mechanism for CM/GC where a total Contract Price is provided in the design phase in order to assist the City in determining whether the project scope is within the City's budget, and allowing for design changes during preliminary design rather than after final design Work has been completed.

(a) If this collaborative process is successful, the Contractor shall propose a final GMP, which may be accepted by the City and included within the Contract.

(b) If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the Contractor, then the City shall terminate the Contract. The public City may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.

(4) When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the City shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

**04-0670**

**Design-Build Contracts**

(1) **General**. The Design-Build form of contracting, as defined at Rule 04-0610(3), has technical complexities that are not readily apparent. Contracting Agencies shall use this contracting method only with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to use the Design-Build process, the City must be able to reasonably anticipate the following types of benefits:

(a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;

(b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;

(c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;

(d) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a

"Biddable" design, or where a design solution is still required (as in complex or phased projects); or

(e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

(2) **Authority**. The City shall utilize the Design-Build form of contracting only in accordance with the requirements of these Rules 04-0600 to 04-0690 rules. See particularly Rule 04-0620 on "Use of Alternative Contracting Methods" and Rule 04-0680 pertaining to ESPCs.

(3) **Selection**. Design-Build selection criteria may include those factors set forth above in Rule 04-0640(2)(a), (b) and (c).

(4) **QBS Inapplicable**. Because the value of construction services predominates the Design-Build form of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.

(5) **Licensing**. If a Design-Build Contractor is not an Oregon licensed design professional, the City shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.

(6) **Performance Security**. ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related professional services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

(7) **Contract Requirements**. The City shall conform its Design-Build contracting practices to the following requirements:

(a) Design Services. The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The services to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.

(b) Professional Liability. The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the City, as well as requirements for professional liability insurance.

(c) Risk Allocation. The Contract shall clearly identify the extent to which the City requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.

(d) Warranties. The Contract shall clearly identify any express warranties made to the City regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.

(e) Incentives. The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.

(f) Honoraria. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the Solicitation process on the basis that the City is benefitted from such deliverables.

**04-0680**

**Energy Savings Performance Contracts (ESPC)**

(1) **Generally**. Rules 04-0600 to 04-0690 include a limited, efficient method for Public Contract Contracting Agencies to enter into ESPCs outside the competitive Bidding requirements of ORS 279C.335 for existing buildings or structures, but not for new construction. If the City chooses not to utilize the ESPC Procurement method provided for by Rules 04-0600 to 04-0690, the City may still enter into an ESPC by complying with the competitive Bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the Procurement requirements applicable to any City not subject to all the requirements of ORS 279C.335.

(2) **ESPC Contracting Method**. The ESPC form of contracting, as defined at Rule 04-0610(6), has unique technical complexities associated with the determination of what ECMs are feasible for the City, as well as the additional technical complexities associated with a Design-Build Contract. The City shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the City must be able to reasonably anticipate one or more of the following types of benefits:

(a) Obtaining, through an ESCO, the following types of integrated services: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services and required documentation as a fully integrated function with a single point of responsibility;

(b) Obtaining, through an ESCO, an Energy Savings Guarantee;

(c) Integrating the Technical Energy Audit phase and the Project Development Plan phase into the design and construction phase of Work on the project;

(d) Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC services;

(e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC services team;

(f) Integrating cost-effective ECMs into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;

(g) Preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure through an ESPC, as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and

(h) Satisfying local energy efficiency design criteria or requirements.

(3) **Authority**. If the City desires to pursue an exemption from the competitive Bidding requirements of ORS 279C.335 (and, if applicable, ORS 351.086), the City shall utilize the ESPC form of contracting only in accordance with the requirements of Rules 04-0600 to 04-0690.

(4) **No Findings Required**. The City is only required to comply with the ESPC contracting procedures set forth in Rules 04-0600 to 04-0690 in order for the ESPC to be exempt from the competitive Bidding processes of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive Bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the City is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in Rules 04-0600 to 04-0690.

(5) **Selection**. ESPC selection criteria may include those factors set forth above in Rule 04-0640(3)(a), (b), (c) and (d). Since the Energy Savings Guarantee is such a fundamental

component in the ESPC contracting process, Proposers must disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

(6) **QBS Inapplicable**. Because the value of construction services predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.

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

(8) **Performance Security**. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and a payment bond, each for 100% of the full Contract Price, including the construction and design and related professional services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related professional services" include conventional design services, commissioning services, training services for the City's operations and maintenance staff, and any similar professional services provided by the ESCO under the ESPC Design-Build Contract prior to final completion of construction. M & V services, and any services associated with the ESCO's Energy Savings Guarantee are not included in these ORS 279C.380(1)(a) "design and related professional services." Nevertheless, the City may require that the ESCO provide performance security for M & V services and any services associated with the ESCO's Energy Savings Guarantee, if the City so provides in the RFP.

(9) **Contracting Requirements**. Contracting Agencies shall conform their ESPC contracting practices to the following requirements:

(a) General ESPC Contracting Practices. An ESPC involves a multi-phase project, which includes the following contractual elements:

(A) A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the Project Development Plan for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.

(B) The various phases of the ESCO's Work will include the following:

(I) The Technical Energy Audit phase of the Work;

(ii) The Project Development Plan phase of the Work;

(iii) A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related services to actually construct the project; and

(iv) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the City, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.

(b) Design-Build Contracting Requirements in ESPCs. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the City shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in Rule 04-0670(7) above.

(c) Pricing Alternatives. The City may utilize one of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the services to be provided by the ESCO;

(B) A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the services to be performed, a cost reimbursement pricing mechanism for the construction services to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the City, the ESCO's M & V services may be terminated

prior to the completion of the M & V/Energy Savings Guarantee period and the City's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) Permitted ESPC Scope of Work. The scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted scope of Work for ESPCs resulting from a Solicitation under Rules 04-0600 to 04-0690 does not include maintenance services for the project facility.

**04-0690**

**Construction Manager/General Contractor (CM/GC)**

(1) **General**. The CM/GC form of contracting, as defined at Rule 04-0610(2), is a technically complex project delivery system. The City shall use this contracting method only with the assistance of knowledgeable staff or consultants who have a demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, Public Contracting and project management. Unlike the Design-Build form of contracting, the CM/GC form of contracting does not contemplate a "single point of responsibility" under which the Contractor is responsible for successful completion of all Work related to a performance Specification. The CM/GC has defined contract obligations, including responsibilities as part of the project team along with the City and design professional, although in CM/GC there is a separate contract between the City and design professional. In order to utilize the CM/GC method, the City must be able to reasonably anticipate the following types of benefits:

(a) Time Savings. The Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The City may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;

(b) Cost Savings. Early Contractor input during the design process is expected to contribute to significant cost savings. The City may consider value engineering, building systems analysis, life cycle costing analysis and construction planning that lead to cost savings. The City shall specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; or

(c) Technical Complexity. The Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the City, design professionals and Contractor, in which the Contractor will assist in addressing specific project challenges through pre-construction services. The City may consider the need for Contractor input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.

(2) **Authority**. The City shall use the CM/GC form of contracting only in accordance with the requirements of these rules. See particularly Rule 04-0620 on "Use of Alternative Contracting Methods."

(3) **Selection**. CM/GC selection criteria may include those factors set forth above in Rule 04-0640(2)(a),(b) and (c).

(4) **Basis for Payment**. The CM/GC process adds specified Construction Manager services to traditional General Contractor services, requiring full Contract performance within a negotiated Guaranteed Maximum Price (GMP). The basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for Work and services rendered, which together shall not exceed the GMP. See GMP definition at Rule 04-0610(7) and Pricing Mechanisms at Rule 04-0660.

(5) **Contract Requirements**. The City shall conform its CM/GC contracting practices to the following requirements:

(a) Setting the GMP. The GMP shall be set at an identified time consistent with industry practice, after supporting information reasonably considered necessary to its use has been developed, and the supporting information shall define with particularity both what is included and excluded from the GMP. A set of drawings and Specifications shall be produced establishing the GMP scope.

(b) Adjustments to the GMP. The Contract shall clearly identify the standards or factors under which changes or additional Work will be considered outside of the Work scope that warrants an increase in the GMP, as well as criteria for decreasing the GMP. The GMP shall not be increased without a concomitant increase to the scope defined at the establishment of the GMP or most recent GMP amendment.

(c) Cost Savings. The Contract shall clearly identify the disposition of any cost savings resulting from completion of the Work below the GMP; that is, under what circumstances, if any, the CM/GC might share in those cost savings, or whether they accrue only to the City's benefit. (Note that unless there is a clearly articulated reason for sharing such cost savings, they should accrue to the City.)

(d) Cost Reimbursement. The Contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP, including any category of "General Conditions" (a general grouping of direct costs that are not separately invoiced, subcontracted or included within either overhead or fee), and may also incorporate a mutually-agreeable cost-reimbursement standard.

(e) Audit. Cost reimbursements shall be made subject to final audit adjustment, and the Contract shall establish an audit process to ensure that Contract costs are allowable, properly allocated and reasonable.

(f) Fee. Compensation for the CM/GC's services shall be paid on the basis of a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee should be expressly defined wherever possible. The fee, first expressed as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount when the GMP is established.

(g) Incentives. The Contract shall clearly identify any economic incentives, the specific criteria that apply and their relationship to other financial elements of the Contract (including the GMP).

(h) Controlled Insurance Programs. For projects anticipated to exceed $75 Million, the Contract shall clearly identify whether an Owner Controlled or Contractor Controlled Insurance Program is anticipated or allowable. If so, the Contract shall clearly identify (1) anticipated cost savings from reduced premiums, claims reductions and other factors, (2) the allocation of cost savings, and (3) safety responsibilities and/or incentives.

(I) Early Work. The RFP shall clearly identify, whenever feasible, the circumstances under which any of the following activities may be authorized and undertaken for compensation prior to establishing the GMP:

(A) Early Procurement of materials and supplies;

(B) Early release of Bid packages for such things as site development; and

(C) Other advance Work related to critical components of the Contract.

(j) Subcontractor Selection. The Contract shall clearly describe the methods by which the CM/GC shall publicly receive, open and record Bids or price quotations, and competitively select subcontractors to perform the Contract Work based upon price, as well as the mechanisms by which the City may waive those requirements. The documents shall also describe completely the methods by

which the CM/GC and its affiliated or subsidiary entities may compete to perform the Work, including, at a minimum, advance notice to the public of the CM/GC's intent to compete and a public Opening of Bids or quotations by an independent party.

(k) Subcontractor Approvals and Protests. The Contract shall clearly establish whether the City must approve subcontract awards, and to what extent, if any, the City will resolve Procurement protests of subcontractors and suppliers. The related procedures and reporting mechanisms shall be established with certainty, including whether the CM/GC acts as the City's representative in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the City shall retain the right to monitor the subcontracting process in order to protect City's interests.

(l) CM/GC Self-Performance. Whenever feasible, the Contract shall establish the elements of Work the CM/GC may self-perform without competition, including, for example, the Work of the job-site general conditions. In the alternative, the Contract shall include a process for City approval of CM/GC self-performance.

(m) Socio-Economic Programs. The Contract shall clearly identify conditions relating to any required socio-economic programs (such as Affirmative Action or Prison Inmate Labor Programs), including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and City.

## Contract Provisions

**04-0800**

**Required Contract Clauses**

The City shall include in all formal Solicitations for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in Rule 04-0200(1)(c) regarding Solicitation Documents. The following series of rules provide further guidance regarding particular Public Contract provisions.

**04-0810**

**Waiver of Delay Damages Against Public Policy**

The City shall not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from the City's unreasonable delay in performing the Contract. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or

mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages, are permissible.

**04-0815**

**BOLI Public Works Bond**

Pursuant to ORS 279C.830(3), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

**04-0820**

**Retainage**

(1) **Withholding of Retainage**. Except to the extent the City's enabling laws require otherwise, the City shall not retain an amount in excess of five percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the City may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The City shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, the City may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. The City may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) **Deposit in interest-bearing accounts**. Upon request of the Contractor, the City shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the City. Earnings on such account shall accrue to the Contractor.

(3) **Alternatives to cash retainage**. In lieu of cash retainage to be held by the City, the Contractor may substitute one of the following:

(a) Deposit of securities:

(A) The Contractor may deposit bonds or securities with the City or in any bank or trust company to be held for the benefit of the City. In such event, the City shall reduce the retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds and securities deposited or acquired in lieu of retainage shall be of a character approved by the Oregon Department of Administrative Services, which may include, without limitation:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or its Contracting Agencies.

(iii) Obligations of any corporation wholly owned by the Federal Government.

(iv) Indebtedness of the Federal National Mortgage Association.

(C) Upon the City's determination that all requirements for the protection of the City's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond. The City, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the City in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(4) **Recovery of costs**. The City may recover from the Contractor all costs incurred in the proper handling of cash retainage and securities, by reduction of the final payment.

(5) **Additional Retainage When Certified Payroll Statements Not Filed**. Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the City shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the City. The City shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see ORS 279C.845(1) regarding the requirement for both contractors and subcontractors to file certified statements with the City). See BOLI rule at OAR 839-025-0010.

**04-0830**

**Contractor Progress Payments**

(1) **Request for progress payments**. Each month the Contractor shall submit to the City its Written request for a progress payment based upon an estimated percentage of Contract completion. At the City's discretion, this request may also include the value of material to be incorporated in the completed Work that has been delivered to the premises and appropriately

stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, the City will make a progress payment to the Contractor, which shall be equal to: (i) the value of completed Work; (ii) less those amounts that have been previously paid; (iii) less other amounts that may be deductible or owing and due to the City for any cause; and (iv) less the appropriate amount of retainage.

(2) **Progress payments do not mean acceptance of Work.** Progress payments shall not be construed as an acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective workmanship or material.

**04-0840**

**Interest**

(1) **Prompt payment policy**. The City shall pay promptly all payments due and owing to the Contractor in accordance with the provisions in the contract documents.

(2) **Interest on progress payments**. Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after City approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent.

(3) **Interest on final payment**. Final payment on the Contract Price, including retainage, shall be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.

(4) **Settlement or judgment interest**. In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty Days after the Contractor submitted a claim for payment to the City in Writing or otherwise in accordance with the Contract requirements.

**04-0850**

**Final Inspection**

(1) **Notification of Completion; inspection**. The Contractor shall notify the City in Writing when the Contractor considers the Contract Work completed. Within 15 Days of receiving

Contractor's notice, the City will inspect the project and project records, and will either accept the Work or notify the Contractor of remaining Work to be performed.

(2) **Acknowledgment of acceptance**. When the City finds that all Work required under the Contract has been completed satisfactorily, the City shall acknowledge acceptance of the Work in Writing.

**04-0860**

**Public Works Contracts**

(1) **Generally**. ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in ORS 279C.800(5), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR chapter 839.

(2) **Required Contract Conditions**. As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:

(a) City authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

(b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

(c) Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).

(d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

(e) Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1).

(f) Requirement for payment of fee to BOLI, as set forth in ORS 279C.830(2) and administrative rule of the BOLI commissioner.

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

(a) The state prevailing rate of wage, and, if applicable, the federal prevailing rate of wage, as required by ORS 279C.830(1)(a), physically contained within or attached to hard copies of procurement Specifications, and by a downloadable direct link to the specific wage rates that apply to the project (either on the City

web site or the BOLI web site) when procurement Specifications are also made available in electronic format.

(b) If both state and federal prevailing rates of wage apply, a requirement that the contractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers. See BOLI rules at OAR 839-025-0020 and 0035.

(c) Reference to payment of fee to BOLI, as required by ORS 279C.830(2).

**04-0870**

**Specifications; Brand Name Products**

(1) **Generally**. The City's Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).

(2) **Equivalents**. The City may identify products by brand names so long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The City shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

**04-0880**

**Records Maintenance; Right to Audit Records**

(1) **Records Maintenance; Access**. Contractors and subcontractors shall maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors shall maintain all other records necessary to clearly document (i) their performance; and (ii) any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a Contract (the books, fiscal records and all other records, hereafter referred to as "Records") accessible to the City at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) **Inspection and Audit**. The City may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Person must provide cost or pricing data under a Contract, the Person shall maintain such Records that relate to the cost or pricing data for 3 years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in Writing.

(3) **Records Inspection; Contract Audit**. The City, and its authorized representatives, shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in section 1 of this rule. The Contractor and subcontractor shall maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of 3 years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in Writing.

**04-0890**

**City Payment for Unpaid Labor or Supplies**

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

(2) **Contract completed**. If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. The City shall not make payments to subcontractors or suppliers for Work already paid for by the City.

**04-0900**

**Contract Suspension; Termination Procedures**

(1) **Suspension of Work**. In the event the City suspends performance of Work for any reason considered by the City to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of Contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) **Termination of Contract by mutual agreement for reasons other than default.**

(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The City suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this section (2), the City shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The City shall also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) **Public interest termination by City**. The City may include in its Contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event the City unilaterally terminates the Contract for any reason considered by the City to be in the public interest.

(4) **Responsibility for completed Work**. Termination of the Contract or a divisible portion thereof pursuant to this rule shall not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) **Remedies cumulative**. The City may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.

**04-0910**

**Changes to the Work and Contract Amendments**

(1) **Definitions for Rule**. As used in this rule:

(a) "**Amendment**" means a Written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general scope of the original Procurement that requires mutual agreement between the City and the Contractor.

(b) "**Changes to the Work**" means a mutually agreed upon change order, or a construction change directive or other Written order issued by the City or its authorized representatives to the Contractor requiring a change in the Work within the general scope of a Public Improvement Contract and issued under its changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or contract time for the changed work.

(2) **Changes Provisions**. Changes to the Work are anticipated in construction and, accordingly, Contracting Agencies shall include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize the City or its authorized representatives to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's changes provisions they are not considered

to be new Procurements and an exemption from competitive bidding is not required for their issuance by the City.

(3) **Change Order Authority**. The City may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Rules, but such changes are limited by the above definition of that term.

(4) **Contract Amendments**. Contract Amendments within the general scope of the original Procurement are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work specified in or reasonably implied from the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

(a) They are within the general scope of the original Procurement;

(b) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through Competitive Bidding, Competitive Proposals, competitive quotes, sole source or Emergency contract;

(c) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and

(d) The Amendment is made consistent with applicable legal requirements.

# DIVISION 5

## PERSONAL SERVICE CONTRACTS FOR SERVICES OTHER THAN ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED SERVICES

## DIVISION 5

## PERSONAL SERVICE CONTRACTS FOR SERVICES OTHER THAN ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED SERVICES

### 05-0100

### Application

(1) Personal Services Contracts. A contract for personal services, other than for architectural, engineering, land surveying and related services, is a contract that calls for 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. Qualifications and performance history, expertise, knowledge 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. "Architect, Engineer, Land Surveying and Related Services" are covered by the provisions set out in Division 3. Personal service contracts may include, but are not limited to the following:

(a) Contracts for services performed in a professional capacity including services of an accountant, attorney, physician or dentist, information technology consultant, or broadcaster;

(b) Contracts for services as an artist in the performing or fine arts including any person identified as a photographer, filmmaker, painter, weaver, or sculptor;

(c) Contracts for services that are specialized, creative and research-oriented;

(d) Contracts for services as a consultant; and

(e) Contracts for educational services.

Personal Services Contracts do not include:

In order to qualify as a personal service contract, the contract must provide that a minimum of seventy-five percent (75%) of the contract price be allocated for the purchase of personal services. For example, a contract to supply all hardware and standard software is not a Personal Services Contract, but a contract with a technology consultant to design or develop a new computer system is a Personal Services Contract. A Personal Services Contract does not include a contract with a temporary service or personnel agency to supply labor which is of a type that can generally be done by any skilled worker.

**05-0200**

**Procedure**

The City must either select a sourcing method from one of the following methods: Competitive sealed bidding, Competitive sealed proposals, Small procurements, Sole-source procurements, Emergency procurements, or Special procurements and follow the screening, selection, evaluation, and award procedures set forth for the selected sourcing method in Division 2 of these Rules; or the City can use the direct appointment procedure set forth in Rule 03-0200.

EXHIBIT "A"

**279A.025 Application of Public Contracting Code.**

(1) Except as provided in subsections (2) to (4) of this section, the Public Contracting Code applies to all public contracting.

(2) The Public Contracting Code does not apply to:

(a) Contracts between contracting agencies or between contracting agencies and the federal government;

(b) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145 for purposes of source selection;

(c) Grants;

(d) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested;

(e) Acquisitions or disposals of real property or interest in real property;

(f) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection;

(g) Contracts for the procurement or distribution of textbooks;

(h) Procurements by a contracting agency from an Oregon Corrections Enterprises program;

(i) The procurement, transportation or distribution of distilled liquor, as defined in ORS 471.001, or the appointment of agents under ORS 471.750 by the Oregon Liquor Control Commission;

(j) Contracts entered into under ORS chapter 180 between the Attorney General and private counsel or special legal assistants;

(k) Contracts for the sale of forest products, as defined in ORS 321.005, from lands owned or managed by the State Board of Forestry and the State Forestry Department;

(l) Contracts for forest protection or forest related activities, as described in ORS 477.406, by the State Forester or the State Board of Forestry;

(m) Sponsorship agreements entered into by the Director of the Oregon State Fair and Exposition Center in accordance with ORS 565.080 (4);

(n) Contracts entered into by the Housing and Community Services Department in exercising the department's duties prescribed in ORS chapters 456 and 458, except that the department's public contracting for goods and services, as defined in ORS 279B.005, is subject to ORS chapter 279B;

(o) Contracts entered into by the State Treasurer in exercising the powers of that office prescribed in ORS chapters 178, 286, 287, 288, 289, 293, 294 and 295, including but not limited to investment contracts and agreements, banking services, clearing house services and collateralization agreements, bond documents, certificates of participation and other debt repayment agreements, and any associated contracts, agreements and documents, regardless of whether the obligations that the contracts, agreements or documents establish are general, special or limited, except that the State Treasurer's public contracting for goods and services, as defined in ORS 279B.005, is subject to ORS chapter 279B;

(p) Energy savings performance contracts;

(q) Contracts, agreements or other documents entered into, issued or established in connection with:

(A) The incurring of debt by a public body, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;

(B) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or

(C) The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085;

(r) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221, 243.275, 243.291, 243.303 and 243.565; or

(s) Any other public contracting of a public body specifically exempted from the code by another provision of law.

(3) The Public Contracting Code does not apply to the public contracting activities of:

(a) The Oregon State Lottery Commission;

(b) The Oregon University System and member institutions, except as provided in ORS 351.086;

(c) The legislative department;

(d) The judicial department;

(e) Semi-independent state agencies listed in ORS 182.451, 182.452 and 182.454, except as provided in ORS 279.835 to 279.855 and 279A.250 to 279A.290;

(f) Oregon Corrections Enterprises;

(g) The Oregon Film and Video Office, except as provided in ORS 279A.100 and 279A.250 to 279A.290;

(h) The Travel Information Council, except as provided in ORS 279A.250 to 279A.290;

(i) The Appraiser Certification and Licensure Board, except as provided in ORS 279.835 to 279.855 and 279A.250 to 279A.290; or

(j) Any other public body specifically exempted from the code by another provision of law.

(4) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS 279.835 to 279.855. [2003 c.794 §5; 2003 c.794 §5a]

**CITY OF THE DALLES**
**POLICY MANUAL**

**SECTION II – PURCHASING**

Ref. Council Resolution No. 11-018 Section 5

# Administrative Policy

## Purchasing, Accounts Payable and Disbursements

Purchasing authority levels and required documentation levels are set within the Council adopted Fiscal Management Policies as follows:

| | | | |
|---|---|---|---|
| **1.** | **0 to $ 1,000** | Field Purchase Order – authorized by signature of Department Manager |
| **2.** | **$ 1,000 to $ 5,000** | Department Manager authority – requires three documented phone quotes |
| **3.** | **$ 5,000 to $ 14,999** | Department Manager authority – requires minimum of three written quotes |
| **4.** | **$ 15,000 to $ 49,999** | City Manager authority – requires minimum of three written quotes |
| **5.** | **$ 50,000 and above** | City Council authority – requires Requests for Proposals (RFP) or formal bids process as deemed appropriate by the situation. |

Purchase orders shall be prepared in advance, prior to any order or commitment for purchase of goods or services. Approvals or authorizations for purchase orders follow the same requirements as shown above for the purchasing levels.

- Departments using on-line purchasing must obtain proper authorizations and a purchase order must be generated prior to the order or commitment for purchase.
- Departments without access to on-line purchasing must provide all necessary information to the Finance Department and a purchase order will be generated for the department.
- Specify the goods or services requested, the vendor, and the estimated price.
- Attach all required documentation.
- The purchase order number must appear on all invoices, packing slips and correspondence.

Purchase Orders approved at the City Council level will be processed as follows:

- City Manager will sign all Purchase Orders approved by the Council and forward the signed form and all supporting documentation to the Finance Department.
- Finance Department will issue the Purchase Order Number, which will be sent to the relevant department requesting the contract or purchase for communication with the vendor(s). The Purchase Order is stored on-line within the information system and may be accessed by any staff with access to the system.

Certain exceptions to the issuance of a purchase order exist for specific types of transactions. Purchase Orders need not be issued for the following types of expenditures:

- Employee travel expenses

- Advance registration for training or lodging
- Recurring expenditures such as utility billings or other monthly services, such as rent and lease payments, where the service was provided without any initiation by City personnel, and the billing/invoice is received after the fact.
- Certain Municipal Court transactions
- Magazine subscription and professional dues renewals
- Replenishment of petty cash funds
- Advance purchase of postage for postage meter or postage by phone
- Various Finance Department transactions

For the above expenditure types, a purchase order is either not functionally appropriate to another type of documentation is better suited. These other forms include the following:

- Travel Advance Form – to be used in place of a purchase order for obtaining an advance for purposes of employee travel on City business.
- Employee Expense Reimbursement Form – to be used to obtain reimbursement for relevant expenses incurred by an employee while traveling on official City business. Original receipts must be attached as documentation.
- Check Request Form – to be used for specific transactions where a purchase order is not practicable.

All original invoices shall be submitted to the Finance Department Accounts Payable Clerk after approval by the appropriate Department Manager or designee for payment. Photocopies of invoices will not be accepted for payment.

- Write PO number on each invoice if not already shown
- Stamp each invoice with approval stamp
- Indicate the account number(s) to be charged
- Obtain Department Manager approval and signature
- Submit to Finance Department

The Finance Department Accounts Payable Clerk will compare and reconcile the invoices and purchase orders, and then will process for payment.

The Finance Director or designee will review and approve a list of all payments scheduled, along with the documentation requesting those payments, prior to checks being issued. Upon approval, checks will be issued, signed and distributed. Checks are signed by facsimile.

All payment packets, documentation and reports will be retained in the Finance Department until after the annual audit, at which time they will be properly stored for the required retention period.

**CITY OF THE DALLES**
**POLICY MANUAL**

**SECTION III – ADMINISTRATIVE GENERAL**

# CITY OF THE DALLES
# CITY COUNCIL RULES
# CODE OF CONDUCT POLICY

## Section 1. Authority.

1.1 As authorized by the City Charter, The Dalles City Council established the following rules for the conduct of its meetings, proceedings and business. These rules shall be in effect from Council adoption until amended or until new rules are made by resolution.

## Section 2. Mayor and Council President, Presiding Officer.

2.1 The Charter provides for the Mayor to preside over Council meetings. In the Mayor's absence, the Council President shall preside.

2.2 Whenever the Mayor is unable to perform the functions of the office, the Council President shall act as Mayor.

Other duties assigned to the Council President are to attend committee meetings when another Councilor is unable to attend certain meetings or delegate to ensure a Council representative is in attendance.

2.3 In the absence of both the Mayor and the Council President, the City Clerk shall call the Council to order and call the roll of the members. Those members present shall elect, by majority vote, a temporary presiding officer for the meeting.

## Section 3. Council Meetings.

3.1 Regular Council meetings will be held on the second and fourth Monday evening of each month for the purpose of conducting business.

Any other special meetings will be limited to two per week including the regular or workshop meetings. Additional meetings will require approval by a majority of the Council.

3.2 If possible, only one or two major topics (defined as issues of special interest, controversial, or difficult) will be scheduled per meeting.

3.3 Regular Council business meetings will being at 5:30 p.m. Meetings will adjourn

within three hours of the beginning of the meeting. In order for any meeting to continue past the normal adjournment time, a majority of the Council must agree.

3.4 Special meetings will be topic centered.

3.5 Citizen comments will be scheduled for all regular Council meetings that are open to the public. The Presiding Officer will state the ground rules at the start of each meeting. The Presiding Officer has the flexibility to extend or shorten the time limit on citizen comments.

The Presiding Officer will state the public hearing procedures before each hearing.

3.6 Staff/consultants will provide brief input and respond to questions.

3.7 Citizen and community group sign-in forms will be available at each meeting.

3.8 The City Clerk will keep an account of all proceedings of the Council in accordance with the statutory requirements constituting the official record of the Council.

Only Councilors or the City Clerk have the authority to make revisions to the minutes subject to a majority vote of the Council. If a citizen wishes to suggest a modification or revision, the request must be made through the Mayor, a Councilor, or the City Clerk.

3.9 Types of Meetings:

(1) Regular - the Charter provides for regular meetings at least once each month at a location within the City boundaries.

(2) Special - any Council meeting other than the regular Council meeting. Notice shall be given at least 24 hours in advance. A special meeting may be scheduled by the Mayor or at the request of three Councilors.

(3) Emergency - a special meeting that is called with no more than 24 hours notice or less than 3 hours notice. The minutes need to state the nature of the emergency. Emergency meetings may be held by consent of a majority of Councilors.

(4) Executive (closed) - a special session that is closed except to the Council,

City Manager, City Attorney, City Clerk, designated staff, and consultants. The media is allowed to attend but may not report, in accordance with the State open meeting law.

Executive Session subjects are limited to hiring the City Manager, City Attorney, or Municipal Court Judge; dismissal or discipline, labor negotiations, real property transactions, exempt public records, trade negotiations, consultation with City Attorney on litigation or potential litigation, City Manager, City Attorney, and Municipal Court Judge evaluations, public investments, and any other topic allowed by State statute.

No final action or decision may be made during an executive session. The Council may discuss, instruct, or reach a consensus; formal approval in public session satisfies legal decision-making requirements.

3.10 Recess and Holidays. The City Council shall be in recess during the month of August, unless it is determined a special meeting is necessary. In the event a regular meeting falls on a holiday recognized by the City, the regular meeting for that week will be cancelled.

3.11 A regular meeting agenda will contain the following categories listed in order:

A. CALL TO ORDER. The meeting is called to order by the Mayor or presiding officer.

B. ROLL CALL OF COUNCIL.

C. PLEDGE OF ALLEGIANCE.

D. APPROVAL OF AGENDA.

E. PROCLAMATIONS/PRESENTATIONS. Formal recognition is given by the Mayor or presiding officer. The Mayor will ask if anyone is present to speak on the matter.

F. AUDIENCE PARTICIPATION. Citizens may comment on Consent Agenda items or City related non-agenda issues (15 minutes maximum time; 5 minutes per speaker). If a response by the City is requested, the speaker will be referred to the City Manager for further action. The issue

may appear on a future meeting for City Council consideration.

G. CITY MANAGER COMMENTS. The City Manager provides information to Council on current activities and issues, and sometimes requests direction.

H. CITY ATTORNEY COMMENTS.

I. CITY COUNCIL REPORTS. Councilors report on their committee and other City activities.

J. CONSENT AGENDA. Routine purchases, contracts, contract awards, resolutions, and other non-controversial items may be approved by one motion and vote. Any Councilor may have any item removed for consideration under Action Items.

K. PUBLIC HEARINGS. Citizens may testify pro or con, on any item.

1. General: Public hearing on resolution or other proposed Council action (one hour maximum per hearing).

2. Legislative: Recommendation from Planning Commission (one hour maximum per hearing: 15 minutes for staff report and questions, 15 minutes for proponent testimony, 15 minutes for opponent testimony and 15 minutes for questions and decision).

3. Quasi-Judicial: Recommendation from Planning Commission (One hour and 15 minutes per hearing: 10 minutes for staff report and questions, 15 minutes for applicant presentation, 15 minutes for proponent testimony, 15 minutes for opponent testimony, 5 minutes for applicant rebuttal, and 15 minutes for questions and decision).

4. Appeal from Planning Commission Decision (one hour and 15 minutes per hearing: 10 minutes for staff report and questions, 15 minutes for appellant presentation, 15 minutes for proponent testimony, 15 minutes for opponent testimony, 5 minutes for appellant rebuttal and 15 minutes for questions and decision).

5. The above mentioned time limits may be exceeded by a vote of the Council or Planning Commission if the matter before them is of a

complex nature or requires extensive testimony from staff, the applicant, or opponents.

L. CONTRACT REVIEW BOARD ACTIONS.

M. ACTION ITEMS. Items for Council action are taken individually. Staff provides information and recommendation. Citizen comments are permitted at the discretion of the Presiding Officer.

1. Council Ordinance First Reading. A Council ordinance which is being introduced for the first time is scheduled for first reading.

2. Council Ordinance for Enactment. A Council ordinance is enacted when read for the second time and adopted (or only one time if Charter requirements are met). When enacted, an ordinance becomes enforceable as City law in 30 days, unless an emergency is declared.

3. Ordinance Adoption by Title. An ordinance may be adopted without being read in full, and read by title only, under the following conditions: a) No Councilor present at the reading requests that the ordinance be read in full; and b) at least two weeks before the reading a copy of the ordinance is provided for each Councilor, three copies of the ordinance are available for public inspection in the office of the custodian of City records, and notice of their availability is given by written notice posted at the City Hall and two other public places in the City.

4. Resolution. A Resolution provides for adoption of formal City policy or interpretation of a policy. Resolutions also set specific fees and City requirements and standards.

5. Council Measures or Proposals. This item provides a formal opportunity for Councilors to initiate policy items for discussion, decision and direction to staff. If an item warrants further research, Council will direct staff to provide a report.

6. Council Memoranda. Information to Council from staff or committees on status of projects or activities is presented as Council Memoranda from the City Manager.

N. DISCUSSION ITEMS.

O. ADJOURNMENT. The presiding officer adjourns the meeting.

**Section 4. Agenda.**

4.1 The City Clerk's office will prepare an agenda for each Council meeting specifying the time and place of the meeting and a brief general description of each item to be considered by the Council.

4.2 Items may be placed on the Council agenda by any of the following methods:

a) A majority vote of the Council

b) Consensus of the Council

c) By any Councilor advising the Mayor or City Manager

d) By the City Manager or City Attorney

e) By Department Managers or designee

Documentation for each agenda item will be received by the City Clerk by 5:00 p.m. on Wednesday, just less than two weeks prior to the Council meeting on a Monday. Agenda materials will be available to the Council, staff, media, and public 10 days prior to the meeting.

4.3 An item may be placed on the Council agenda after the agenda is closed and the notice published, if the Mayor, Councilor, or City Manager explains the necessity. The City Clerk will notify the media and any known interested citizens as soon as possible after receiving information about the proposed agenda addition.

4.4 Sufficient time will be allowed between public hearings and other scheduled items so the public is not kept waiting unduly, and so the Council will have sufficient time to review relevant materials, to hear testimony and to deliberate.

4.5 Legally required and advertised public hearings will have higher priority than other time scheduled agenda items.

4.6 Agenda items that are continued from one meeting to another will have preference on the subsequent agenda to the extent possible.

4.7 The Mayor may, with the concurrence of the Council, consider agenda items out of order.

**Section 5. Public Hearing Procedural Requirements.**

5.1 Quasi-judicial hearings require a Council decision by using a certain process which includes criteria, evidence, and specific findings.

Legislative hearings do not always require a Council decision even though evidence is presented.

5.2 A Councilor's qualifications may be challenged for bias, prejudgement, personal interest, or other reasons. The challenge may prevail if it shows a Councilor cannot be impartial.

A Councilor will not participate in the discussion nor vote when any of the following conditions exist:

a) Family financial interests

b) Ownership of property within noticed area

c) Direct private interest

d) Other valid reasons showing a Councilor cannot be impartial

5.3 For quasi-judicial hearings, Councilors will refrain from having pre-hearing or ex-parte contacts relating to any issue of the hearing. If a Councilor has pre-hearing or ex-parte contact prior to any hearing, the Councilor will reveal this contact at the meeting and prior to the hearing. The Councilor also will state whether such contact affects their impartiality or ability to vote on the matter. The Councilor must state whether he or she will participate or abstain.

5.4 For quasi-judicial hearings, a Councilor may be disqualified from the hearing by a two-thirds vote of the Council. The Councilor subject to disqualification cannot vote on this motion.

5.5 For quasi-judicial hearings, a Councilor who was absent during the presentation of

evidence cannot participate in any deliberations or decision regarding the matter unless the Councilor has reviewed all the evidence and testimony received.

**Section 6. Council Ordinances.**

6.1 All proposed ordinances will be prepared by the City Attorney.

6.2 Council Ordinances will be confined to one subject which shall be clearly stated in the title.

6.3 Council Ordinances will be read according to policy set forth in the City Charter.

6.4 The City Clerk or designee will number the ordinance, fill in the vote results, and obtain the signature of the Mayor and City Clerk within three days from the date passed.

6.5 Ordinances become effective 30 days after enactment unless a later date is specified, except ordinances that make appropriations and the annual tax levy, local improvements and assessments, and emergency ordinances.

**Section 7. Council Discussions.**

7.1 Before speaking, a Councilor will ask the presiding officer to be recognized.

7.2 Councilors will be direct and candid; Councilors need to be comfortable saying what they want and giving positive feedback.

7.3 If a council member is personally offended by remarks of another council member, the offended member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other council member to justify or apologize for the language used. The Mayor will maintain control of this discussion. If the Mayor is challenged, the Council President shall step in to control the discussion.

7.4 Councilors will speak one at a time; allowing one another to finish; encouraging all Councilors to participate.

7.5 During decision making, Councilors will talk out differences when the minority tries to sway the majority, and once decisions are made, will support the decision. It is permissible to point out how opinions differ from the decision. For example:

"Yes, I disagreed. This is why my peers voted the way they did." Councilors will disagree in a way that is not destructive to the staff who follows the majority.

7.6 During the voting process, Councilors will express ideas (clarify positions), if at all possible, prior to the vote.

7.7 During public hearings, Councilors will be open to the ideas and input of the citizens and will suspend judgement until reading the packet information and listening to the ideas and opinions of others (Councilors, citizens, and staff). It is appropriate to defer action or refer back to staff, but Councilors will specify what new and/or additional information is needed and determine how long before it will be brought back. The Presiding Officer will seek consensus on the action the Council is to take.

7.8 During Council discussion, Councilors will ask questions to clarify information. Councilors will avoid disguising opinions in a question, and will state where they are unclear, then ask a question. Councilors will not ask leading questions (questions that are framed with an implied answer). Councilors will be conscious of the meeting time limit during discussion and debate; will identify items and the type of action and/or information they are seeking through the agenda process; will articulate what the issue is; will help keep the group on track and to the point of the discussion; and will offer ideas and search out commonalities among Councilors' perspectives and opinions. Each member is responsible for facilitating the discussions.

7.9 Councilors should refrain from using the "calling for the question" parliamentary procedure for the sole purpose of blocking or stopping discussions.

7.10 Councilors will avoid asking people to appear at a Council meeting to state their complaint or question. Instead, as a first step, the matter will be referred to the City Manager or designee, or ask that the matter be placed on the agenda as a Council Measure with the appropriate background information. When citizens contact Councilors, the Councilors will ask these questions:

a) Have you contacted the City Manager? If yes, the Councilor will trace back through the Mayor or City Manager.

b) Will you write me a letter?

7.11 The City Council will not provide support or opposition for any political candidate.

If a request is received to support or oppose environmental and/or human rights issues, initiatives, or ballot measures, the following steps will be taken:

(1) The request must be made in writing and submitted to the City Manager's Office and must include a specific request for action.

(2) The City Manager and City Attorney will review the request and forward to the Mayor with a recommendation to either support, oppose, or take no action.

(3) The Mayor will present the information to the City Council and the City Council will determine whether they wish to take action on the request.

If the Council wishes to take an action, it must be by unanimous vote and the matter will be scheduled for consideration at a future City Council meeting. If approved, a letter will be sent on behalf of the Council, stating their position on the request.

If the Council chooses to take no action, a letter will be sent on behalf of the City Council stating the Council has decided to take no position on the request.

**Section 8. Comments and Testimony to Council.**

8.1 Persons addressing the Council are requested to step to the podium microphone, give their name and address for the record and unless further time is granted by the presiding officer, must limit comments to three minutes. All remarks will be addressed to the Council as a body. Any person making personal, impertinent, or slanderous remarks, or who becomes boisterous, threatening, or personally abusive while addressing Council may be requested to leave the meeting.

8.2 The Presiding Officer has the authority to preserve order at all meetings of the Council, to cause the removal of any person from any meeting for disorderly conduct, and to enforce the rules of the Council. The Presiding Officer may command the assistance of a Police Officer of the City to restore order at any meeting.

**Section 9. Motions.**

9.1 When a motion is made and seconded, it shall be clearly and concisely stated by its mover. The Presiding Officer will state the name of the Councilor who made the

motion and the name of the Councilor who made the second.

9.2 When the Council concurs or agrees to an item that does not require a formal motion, the Presiding Officer will summarize the agreement at the conclusion of discussion.

9.3 A motion may be withdrawn by the mover at any time prior to debate, without the consent of the Council.

9.4 If a motion does not receive a second, it dies unless debate has commenced without a second. Some motions can proceed without a second, including nominations, withdrawal of motion, agenda order, request for roll call vote, and point of order.

9.5 A motion to table is not debatable and precludes all amendments or debate of the issue under consideration. If the motion prevails, the matter must be taken from the table at the same meeting.

9.6 A motion to postpone to a certain time is debatable and amendable, and may be reconsidered at the date and time designated in the motion.

9.7 A motion to postpone indefinitely is debatable and is not amendable, and may be reconsidered at the same meeting only if it received an affirmative vote. The object of this motion is not to postpone, but to reject the question without risking a direct vote when the maker of this motion is in doubt as to the outcome of the question.

9.8 A motion to call for the question shall close debate on the main motion and is not debatable.

9.9 A motion to amend can be made to a motion that is on the floor and has been seconded. An amendment is made by inserting or adding, striking out and inserting, or substituting words.

9.10 Council will discuss a motion only after the motion has been moved and seconded.

9.11 The motion maker, Presiding Officer, or City Clerk should repeat the motion prior to voting.

9.12 The City Clerk will record the vote for all action items.

9.13 At the conclusion of any vote, Presiding Officer will announce such results.

9.14 When a question has been decided, any Councilor who voted in the majority may move for reconsideration, but no motion for the reconsideration of a vote shall be made after the ordinance, resolution or act has gone out of the possession of the Council.

9.15 The City Attorney shall decide all questions of interpretations of these rules and any other questions of a parliamentary nature which may arise at a Council meeting. All cases not provided for in these rules shall be governed by Robert' Rules of Order, Newly Revised.

**Section 10. Council Attendance at Meetings.**

10.1 Councilors will inform the Mayor, City Manager, or City Clerk if they are unable to attend any Council meeting. Lack of notification will constitute an unexcused absence. The Mayor will inform the Council President regarding an absence of the Mayor.

10.2 Vacancies in Office: Rules will be followed according to the City Charter.

**Section 11. Council Seating at Meetings.**

11.1 During regular Council meetings, the Mayor will be seated in the center with the City Manager and City Attorney seated on each side of the Mayor. No other seats are designated and Council may be seated in any order to the left and right of the Mayor, City Manager and City Attorney.

11.2 There will be no specified seating arrangement for any other Council meetings.

**Section 12. Ethics, Decorum, Outside Statements.**

12.1 All members of the Council shall review and observe the requirements of State ethics law. In addition to complying with state ethics law, all members of the Council shall refrain from:

a) Disclosing confidential information;

b) Taking action which benefits special interest groups or persons at the expense of the City as a whole;

c) Expressing an opinion contrary to the official position of the council without so saying;

d) Conducting themselves in a manner so as to bring discredit on the government of the City.

12.2 The Presiding Officer shall preserve decorum during meetings and shall decide all points of order, subject to appeal of the council.

Members of the Council shall preserve decorum during meetings and shall not, by conversation or action, delay or interrupt the proceedings or refuse to obey the orders of the Presiding Officer or these rules.

Members of City staff and all other persons attending meetings shall observe the Council's rules of proceedings and adhere to the same standards of decorum as members of the Council.

**Section 13. Media Representation at Council Meetings.**

13.1 All public meetings of the Council and its committees, commissions, and task forces, will be open to the media, freely subject to recording by radio, television, and photographic services at any time, provided that such arrangements do not interfere with the orderly conduct of the meeting.

13.2 Media representatives are allowed to attend most Council executive sessions subject to the understanding that issues will not be reported.

13.3 Media representatives may be restricted from attending executive sessions involving deliberations with persons designated by the Council to carry on labor negotiations.

**Section 14. Council Meeting Staffing.**

14.1 The City Manager will attend all Council meetings unless excused. The City Manager may make recommendations to the Council and shall have the right to take part in all Council discussions but shall have no vote.

14.2 The City Attorney will attend all regular Council meetings unless excused, and will, upon request, give an opinion, either written or oral, on legal questions. The

City Attorney acts as the Council's Parliamentarian.

14.3 The City Clerk will attend all Council meetings and keep the official minutes and perform such other duties as may be needed for the orderly conduct of meetings.

14.4 Department Managers will attend Council meetings upon request of the City Manager.

**Section 15. Council Relations With City Staff.**

15.1 City staff or Council will not argue during a public meeting.

15.2 There will be mutual respect from both staff and the Council of their respective roles and responsibilities when and if expressing criticism in a public meeting.

15.3 City staff will acknowledge the Council as policy makers, and the Council will acknowledge staff as administering the Council's policies.

15.4 All written informational material requested by individual Councilors or the Mayor will be submitted by staff to the entire Council with a notation indicating which Councilor requested the information.

15.5 Mayor and Councilors will not attempt to coerce or influence staff in the making of appointments, awarding of contracts, selection of consultants, the processing of development applications, granting of city licenses and permits, or other such administrative functions.

15.6 Mayor and Councilors will not attempt to change or interfere with the operating rules and practices of any City department. The City Manager will designate the necessary staff to conduct business for the Councilors, including handling correspondence, arranging appointments, and making travel arrangements.

15.7 Mail that is addressed to the Mayor and Council will be opened and circulated to the Mayor and Council as soon as practical after it arrives.

15.8 At no time will staff open any mail that is marked personal or confidential.

15.9 The Mayor and Councilors will not direct staff to initiate any action or prepare any report that is significant in nature, or initiate any project or study without the approval of a majority of the Council.

15.10 Mayor and Council requests for information can be made directly to staff. If the request would create a change in work assignments for any staff member, the request must be made to the City Manager.

## Section 16. Council Relationship with City Committees, Task Forces, and Commissions; Council Representation to Community Organizations, Other Agencies, and Media.

16.1 The Mayor will appoint the committees and commissions of the City, with concurrence of the City Council. The Mayor may request assistance from Councilors in making a recommendation. To encourage broad participation, service on City committees will be limited to specific terms. A citizen may not serve on more than two City committees simultaneously. Any citizen serving on two advisory bodies may not be chairperson of both committees simultaneously.

16.2 With the consent of the Council, the Mayor may remove a citizen from the City committee or commission prior to the expiration of the term of office. Reasons for removal may include, but are not limited to: missing three consecutive regular meetings of the committee or commission, disruptive or inappropriate behavior prior to, during, or after committee or commission meetings, which prohibit the advisory body from completing its business in a timely manner, or not acting in the best interest of the citizens or City. This includes preventing a committee or commission from carrying out its goals and objectives.

When the Mayor is satisfied that it would be in the best interest of the City and the committee or commission, a citizen may be removed from an advisory position by the following process:

(1) The Mayor will request the citizen to submit a letter of resignation within 10 days from the Mayor's notification to committee or commission member. The Mayor's letter will contain the reasons for requesting the resignation. The citizen may submit a letter of response as to why he or she should remain on the committee or commission. This letter will be reviewed by the Council prior to action on the removal request from the Mayor.

(2) The Mayor will request the item be placed on a regular Council meeting agenda for consideration for removal of the citizen from the committee or commission. The citizen will be notified of the Council meeting date when the issue will be discussed.

(3) If the Council approves the Mayor's request for removal, the Mayor will send a letter to the citizen informing him or her that they have been removed from the committee or commission.

16.3 Members of the Council will not attempt to lobby or influence committee, task force, or commission members on any item under their consideration. It is important for the advisory bodies to make objective recommendations to the council on items before them. Councilors that attempt to influence committee, task force, or commission members on an item may prejudice or hinder their role in reviewing the recommendation as a member of the Council.

16.4 Councilors will have the right to attend meetings but should not become involved in committee, commission, or task force discussions unless they are a liaison member to that body.

16.5 The Mayor will make appointments of Councilors to liaison positions on City committees. Rotation of Councilors to committees is encouraged. Councilors should make their committee choices known to the Mayor who will make the final decision.

16.6 If the Mayor or a Councilor represents the City before another governmental agency, before a community organization, or the media, the official should first indicate the majority position of the Council. Personal opinions and comments may be expressed only if the Councilor clarifies that these statements do not represent the position of the Council. It is unacceptable to make derogatory comments about other Council members, their opinions and their actions. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by council members.

**Section 17. <u>City Manager/City Attorney Evaluation Process</u>.**

17.1 The Mayor, Councilors and the City Manager, City Attorney or Municipal Judge will determine the evaluation form used for the evaluation.

17.2 The standards, criteria, and policy directives used in the evaluation of the City Manager, City Attorney, or Municipal Judge will be adopted at a regular Council meeting in accordance with State law.

17.3 The Council will determine when the completed evaluations are due and who will

collect these documents. Copies of the employee's contract will be provided to the entire Council. The original employment agreement shall be maintained in the City's official records.

17.4 The evaluation session will be scheduled for executive session.

17.5 At the evaluation session, the summary comments may be given, as well as individual comments by Councilors. The employee may respond at the conclusion of the Council comments. The employee's contract should be discussed and any recommendation may be concurred to by the Council.

17.6 Since the evaluation is held in executive session, attendance is usually restricted to the Mayor, Councilors, City Manager and City Attorney.

17.7 The last step of the evaluation process is to have the City Attorney prepare amendments, if any, to the employee's contract. This contract normally will be approved as a consent agenda item at the next regular Council meeting.

**Section 18. Confidentiality.**

18.1 Councilors will not repeat by name to persons not on the Council what others have said in a way that might embarrass fellow Councilors.

18.2 Councilors will keep all written materials provided to them on matters confidential under law in complete confidence to insure that the City's position is not compromised. No mention of information read or heard should be made to anyone other than other Councilors, the City Manager or City Attorney.

18.3 If the Council, in executive session, provides direction or consensus to staff on proposed terms and conditions for any type of negotiation whether it be related to property acquisition or disposal, pending or likely claim or litigation, or employee negotiations, all contact with the other parties shall be made by designated staff or representatives handling the negotiations or litigation. A Councilor will not have any contact or discussion with any other party or its representative nor communicate any executive session discussion.

18.4 All public statements, information, or press releases will be handled by designated staff or a Council spokesperson.

**Section 19. Council Expenses.**

19.1 Council will follow the same rules and procedures for reimbursement as those which apply to City employees, as are set forth in the purchasing procedures.

19.2 Councilor expenditures for other than reimbursements will follow purchasing rules which apply city-wide.

**Section 20. Public Records.**

20.1 Public records created or received by Councilors, will be transferred to the City Clerk for retention in accordance with Oregon public records law.

**Section 21. Censure/Removal.**

21.1 The Council may enforce these rules and ensure compliance with City ordinances, charter and state laws applicable to governing bodies. If a member of Council violates these rules, ordinances, charter or state laws applicable to governing bodies, the Council may take action to protect the integrity of the Council and discipline the member with a public reprimand or removal from assigned committee(s).

21.2 The Council may investigate the actions of any member of Council and meet in executive session under ORS 192.660 (2) (b) to discuss any finding that reasonable grounds exist that a violation of these rules, local ordinance, charter or state laws applicable to governing bodies has occurred. Sufficient notice must be given to the affected member to afford them the opportunity to request an open hearing under ORS 192.660 (2) (b).

**Section 22. Miscellaneous.**

22.1 When gifts (Sister City gifts, etc.) are presented to the Mayor and Councilors, the main gift will become the property of the City for display purposes and the individual gifts to the Mayor and Councilors are for their personal use.

**Section 23. Suspension and Amendment of Rules.**

23.1 Any provision of these rules not governed by State law, City Charter, or Code may be temporarily suspended by a majority vote of the Council.

23.2 These rules may be amended or new rules adopted by a majority vote of the

Council.

By my signature, I have read and agree with the City Council Rules/Code of Conduct and understand the consequences of violating this policy.

Dated: 11-27-17

Stephen E. Lawrence, Mayor

Councilor at Large, Taner Elliott

Council Position #1, Tim McGlothlin

Council Position #2, Darcy Long-Curtis

Council Position #3, Russ Brown

Council Position #4, Linda Miller

# POLICY CONCERNING
# PERSONAL USE OF CITY-OWNED
# PROPERTY, FACILITIES AND EQUIPMENT

This policy is intended to apply to the use of City-owned property, facilities and equipment by public officials and members of the general public. Public officials include elected officials, compensated public employees, and uncompensated persons who volunteer their time on behalf of the City. As a general rule, the use of City-owned property, including photocopiers, fax machines, document scanners, telephones, and computers, shall comply with the provisions set forth in the Oregon Government Standards and Practices Advisory Opinion No. 98A-1003, a copy of which is attached hereto.

Concerning the use of photocopiers and fax machines, personal use of such equipment is allowed, provided that such use is limited in scope and the public official or member of the public reimburses the City for the cost of using the equipment. Use of a photocopier shall be reimbursed at the rate of .25 cents per page, and use of a fax machine to send or receive a personal document shall be reimbursed at the rate of $1.00 per page for sending and .50 cents per page for receiving.

The use of City-owned cellular telephones is governed by the policy concerning cellular phones dated September 11, 2008.

The City desires to establish guidelines concerning the personal use of City-owned facilities, including tools and equipment in those facilities. Since such personal use will not be available to members of the general public, in order to comply with the provisions of ORS 244.040(1), a copy of which is attached hereto, the policy needs to provide that public officials are also restricted from engaging in personal use of City-owned property, facilities and equipment. The use of City-owned facilities, including but not limited to the facilities of the Public Works Department, City Hall, the City Police Department, the City/County Public Library, and the Wicks shops, and the use of tools and equipment in such facilities, shall be restricted to provide maintenance and repair upon City-owned equipment and property. City-owned facilities and equipment, which includes tools, shall not be used by public officials and members of the general public to perform maintenance and repair upon any privately owned vehicles or equipment, or other private property, nor shall such public facilities, tools or equipment be used for any personal use by public officials and members of the general public.

Violation of this policy can result in disciplinary proceedings.

Dated this 6th day of February, 2009.

Nolan K. Young

Nolan K. Young, City Manager

ATTACHMENT I

Oregon Government Standards and Practices Advisory Opinion No. 98A-1003

July 9, 1998

On July 9, 1998 the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion on its own motion:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION**

**ADVISORY OPINION NO. 98A-1003**

ISSUE: The acquisition of technology by government entities has created new considerations for public employers relating to adopting guidelines for employees use of agency equipment for personal purposes. The premise that publicly owned automobiles are to be used only for official public business is virtually undisputed; however, that same premise has not been as clearly accepted or understood in relation to publicly owned resources such as computers, cellular telephones and even regular land line telephones in a public agency office. Managers and employees of public agencies have contacted the GSPC to request guidance concerning employees personal use of agency owned equipment.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issues addressed in this opinion:

> ORS 244.020(15): Public official means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services.
>
> ORS 244.040: Code of ethics; prohibited actions; honoraria. The following actions are prohibited regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120.
>
> (1)(a) No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official s holding of the official position or office, other than official salary, honoraria, except as prohibited in paragraphs (b) and (c) of this subsection, reimbursement of expenses or an unsolicited award for professional achievement for the public official or the public official s relative, or for any business with which the public official or a relative of the public official is associated.

QUESTION #1: Do Oregon Government Standards and Practices laws permit public officials to use resources owned by their public employer such as telephones, cellular telephones and computers for the personal benefit of the public officials?

OPINION: ORS 244.040(1)(a) specifically prohibits all public officials in the State of Oregon from using their official position to obtain financial benefit or avoid financial detriment if the opportunity to do so arises only because of the holding of the position. This provision applies equally to elected persons, compensated public employees and uncompensated persons who volunteer their time to a public entity.

This interpretation includes all publicly owned property or other resources of a government body such as photocopiers, fax machines and document scanners; however, because questions relating specifically to personal use of telephones, cellular telephones and computers have been made to the GSPC staff with increasing frequency, this opinion will address the personal use of each of those items:

(We note that public agencies own adopted employment policies may be more specific and restrictive than ORS Chapter 244; however, agency policy may not permit what state law prohibits. If such policies apply, the public employee must comply with both state law and the employer policy.)

> **Telephones:** The ability to make outgoing and receive incoming telephone calls is an essential element of a government agency s ability to provide service to the public. A public agency s telephones are intended to be used only for official business of the agency.

We believe, however, that there are occasions when public officials may use their employing agency s telephones for personal purposes without such usage being at odds with the law. It is normal practice by both public and private employers to permit employees to use business telephones to talk to family members, make medical appointments, schedule service technicians, confer with a child s school and take care of any of a variety of other matters which can only be accomplished during regular working hours. Most employers believe that it is less disruptive to permit employees to make such personal calls at their work stations than to require an employee to take a break or leave from work to take care of personal matters.

> Personal telephone calls made during working hours from public employers telephones should, of course, be brief, infrequent and otherwise comply with any specific rules or policies of the agency. Personal long distance calls, even if the employee reimburses the public agency for the cost of such calls, may not be made
>
> on agency telephones. If it becomes necessary for a public official to make personal long distance calls while at work, such calls must be made with the employee s personal calling card or from a pay phone. (The reimbursement issue is discussed later in this opinion.)

**Cellular phones:** The statutory considerations relating to the use of cellular telephones are essentially the same as those which apply to regular telephones. That is, public agencies provide cellular phones to their employees specifically to facilitate the carrying out of official business. Public agencies cellular phones are not for the convenience or personal use of employees.

The instances when public agency cellular phones may be used by employees for personal purposes are more limited when compared to those for the personal use of agency telephones cited above. This is because of the air time costs associated with cellular phone usage. We believe that an occasion when an employee s personal use of a public agency cellular phone would not violate the provisions of ORS 244.040(1)(a) would be the need to contact a spouse or child care giver to advise that the employee is going to be late getting home or picking up children for a reason directly related to official duties such as a meeting which ran later than expected or a last minute change of schedule. Another permitted personal use of a public agency cellular phone by an employee would be receiving an incoming call regarding a family emergency. As we stated previously in relation to telephones, such calls should be of brief duration and should occur infrequently, such as 2 to 3 times monthly. We do not believe that such limited use of an agency cellular phone by an employee would constitute personal gain within the meaning of ORS 244.004(1)(a). Accordingly, any requirement for an employee to reimburse the employing agency for such calls would be a matter of local policy.

If public employees desire to have the convenience of a cellular telephone while on duty to make the types of routine personal calls cited in the section relating to telephones above, the employees must acquire and pay for their own personal cellular service. This requirement is independent of whether or not public employees also possess a cellular phone assigned by their employing agency. Such a situation would require a public official to have two cellular phones - one for business calls and another for personal calls.

**Computers:** Computers are now standard tools of the workplace in the public sector. Public agencies provide computers at employee work stations, some agencies provide laptop units which may be used virtually anywhere and some public agencies provide computers at employees homes to facilitate working at home or telecommuting. The result of computers being so commonplace in the public sector has been to create a need for guidelines regarding public officials using their agency s computer for personal purposes.

The statutory considerations are, again, essentially the same as for both telephones and cellular telephones cited above. Publicly owned equipment is intended to be used for the official business of the government entity. Thus, computers owned by public agencies may not generally be used by employees for personal purposes. Employees also must comply with any employer policies which may place additional restrictions on the use of computers.

There are some instances, however, in which we believe the personal use of publicly owned computers would violate neither the spirit nor the intent of ORS 244.040(1)(a). One example would be the occasional use of a public agency computer by a public official to type a social

letter to a friend or family member on the employee s own time. We believe another use allowable under the law would be the preparation of application materials for a different position with the employing government agency. Still another example of what we believe to be personal use not prohibited by state law would be playing computer games during break periods. Such personal use by public officials may also serve to improve keyboard proficiency and familiarity with software components. We believe uses such as these to be allowed under the law because no or negligible financial gain would result. Again, public employers may impose more restrictive policies.

There are some instances in which the personal use of a government owned computer by a public official would result in significant financial gain or avoidance of financial detriment. Such instances would be clearly prohibited by the provisions of ORS 244.040(1)(a). One example would be a public official using an agency computer to maintain financial records or otherwise facilitate an outside business operated for the official s personal financial gain. Another example of prohibited personal use would be the preparation of papers for ongoing college courses over a long period of time, unless the course work was part of an agency related training program. Such usage is prohibited because it could result in the avoidance of a financial detriment for the public official. That is, if the official is able to continue using the agency computer for such purposes, the official avoids having to expend personal funds to buy a computer. Use of official position to avoid financial detriment is specifically prohibited by law.

**Internet Access:** Some public employers have also equipped publicly owned computers with access to the Internet in order to have access to information and to provide information to the public. Personal use of the Internet is subject to the same considerations as the use of the computer itself. If the public employee uses Internet access through a publicly owned computer in order to avoid the financial expense of subscribing to an Internet service at personal expense, it would be a violation of ORS 244.040(1)(a).

QUESTION #2: Do Oregon Government Standards and Practices laws permit public officials to make personal long distance telephone calls on agency phones or use agency cellular phones for personal purposes as long as the official reimburses the agency for any costs which are incurred for such calls?

OPINION: No. The Oregon Supreme Court, in Davidson v. Oregon Government Ethics Commission, 300 OR 414, 712 p2d 97 (1985), stated the broad policy of Oregon s ethics (government standards and practices) laws is to ensure ...that government employees do not gain personal financial advantage through their access to the assets and other attributes of government. In the case, the court held that a public official could not use official position to obtain financial gain for the public official where, through access to the official s employing agency s buying power, the public official personally purchased an automobile at a discounted price. The court emphasized that the term use in ORS 244.040(1)(a) includes availing oneself of a benefit not available to the general public.

Ordinarily, the rates government entities pay for telephone service and cellular telephone service are significantly less than what individuals pay for their own personal service. Thus, if a public official

were to reimburse a public employer only the costs incurred by the entity for long distance calls or cellular telephone air time used for personal purposes, the official could still be obtaining a financial advantage available only because of the official position held. The rate difference between what is generally available to the public and the government rate would be a key factor in determining whether a violation of ORS 244.040(1)(a) occurred. If the public official made reimbursement at a higher rate generally available to the public, no personal gain would result and no violation of ORS Chapter 244 would occur. However, the public official may also benefit in other ways by having access to the government telephone services, even if there is little or no price difference. The public official could avoid having to arrange for personal telephone service, and qualifying through credit checks.

QUESTION #.3: Do Oregon Government Standards and Practices laws permit public officials to use agency resources such as discounted long distance telephone service and cellular service or make use of publicly owned computers if the public body establishes such use as part of an official salary and benefits package?

OPINION: Yes. Official salary is specifically excluded in the language of ORS 244.040(1)(a) as a prohibited use of public office for financial gain. We interpret official salary to include all components of a compensation package such as insurance, paid leave, retirement benefits and formally adopted policy providing access to and usage of agency resources for non-salaried officials. Thus, if a governing body of a public body were to officially adopt a policy which would enable public officials of that entity to obtain personal cellular telephone service at the same rate charged to the entity as part of official compensation, the employees would be able to take advantage of such a benefit without violating Government Standards and Practices law.

We caution, however, that public bodies insure that they comply with any requirements to report the value of such benefits as income to the federal and state governments.

**THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN.**

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the _____ day of _____, 1998.

_____

Donald Reiling, Chairperson

_____ _____

Lynn Rosik Date

Assistant Attorney General

ATTACHMENT II

ORS 244.040(1)

ORS 244.040 Prohibited use of official position or office; exceptions; other prohibited actions.

(1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

(2) Subsection (1) of this section does not apply to:

(a) Any part of an official compensation package as determined by the public body that the public official serves.

(b) The receipt by a public official or a relative or member of the household of the public official of an honorarium or any other item allowed under ORS 244.042.

(c) Reimbursement of expenses.

(d) An unsolicited award for professional achievement.

(e) Gifts that do not exceed the limits specified in ORS 244.025 received by a public official or a relative or member of the household of the public official from a source that could reasonably be known to have a legislative or administrative interest in a governmental agency in which the official holds any official position or over which the official exercises any authority.

(f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest in a governmental agency in which the official holds any official position or over which the official exercises any authority.

(g) The receipt by a public official or a relative or member of the household of the public official of any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS 244.020.

(h) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

CITY ATTORNEY'S OFFICE
**CITY OF THE DALLES**
313 COURT STREET
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# PUBLIC RECORDS POLICY

## 1. Policy and Purpose

It is the policy of the City of The Dalles to make public records easily accessible to interested parties. The City recognizes the Oregon Public Records Law (ORS 192.311 to 192.478) gives the public the right to inspect and copy certain public records maintained by the City. (End note #1). The City also recognizes certain records maintained by the City are exempt from public disclosure, or disclosure may require balancing the right of the public to access the records against individual privacy rights, governmental interests, confidentiality issues and attorney/client privilege. Additionally, when the City receives a request to inspect or copy public records, costs are incurred by the City in responding to the request, and it is in the public interest those costs be recovered by the City.

The purpose of this Public Records Policy is to **(a)** establish an orderly and consistent procedure for responding to Public Records Requests, **(b)** establish the basis for a fee schedule intended to reimburse the City for the actual costs incurred in responding to Public Records Requests, and **(c)** inform citizens of the procedures and guidelines applicable to Public Records Requests.

## 2. Public Records

Oregon Public Records Law defines a public record as:

> *Any writing containing information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics ORS 192.311(5)(a).*

A record may be handwritten, typed, photocopied, printed, microfilmed, or exist in an electronic form such as an e-mail, a word processing or excel document, or other types of electronic recordings.

Many Public Records Requests are requests for information and actually require the creation of a new public record. Public bodies are not obligated under Oregon Public Records Law to create new public records where none exists in order to respond to requests for information. Although a public body may, if it chooses, create a new record to provide information, the public body holds sole discretion as to whether it creates a new record and only has a duty to allow the inspection and copying of an existing public record.

The City will provide public records in the format in which they exist unless an alternate format is requested and the City Attorney approves of the conversion. If the City Attorney agrees to convert the records to an alternate format, the requester will be responsible for any additional cost. If requested public records are in electronic form, the City will provide the document in electronic form, or make arrangements to inspect the record with an appropriate device. The City will provide records in alternative format, if necessary, to provide reasonable accommodation to persons with disabilities.

## 3. Public Records Exempt from Disclosure

Some public records are exempt from disclosure under state law. Many of these exemptions may be found in ORS 192.345 and ORS 192.355. Others may be located in other Oregon statutes. Some of the exemptions include:

A. **Personal Safety Exemption - ORS 192.368(1).** If an individual requests in writing a public body not disclose the phone number or address of the individual, the public body is prohibited from disclosing the information if the safety of the individual or family member would be in danger.

B. **Public Records Relating to Pending Litigation ORS 192.345(1).** If a public body is involved in litigation, or if litigation is reasonably likely in the future, the public records relating to litigation are exempt from disclosure.

C. **Trade Secrets - ORS 192.345(2).** Public records comprising "trade secrets" may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

D. **Personnel Discipline Actions - ORS 192.345(12).** Public records of a personnel discipline action or materials or documents supporting that action are exempt from disclosure.

E. **Personal Privacy Exemption - ORS 192.355(2).** Information of a personal nature, such as information kept in a medical or personal file, is exempt from disclosure if disclosure would be an unreasonable invasion of privacy, unless disclosure is in the public interest by clear and convincing evidence.

F. **Public Employee Addresses, Dates of Birth and Telephone Numbers - ORS 192.355(3).** The addresses, dates of birth, and telephone numbers of public employees and volunteers which are maintained by the public body in personnel files are exempt from disclosure.

G. **Confidential Information Submitted by Citizens - ORS 192.355(4).**
Information submitted to a public body in confidence and not required to be submitted, where the information should reasonably be considered confidential, and the public body has in good faith obliged itself to keep the information

confidential, is exempt from disclosure.

## 4. Copyrighted Material

If the City maintains public records containing copyrighted material, the City will permit the person making the request to inspect the copyrighted material and may allow limited copying of such material if allowed under federal copyright law as determined by the City Attorney. The City may require written consent from the copyright holder, completion of a Request for Reproduction of Copyrighted Materials form, or an opinion from the requester's legal counsel before allowing copying of such materials.

## 5. Fees

The fees for responding to Public Records Requests are established in a fee schedule adopted by the City Council by resolution. The fees established are reasonably calculated to reimburse the City for its actual costs in making the records available, and may include:

A. charges for time spent by the City Attorney in reviewing the public records, and charges for time spent by City staff or a City contractor to compile the requested public records, to segregate exempt records, to supervise the requester's inspection of original documents, to copy records, to certify records as true copies and to send records by special or overnight methods such as express mail or overnight delivery;

B. a per page charge for photocopies of requested records;

C. a per item charge for providing CDs, audiotapes, or other electronic copies of requested records;

D. charges for preparation of a written transcript; and

E. charges for redaction of police officer body camera footage.

**Payments.** The City will prepare an estimate of the charges it expects to be incur in responding to a Public Records Request. For a fee estimate in excess of $25, the City may require an initial deposit of $25.00 be paid as provided in Section 6 of this Policy. For a fee estimate in excess of $100, the City requires prepayment in full. If the actual costs incurred by the City are less than the amount of any required prepayment, the overpayment will be promptly refunded. If the actual costs incurred by the City are more than the amount of the prepayment, the requester will be responsible for the additional costs, and will be required to pay the additional amount in prepayment before the requested records are provided.

**Fee Waivers.** Unless otherwise prohibited by law, the City may, at the City's discretion, furnish copies of requested records without charge or at a reduced fee if the City determines the waiver or reduction of fees is in the public interest. A request for a fee waiver or reduction

should be made in writing to the City Attorney. The request must identify the reason for the request and the public interest served in waiving or reducing the fee.

The City Attorney shall determine whether to grant a fee waiver or reduction on a case-by-case basis. A waiver or fee reduction may be granted if it is determined the waiver or reduction is in the public interest because making the record available primarily benefits the general public. In making this determination, the City Attorney shall consider **(a)** the character of the public interest in the particular disclosure, **(b)** the extent to which the fee impedes that public interest, and **(c)** the extent to which a waiver or reduction would burden the City. A decision on a request for a fee waiver shall be made within five (5) business days of receipt of a Request.

## 6. Procedure

The following are the procedures for submitting and responding to requests to inspect or receive copies of public records in the City's custody:

### A. Making a Request.

1. A request to inspect or obtain copies of a public record must be made in writing. Persons are encouraged to use the City's Public Records Request Form available in paper and electronic formats. This form is available on the City's website at www.thedalles.org. Other forms of written requests will be accepted if all the information required to respond to the request is provided.

2. The written request shall be delivered to the City Clerk's Office either by email or by delivery in person or by mail addressed to City Clerk, 313 Court Street, The Dalles, OR 97058, by facsimile at (541) 296-6906, or by email to cityinfo@ci.the-dalles.or.us.

### B. Processing a Public Records Request.

1. Acknowledgment. Within five (5) business days of receipt of a Public Records Request, the City Clerk or City Attorney shall send a written acknowledgment to the requester containing the following:

   a. Confirmation of whether the City is the custodian of the requested record, or whether the City is uncertain if the City is the custodian of the requested record; or

   b. A statement indicating no such records exist; or

   c. If the request is unclear, a request to clarify the records sought; and

   d. If applicable, a cost estimate with a notice a deposit must be paid before the request will be processed.

If it is not possible to provide a full cost estimate within the initial five-day period, the acknowledgement will indicate a more accurate cost estimate will be provided when available, and the full, prepaid deposit for costs must be provided before the City will continue to process the request.

2. The City shall close the request within sixty (60) calendar days of the acknowledgment if the requester fails to pay the required fee, request a fee waiver, or respond to the City's request for clarification.

3. If a fee waiver is requested, the City Clerk will send a copy of the request to the applicable Department Manager for their review.

4. Upon receipt of the deposit for costs, or upon approval of a fee waiver, the City Clerk shall work with the applicable City staff, if necessary, to produce the requested copies. At the City Clerk's reasonable discretion, the copies shall be forwarded to the City Attorney's Office along with a report of the final costs incurred in responding to the request; provided, however, the City Clerk shall always forward Requests to the City Attorney when such Requests are received from a law office or connected with pending litigation, litigation expected to be filed, or upon request by the City Attorney.

5. Within fifteen (15) days of receipt of a Public Records Request, if the applicable fees have been paid or waived and the requester has responded to any request for clarification, the City shall:

a. complete its response to the request; or

b. provide a written statement that the City is still processing the request and a reasonable date by which the City expects to complete its response.

6. After the records have been compiled for inspection, the City Clerk shall notify the requester an appointment may be scheduled to inspect the records at City Hall. Where the requester desires to inspect the public records, it is the requester's obligation to schedule the inspection appointment with the City Clerk. If copies of the records are requested, upon receipt of any additional monies owed for processing the request, the records will either be mailed to the requester or be made available for pickup.

7. If an inspection of public records is to occur, the City Clerk (or the Clerk's authorized designee) shall be present **at all times** to supervise the inspection and to ensure no documents are removed, destroyed, or otherwise tampered with. There may be additional costs associated with the inspection process required to be paid at the time of inspection.

8. If the City Attorney believes the request should be denied in whole or in part, the City Attorney shall prepare a written explanation of the basis for the

denial, which shall identify all applicable exemptions from disclosure for each part of the record being withheld. The written denial shall be provided to the requester. All denial letters shall include a notice that the requester may appeal the denial to the Wasco County District Attorney's Office pursuant to ORS 192.411, 192.415, 192.418, 192.422, 192.427, and 192.431.

C. **Exceptions**

Requests for the following categories of records are exempt from the procedures in this policy:

Easily accessible or routinely requested records. If requested records are easily accessible by City staff, or are publicly available, such as on the City's website, and contain no materials exempt from disclosure, City staff may inform the requester how to access the records or provide the records at no cost. If the requester requests a paper copy of the records, and the records are twenty (20) pages or less, City staff may provide a copy of the records at no cost.

D. **Appeal**

If a Public Records Request or a fee waiver is denied, the requester may appeal the denial to the Wasco County District Attorney's Office pursuant to ORS 192.411, 192.415, 192.418, 192.422, 192.427, and 192.431.

**Endnotes**

(1) The City is required to respond to requests by Oregon Public Records Law. The Federal "Freedom of Information Act" only applies to requests for public records in the federal government's custody and does not apply to requests for the City's public records.

Julie Krueger, City Manager

7-19-21
Date

City of The Dalles
313 Court St
The Dalles, OR 97058
(541)296-5481, Ext 1119

# PUBLIC RECORDS REQUEST FORM

If there are fees associated with your request form, you will receive a fee letter with information on how to submit payment:

This form may be submitted:

* By mail or in person to the City Clerk, City of The Dalles, 313 Court St, The Dalles, OR 97058
* Emailed to the City Clerk at igrossman@ci.the-dalles.or.us

Questions? Call (541)296-5481, Ext 1119, or email igrossman@ci.the-dalles.or.us

**Please select the option that best describes which requester type you represent:**

☐Private Citizen or Business ☐ Attorney ☐Insurance ☐Government Agency
☐Law Enforcement ☐Media ☐Other

**Requestor Information: please enter your contact information**

| Name of Requester/Firm/Company: | Telephone Number: |
|---|---|
| Mailing Address: | Contact Person: |
| City: | State/Zip: |
| Contact Person e-mail address: | |

**Purpose for Request:** Some records may require a balancing of privacy rights, governmental interests and other confidentiality policies on one hand and the public interest in disclosure on the other. Thus because the identify and motive of the person seeking the disclosure of a particular public record may be relevant in determining whether a record is exempt from disclosure under a conditional exemption, please give a brief statement as to the purpose of your request:

**Requested Information/Records:** Please give a brief statement describing the requested information/records, being specific enough for the City to determine the nature, content and department within which the record(s) you are requesting may be located. If files are to be previewed before copies are requested, please identify documents you wish to have copied from the files or on the attached Addendum, and sign.

City of The Dalles
313 Court St
The Dalles, OR 97058
(541)296-5481, Ext 1122

| **Incident Information: use this section to request records related to an incident TD Police Department investigated or a citation issued by TDPD.** | | | |
|---|---|---|---|
| Case # or Citation #: (if known) | | Officer: (if known) | |
| Date of Incident: | | Time: ☐AM ☐PM | |
| Location of Incident/Street Address: | City: | County: | |
| Type of Incident/Crime/Description of events: | | | |
| Persons Involved (full and complete name known) – list additional known persons in comments section.<br>Name: DOB:<br>Name: DOB: | | | |
| Vehicle Information: | Make/Model/Year/Color/Style/etc. | License Plate #: | State: |
| **Comments:** | | | |

**FOR OFFICE USE ONLY**

Date Received_____ Date Completed_____ Date Notified_____
Date Picked Up: _____

Info Compiled by:_____ Total charges:_____

# E-MAIL AND VOICE MAIL POLICY

## 1. GENERAL

Electronic mail (e-mail) messages are within the scope of the Public Records Law and Records Retention Law. Because of this, the City has developed the following policy for use of the City's e-mail system by City employees and the retention of e-mail messages.

## 2. STATUS OF E-MAIL MESSAGES

A. All e-mail messages are considered City records. The City reserves the right to access and disclose all messages sent over the e-mail system for any purpose, including the right to disclose e-mail messages to law enforcement officials without prior notice. There shall be no expectation of privacy in the use of e-mail on the City system.

B. E-mail messages may be accessed and reviewed at any time by the department head or the department head's designee, the City Manager, or the City Attorney.

C. The City retains the discretion to assert any applicable privileges and objections if a public records request or discovery request is made for any City e-mail. An employee desiring that the City assert a privilege or objection under the public records law with respect to City e-mail shall notify the Department Head (or City Manager in the case of the Department Head's absence) who shall make a final determination.

## 3. USE OF E-MAIL

A. City business. E-mail is to be used for matters that pertain directly to the business of the City. E-mail communications must be professional in content and appropriate to a governmental agency.

B. General Guidelines. Electronic messages are legally discoverable and permissible as evidence in a court of law. Electronic messages can never be unconditionally and unequivocally deleted. The remote possibility of discovery always exists. Employees should use caution and judgment in determining whether a message should be delivered electronically instead of in person. Employees should be suspicious of messages sent by persons not known by the employee. Employees should not open an attachment in an electronic message unless the attachment was expected to be sent. Employees shall delete and not forward any "chain letters". Employees should not read an email message containing an attachment from an unknown source. Such messages should be immediately deleted. Email messages which have been identified as "spam" messages should be immediately deleted.

C. Personal Use. With the permission of a Department Head and subject to any additional limitations imposed by a Department Head, e-mail may be used for personal communication on an occasional, infrequent basis. Significant personal use is prohibited. Misuse or overuse may be the basis for disciplinary action. To the extent possible, personal use of e-mail shall be conducted on breaks or off hours. For purposes of disclosure and access, personal e-mail messages are subject to the same rules established by this policy for an other e-mail message.

D. Use for community service or charitable or non-profit purposes. If authorized by a Department Head or the City Manager, employees may use e-mail for community service, non-profit or charitable activity not sponsored by the City.

E. Prohibited use. Use of e-mail for non-City business activities, outside business activities or activities for personal gain is prohibited. Employees are strongly cautioned that such use likely constitutes a violation of the Oregon Ethics Code and may result in civil liability for the employee. The City prohibits discrimination based on age, race, gender, sexual orientation or preference, physical or mental disability, sources of income, or religious or political beliefs. Use of the City's electronic messaging resources to harass or discriminate for any or all of the aforementioned reasons is prohibited.

F. Reading e-mail of other employees. An employee shall not read, forward, delete or in any way access e-mail repositories or the e-mail of another employee, without that employee's permission; however, e-mail messages may be accessed and read at any time by a Department Head, the Department Head's designee, the City Manager, or the City Attorney.

G. Identification of e-mail. All e-mail messages shall be clearly identified as to the author of the message. Anonymous messages are prohibited.

4. RETENTION OF E-MAIL

A. Because e-mail messages sent or received by City employees in connection with City business are public records, they are subject to the same retention requirements as hard copy documents. In the e-mail context, "retention" means "do not delete." E-mail messages must be retained even if they are confidential, privileged, or otherwise exempt from disclosure under Oregon public records law. The retention and disposition of public records is authorized by retention schedules issued by the Secretary of State Archives Division. Records may be retained in hard copy or electronic format. If a hard copy of the e-mail message is printed, then the electronic version may be deleted. The hard copy must then be kept as long as required by the applicable retention schedule. An e-mail message

retained in electronic format shall be retained for the applicable period set forth in the retention schedule adopted by the City.

B. Employees have a responsibility to be familiar with the retention schedules applicable to City records, and to ensure that the e-mail messages they send or receive are retained in accordance with the appropriate records retention schedules. Employees shall not delete any e-mail message unless its retention period has expired or it has been printed out as a hard copy.

C. Personal email messages are defined as a personal exchange not covered by the State of Oregon records retention schedule, and they should be deleted after they have been read. Examples of personal e-mail messages include:

- Lunch plans
- Jokes
- Chain letters
- Messages to family and friends
- Attached files such as photographs

D. Temporary or transitory e-mail messages are any exchange of communication that is fulfilled almost immediately upon request. These messages should be kept until the task is completed or the value of the message has passed. Examples of these types of messages include:

- charity campaigns
- Listserv messages
- City-wide communications
- Meeting reminders
- Deadline reminders
- Routing slips
- Fax confirmation
- Reading materials
- Reference materials
- FYI (for your information) e-mail information that does not elicit a response

E. E-mail messages soliciting a response are any exchange of communication that requires the recipient to respond or perform an action on the message received. These messages may include attachments that the recipient will also need to respond to. The retention of these e-mails and any accompanying attachments will depend upon the content of the message. Examples of these types of messages include:

- Contract negotiations

- Administration of fiscal communications
- Policy drafts
- Reports
- Requests for information

F. E-mail messages which document communications created or received by the City, and which directly relate to a City program or City administration, and which are not otherwise specified in the City Records Retention Schedule, or in any applicable state rule or statute, will be classified as correspondence. Such e-mail could include messages which communicate formal approvals, direction for action, and information about contracts, purchases, grants, personnel and particular projects or programs. A copy of the e-mail message should be filed with the associated program or administrative records, and retained in accordance with the retention schedule specified for the program or administrative records.

G. Questions about retention of e-mail messages should be directed to either the City Clerk or the City Attorney.

5. VOICE MAIL USAGE. Voice mail, like e-mail, is provided as a communication tool for the City. The City recognizes that voice mail may be used for some minimal personal use, and like the telephone, such personal use of voice mail will be allowed provided such use does not interfere with the business of the City or otherwise violate the use provisions set forth in Section 3 of this policy. There shall be no expectation of privacy in the use of voice mail on the City system. Voice mail messages are subject to review and inspection by a department head, the department head's designee, the City Manager, or the City Attorney.

6. VIOLATION OF POLICY

Employees who violate any provision of this policy are subject to disciplinary action, up to and including discharge, subject to the applicable provisions of any exempt employees' handbook, or any applicable collective bargaining agreement. In the case of ethics violation, employees may be subject to personal liability, including proceedings under the jurisdiction of the Oregon Government Standards and Practices Commission.

Dated this 23 day of May, 2007.

Nolan K. Young

Nolan K. Young, City Manager

**City of The Dalles**
**Administrative Policy Regarding the City's Use of Social Media**

## External

The City of The Dalles uses Facebook (and other social media outlets) as a limited public forum. Anything posted on the City's official social media pages is subject to Oregon public records laws, records retention schedules, and the City's own policies. The City's social media policy can also be found here (www.thedalles.org/public_docs).

The intended purpose of the City's use of social media is to serve as a mechanism for communication between City departments and members of the public. Comments posted to this page will be monitored closely by City administration for compliance under the City of The Dalles Social Media Policy, and the City reserves the right to restrict or remove any content that is deemed to be in violation of this policy.

Comment Guidelines

Comments, when allowed, will be monitored. Comments that contain the following, or contain links to sites that contain the following, will be removed:

A. Lack of relation to the particular topic being discussed;
B. Profane language or content;
C. Support or opposition of particular political campaigns or ballot measures;
D. Support or opposition of particular commercial services or products;
E. Discrimination or the promotion, fostering or perpetuation of discrimination of any kind;
F. Sexual content;
G. Solicitations of commerce, or "spam;"
H. Encouragement of illegal activity;
I. Information that may tend to compromise the safety or security of the public or public systems;
J. Copyrighted material, without proper, legal attribution.

Comments, links or other information shared by individuals using official City social media outlets should not be construed as the opinion of the City.

## Internal

The Office of the City Manager is responsible for the operation and oversight of the City's online presence, including all social media outlets. Changes to the City's website or social media channels must be approved by the City Manager, or by individuals that have been designated for that responsibility by the City Manager.

The primary purpose for the City's online presence is to engage the public and provide transparency for official activities. As such, individuals who are responsible for providing content on the City's website or social media outlets must provide content that is relevant, concise, and appropriate for the medium. Those who provide content are encouraged to use pictures when relevant to the topic.

If, at the discretion of the City Manager, other departments have individual social media pages, those departments must follow what is outlined in the City of The Dalles Social Media Policy.

Signed: Nolan K Young
Nolan K. Young, City Manager

Dated: January 27, 2012

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

# CITY RIGHT-OF-WAY INSURANCE POLICY

In order to limit City liability and potential liability exposure, the following policy was developed to require any individual, organization or company to carry liability insurance for the use of a public right-of-way.

Scope:

This policy applies to any individual, association, organization or company applying for a permit to use, block or cross a public right-of-way for other than its intended public use; or for the sole use of the individual, association, organization or company; or for an event organized by an individual, association, organization, or company.

The insurance provided will be documented on a standard insurance certificate describing the purpose for the insurance and naming The City of The Dalles as an additional insured. The minimum cover required will be $500,000 per incident and $1,000,000 aggregate. Rental of Lewis and Clark Festival Park or events determined to have a higher risk will require higher insurance coverage.

Applicability:

Insurance is required for the following:

- Side-Walk/Street Closures other than property owner repairs/replacement of sidewalk.
- Blocking one or more parking spaces for other than temporary parking of a motor vehicle, including City owned parking lot and on-street parking spaces.
- Street Banner or device hung over a public right-of-way except for power, phone, or other communication cable.
- Use of City parking lots or property for the purpose of an event, fair, exposition, parade, sale or promotion.
- A business franchise that places their property on, over or under City property to include public right-of-way.
- An agreement for services provided to the City or on the City's behalf.

Any permit application, agreement or contract involving the above described shall not be approved until an appropriate certificate of insurance is received.

Julie Kruger

Julie Kruger, City Manager

1-29-21

Date

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

# CITY INDEMNITY POLICY

This Policy provides guidance to City Management and reinforces City liability insurance policies.

All City of The Dalles employees, officers, agents, and elected officials (collectively, "Persons") are indemnified from penalty arising from legal action against them when their actions occur within the course and scope of their position and the act does not violate City Policy or Policies of their Department.

The City and its insurer will defend Persons named in a legal claim for conduct occurring within the course and scope of their position. City Legal Counsel will seek Summary Judgment to remove the name of the Person from the claim. If Summary Judgment is denied, the City will continue to defend the Person.

The indemnity described here shall be provided at no cost to the Person.

If the Person must provide statements or testimony during the defense process, the Person shall be paid their normal wage during such times. City Officers shall be provided a reasonable stipend to cover expenses connected with their provision of statements or testimony.

This Policy applies to conduct occurring within the course and scope of a position and shall be effective even if the Person is no longer associated with or employed by the City when the claim is filed.

Julie Krueger

Julie Krueger, City Manager

3-11-21

Date

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

# Executive Risk Management Program

## Mission Statement

The mission of the City of The Dalles Risk Management Program is to identify and assess risks, select and implement measures to address risk, and monitor the program's effectiveness in an organized and coordinated fashion to pro-actively identify risks and prevent claims.

## Risk Management Objectives/Duties

Accidents and losses must be reported promptly and in accordance with prescribed procedures. The benefits of timely reporting include enhanced citizen confidence, better protection of the City's interest, reduced time lost for employees and equipment, and savings realized through prompt settlements.

Reports of general liability claims and automobile accidents should be immediately reported to the Risk Manager. The following information should be included in every report:

a. Date, time, and location of accident or event
b. Description of vehicle, equipment, or property involved
c. Name(s) of person(s) involved
d. Name(s) of person(s) injured
e. Description of any medical attention received
f. Nature of damage/loss and estimated cost
g. Description of circumstances; diagram of events if possible
h. Insurance Policy Numbers, Agents, and/or Agencies
i. Name(s) and addresses of witnesses
j. Appropriate signatures
k. Copy of DMV report, if filed
l. Copy of Police report, if filed
m. In addition, procedures described in the City Accident Reporting and Analysis Policy must be followed

The Department Director will process all accident/loss notices, except workers' compensation (processed by Human Resources), and will notify the appropriate insurance coverage provider.

The City Human Resources Department will file workers' compensation accident reports with the appropriate insurance coverage provider. Workers' compensation incidents will be processed in accordance with Employee Handbook Policies and Procedures: Early Return to Work – On the job injury.

Additions and/or deletions of coverage: Any and all changes, additions or deleted coverage will be submitted to insurance agent (auto, new building and/or facilities, equipment, and program or service). "Change of Insurance Form" will be completed by the City, signed and dated by the department head, and approved by the City Manager. The request will be forwarded to the insurance agent, signed and dated to acknowledge receipt of the request and returned to the City. The form will be returned to the City Attorney's office and filed.

Special events: If required, a certificate of general liability insurance with the City of The Dalles, its officers, employees and agents shall be added as an additional named insured, with a 30-day notice of cancellation in the face amount of $2 million per occurrence. Special events may require additional insurance, to be determined by the City. Certificates of Liability Insurance must be forwarded to City Insurance Agent for review and filed with the City prior to the event.

## Disciplinary Actions

Verbal and written reprimands should follow department and City policy. All potential disciplinary actions involving leave without pay, administrative leave with pay, suspensions, and any action ultimately headed towards termination of employment should initially be forwarded to CIS' Pre-Loss Attorney before taking action.

## Risk Management Responsibility

The Risk Manager for the City of The Dalles is the Human Resources Director. The Risk Manager will Chair the Risk Management Executive Committee.

Risk Management Executive Committee – The City's Risk Management Committee is comprised of the City Human Resources Director, the Finance Director, Police Captain, Public Works Director and risk management consultants (insurance agent) will be invited to participate. It shall be the Committee's responsibility to meet quarterly and make recommendations regarding how to best carry out the City's Risk Management Objectives.

The Risk Management Committee will:

a. Establish a vision
b. Set annual objectives for risk management
c. Set priorities by identifying top risks
d. Determine risk tolerance
e. Identify risk exposures
f. Identify and assign "Risk Owners" to those exposures
g. Learn best practices identified by insurance coverage providers
h. Review Annual Best Practice Survey
i. Understand emergency management policies and procedures
j. Promote sound records management including data security and confidentiality
k. Oversee compliance with OSHA and other regulations
l. Review significant claims
m. Assure accountability by reviewing risk activities and results.

## Department Heads and Supervisors

Department heads and supervisors are tasked with supporting the City's Risk Management Program by ensuring employees understand and comply with all risk management and safety requirements.

Department heads and supervisors will:

a. Promote safety program and loss control efforts
b. Ensure employees are trained on risk management, loss control, employee safety and emergency response policies
c. Allocate time for employee safety training and Safety Committee participation
d. Identify, reduce, and eliminate hazards through regular inspections and accident investigations
e. Hold all employees accountable for safety
f. Recognize and reward safe behavior
g. Understand and enforce contractual standards
h. Assure proper handling of hazardous materials
i. Promote and model ethical behavior
j. Initial administration of workers' compensation process in the event of an employee injury or illness by processing an OSHA 801 form as soon as possible after event.

## Employees

All City employees shall:

a. Participate in appropriate training
b. Follow all safety rules
c. Report all incidents, injuries, and accidents to their supervisor immediately
d. Share any risk or potential risk with their supervisor immediately
e. Know what to do in an emergency; how to mitigate an event
f. Acknowledge responsibility for their own actions
g. Work in an ethical manner.

## Safety Committee

The primary function of the Safety Committee is to focus on internal solutions to safety problems. The City's Safety Committee is made up of representatives from all departments.

The Safety Committee shall:

a. Meet monthly
b. Review workers' compensation claims and incident report
c. Conduct quarterly inspections of City facilities
d. Conduct accident/incident analysis
e. Conduct job hazard analysis
f. Review OSHA consultations and ensure compliance
g. Make recommendations to City Manager and/or Department Heads regarding safety concerns

## Insurance Agent

Provides a wide array of services for its customers including:

a. Assist, train, attend Safety , Risk Management and Staff meetings as required
b. Frequent communication with public entity staff
c. Review construction and City contracts for coverage, execution and risk transfer, reduction, elimination hold harmless and indemnity issues
d. Advise staff on risk management training opportunities
e. Perform loss prevention and control surveys, inspections, and recommend future actions
f. Negotiate, on behalf of the City, pricing of insurance products and policies
g. Assist with disaster/emergency, business interruption, contingency planning assistance (Agility)
h. Assist in claims processing and communication
i. Advise on Worker's Compensation insurance

## Analyze Risk Treatment Alternatives

1. Eliminate or avoid risk – Some identified risks can be eliminated or avoided. For example, hazards that are identified during inspections or by individuals can be removed, and broken equipment can be locked/tagged out until it is repaired.

2. Control of risk – For risks that cannot be eliminated or transferred, appropriate control methods shall be implemented. Control methods include personal protective equipment, regular inspection of safety equipment, training in safe job procedures, ergonomic assessments and improvements, and obtaining assistance with tasks when needed.

## Review and update

This Policy shall be reviewed every two years by the Risk Management Team and updated as appropriate.

Date: 6-3-14

Julie Krueger, City Manager

**CITY OF THE DALLES**
**POLICY MANUAL**

**SECTION IV – PERSONNEL**

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

# Human Resources Process and Procedure
# April 1, 2021

The following processes and procedures will be utilized for the given personnel actions.

## PERSONNEL FILES

1. All original *personnel* and *medical* documents will be maintained in Human Resources personnel and medical files. Departments may maintain copies of some documents, provided that protected private health and medical information shall only be kept by the Human Resources Department in a separate medical file.
2. Human Resources will maintain all official position description files approved by the City Manager. New position descriptions are created and old description modified only by the appropriate Department Head, in consultation with Human Resources. This includes modified duty for medical reasons that shall be approved by the employee's attending physician and Department Head before becoming effective. For a position description to become the official position description, the City Manager must approve it.

## RECRUITMENT

1. City Departments wanting to fill a vacant position will notify Human Resources. Human Resources will review and update the position description, then forward to the Department Head for review/amendment. The Department Head will then return amended position description to Human Resources.
2. If the position is new or amended, prior approval from the City Manager is required.
3. Human Resources will review, and post an advertisement of the position. All recruitments are billed to Human Resources and paid through the recruitment budget line.
4. No position vacancy announcement will be used in the recruitment other than that approved by the Human Resources Director.
5. For Patrol Officer recruitments where a passing test result is needed, National Testing Network shall be used. If testing will be conducted by the Network, the Department Head will coordinate with Human Resources.
6. All Applications/Resumes will be submitted electronically through application tracking system. Applications and resumes mailed, emailed or hand delivered to the City will not be accepted.

7. Human Resources will review each application/resume to determine if the applicant meets the qualifications described in the Position Description, minimum qualifications, and desired qualifications immediately after the closing date listed on the position announcement. Applicants meeting or exceeding the position minimum qualification requirements will be referred to the Department Hiring Manager.
8. Human Resources will schedule testing needed outside the organization as well as interviews and advise Department Head of the times and dates of those tests & interviews.
9. Human Resources will draft interview questions and provide to the Department Head for review.
10. After the interview panel reviews and ranks interviewees, the Human Resources Director may provide input on the applicants and the panel. The Department Head will make their recommendation for hiring to the City Manager, including starting pay, prior to a conditional offer of employment being made.
11. The candidate's current or previous wage shall not be considered when determining the starting wage offered. Starting wage shall be based on relevant education and experience.
12. Once a final determination is made, after consultation with the City Manager, the Department Director will make a conditional offer of employment to the desired candidate.
13. When the preferred candidate is given a conditional offer, they shall also be advised they will receive emails from ProScreening for background/credit check as may be appropriate to the position. The Department Head will advise Human Resources once a conditional offer has been agreed to. Human Resources will then initiate the background and credit check. All background/credit checks will be conducted in accordance with City Policy, State and Federal Law.
14. Human Resources will advise the Department Head of the results of the background/credit check so that a final decision to affirm or decline the hire can be made.
15. The Department Head or assign will notify the candidate.

**HIRING/ON-BOARDING**

1. Hiring department sends completed Personnel Action Form (PAF) to Human Resources with sections 1-10 completed and Department Director's signature (section 11).
2. The Human Resources Director will immediately notify the IT Manager providing the new employee's name, scheduled first day of work, job title and section or workgroup.
3. On their first day, Human Resources will contact IT with the new hire's phone number. IT will then contact the new employee and provide log in credentials.
4. Human Resources will create a personnel file & benefit packet and schedule the new hire's orientation.

5. If the new hire will be in an SEIU represented position, the SEIU President will be notified of the new hire's start date and time of orientation.
6. Human Resources will transfer the new hire from the Application Tracking System into the Payroll System.
7. The Human Resources Director will provide the new hire with an orientation.
8. New hire will complete a W-4 and I-9 form at orientation. New hire may complete benefit selection at orientation or at a later date, provided the benefit selection process is completed within fourteen days of hire.
9. Human Resources will get required signatures on PAF and send to payroll.
10. Payroll will receive W-4 and PAF once completed. Payroll will then ensure the new hire is set up in the payroll system.
11. Human Resources will set up employee benefits in the payroll system and on the provider's web page.

## FAMILY MEDICAL LEAVE

1. An employee who is absent on qualified sick leave under City Policy, or is anticipating an absence under that policy greater than 3 days, may complete a Family Medical Leave request form and submit the request form to Human Resources. When to use FMLA is entirely at the employee's discretion.
2. The Family Medical Leave request form must be accompanied by a physician's statement, which includes an anticipated date of return to work.
3. If, for reasons of incapacitation, an employee is unable to complete the request form, the Human Resources Director will, to the greatest extent possible, complete the request and all supporting documentation and place in the employee's personnel file.
4. The Human Resources Director will either approve or deny the request based on the information presented with the request. All requests received meeting the conditions of City Policy, Oregon Family Leave Act, or federal Family Medical Leave Act will be approved.
5. The Human Resources Director will, within three (3) work days, notify the employee and the employee's Department Head of the approval or denial of the requested leave. If the Human Resources Director is unavailable, approval of leave will be assumed until such time as the Director can verify.
6. An employee, or employee's representative in the case of incapacity, may appeal denials to the City Manager through the City's Grievance procedure.

## HARDSHIP LEAVE

1. Employees who need time off for any reason covered by the City's Hardship Leave Policy and lack the accrued time to cover the needed time off, may submit a request for Hardship Leave to Human Resources with as much detail as possible.
2. If the Human Resources Director finds cause to grant the Hardship Leave, the Human Resources Director will determine actual need and request donations from

other employees to cover the need.

3. Donated time received after the need is met, will be retained by the donating employee. Donations made in excess of the need will not be accounted for in the receiving employees leave bank.
4. The Human Resources Director will notify donating employees in the event the need is met and how many hours of their donation they retained (were not donated).
5. If donations made are insufficient to meet the need, the employee requesting Hardship Leave will be advised of the shortfall. If the employee has not completed an FMLA request, they will be advised to do so.

## DOCUMENTATION

1. Personnel Action Forms will be submitted to Human Resources with accompanying documentation as appropriate. EXAMPLE: Personnel Action Forms submitted recommending Step Promotion must include the most recent employee Performance Evaluation (original).
2. Incomplete Personnel Action forms or forms submitted without appropriate documents enclosed will be returned to the Department.
3. Once all appropriate actions initiated by the document have been completed, Human Resources will return a copy of the Personnel Action form to the Department and Employee.

## DISCIPLINARY ACTION

1. In the event a Department Head reprimands an employee in writing, the original Written Reprimand and Employee comments, if any, will be sent to Human Resources.
2. The Human Resources Director should be advised of disciplinary action including demotion, suspension, reduction in pay, and discharge prior to enforcement. Such disciplinary action should generally follow a progressive discipline model and the requirements of the Collective Bargaining Agreement and/or Employee Handbook.
3. The Human Resources Director may take part in any disciplinary investigation at the request of the Department Head who is considering possible disciplinary action, and may take part in a disciplinary hearing.
4. No employee may be suspended without pay, demoted or terminated without a due process hearing.

## PERSONNEL COMPLAINTS

1. Personnel complaints should be addressed at the lowest level of supervision possible. In the event a complaint is presented to the Department Head, and the Department Head is unable to resolve the complaint, or if the complaint is against the Department Head, personnel may request Human Resources assistance following the process set forth in paragraph 2 of this section.
2. Personnel will present their original complaint to the Human resources Director

and provide personal statements to aid in the investigation. The complainant should also provide names of any witnesses. Human Resources will investigate complaints against City Personnel whether the complaint comes from another employee or the public. The exception to this is in cases of suspected criminal law violations (see paragraph 3 of this section).

3. The Human Resources Director will confer with the City Attorney and Chief of Police before beginning any investigation to ensure a lawful and appropriate process is followed in the event criminal activity is discovered. If either the City Attorney or Chief of Police believe there may have been criminal activity, the Human Resources Department will turn over the investigation to the Police Department. If there is no known or suspected criminal activity, Human Resources will follow the process identified in paragraph 4 of this section.
4. Human Resources will investigate by interviewing all witnesses identified in the complaint and determine if there was a violation of policy or possibly a violation of employment law. If there is a potential criminal violation, the Human Resources Director will consult with the Chief of Police before continuing the investigation. If the Chief believes the complaint includes a violation of criminal law, the Police Department will take the lead on any investigation including interviews of witnesses. The Police Department may share pertinent information with Human Resources on violations of policy or employment law discovered in the investigation.
5. When the Human Resources Director concludes the complaint investigation the Director will submit an investigation report to the Department Head with recommendations. The Human Resources Director will also advise the City Manager of findings and recommendations.
6. Appropriate corrective action, up to and including termination, will be taken against an employee who has been found to have committed a violation of policy or a violation of employment law. The complainant will be advised that corrective action has been taken; however, the exact nature of the corrective action taken will not be disclosed to the complainant. Human Resources will notify the complainant's Department Head prior to informing the complainant.

## GRIEVANCES

1. Grievance procedures are outlined in the respective Collective Bargaining Agreements, and for exempt employees other than Department Heads, in the Exempt Employee Handbook.
2. The Human Resources Director, City Manager and City Attorney should be informed of a grievance as soon as possible.
3. For the purpose of the grievance procedures outlined in the Collective Bargaining Agreement the Human Resources Director shall be the City Manager's designee on grievances brought by Union Members who report directly to the City Manager unless otherwise directed. The Human Resources Director will keep the City Manager apprised of the Grievance status throughout the process.

**OFF-BOARDING**

1. When an employee's employment is terminated for any reason, the employee's manager will notify Human Resources as soon as possible. Notification will include: employee's name and date of last day of employment.
2. If the employee resigned and has already left, Human Resources will verify all City property in the employee's control (i.e. phone, keys, equipment) was returned to the City. The Human Resources Director will notify IT to disable all access to City computer resources and files.
3. If the employee's last day is at a future date, Human Resources will immediately notify the IT Manager of the employee's last day and initiate off-boarding.
4. The Human Resources Director will ensure any City property in the employee's control is returned to the City prior to the employee's departure.
5. Human Resources Director will change the employee's status with all benefit providers through the web portal to "Terminated."

Julie Krueger, City Manager

4-1-21
Date

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

# Hiring Procedures
**March 23, 2010**

Hiring of new employees for the City is a function and responsibility of the City's Management Team. Information requested and received by the City from job applicants must be treated as confidential information. As such, participation in the hiring process must lie with the City's Exempt Staff. Therefore, the following procedures are to be utilized when hiring to fill all Union-level positions.

- Applications are to be reviewed and short-listed by Exempt Management personnel only, including at a minimum, the Department Director or Manager of the Division within which the vacancy exists.
- The list of applicants selected for interviews must be approved by the Department Director.
- Interview panels are to consist of at least three people.
- The make up of interview panels must be approved by the Department Director and City Manager. At times, it may be desirable to include interviewers from agencies or businesses other than the City that have knowledge in the discipline of the position being filled.
- Interview questions and skill tests must be approved by the Department Director.
- If the Department Director is not on the interview panel, then interview results, ranking of interviewed applicants and recommendations for hiring from the interview panel, which are confidential, will be forwarded to the Department Director. The Director will then meet with and interview applicants based on the results of interviews conducted and may include applicants other than those recommended by the panel.
- The Director will make the final recommendation for hiring to the City Manager.

March 23, 2010
Date

Nolan K. Young
Nolan K. Young, City Manager

CITY of THE DALLES
HUMAN RESOURCES
313 COURT STREET
THE DALLES, OREGON 97058

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# EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION PLAN

## AUTHORITY:

### A). AFFIRMATIVE ACTION IN FEDERAL CONTRACTS

Title 41 CFR, Subtitle (B), Parts 60-741 "Contractors" (>$50,000)

Title 29 U.S.C. Sec. 793 "Rehabilitation" Disability Rights and Advocacy (>$10,000)

Title 38 U.S.C. Sec. 4212 "Veterans" (>$100,000)

Executive Order 11246 "Federal Contracts for Service or Support"

### B). AFFIRMATIVE ACTION OREGON

ORS 243.305 State Employment [not binding on other employers]
Administrative Rule 105-040-0001

### C). EQUAL EMPLOYMENT AND OPPORTUNITY - FEDERAL

Title 42 U.S.C., Chapter 21 "CIVIL RIGHTS ACT OF 1964" [amended][1]
- Subchapter III, "Public Facilities"
- Subchapter V, "Federally Assisted Program"
- Subchapter VI "Public Health and Welfare"
- Subchapter VII "Equal Employment Opportunities" [EEOC]

Title 29 U.S.C., "Labor"

Title 49 CFR "Disadvantaged Business Enterprise (DBE)" and "Airport Concessions Disadvantaged Business Enterprise (ACDBE)."

### D). EQUAL EMPLOYMENT, PUBLIC ACCOMMODATIONS - OREGON

ORS 659A "Unlawful Discrimination in Employment, Public Accommodations, Real Property Transactions; Administrative and Civil Enforcement."[2]

ORS 652.210 – 652.235 "Equal Pay Act"
Oregon Administrative Rule 839-008

**NOTE**: See Employee Handbook for further detail on Equal Employment Policy.

[1] Includes protection for age, sex, race, religion and national origin.
[2] Include protection for race, national origin, age, color, sex, gender identity, sexual orientation, disability, religion, military status, family status and marital status.

## APPLICABILITY OF THIS POLICY

The policy applies to all recruitment, advertisements, selections, interviews and placements of persons for hire or contracting with the City of The Dalles when person(s) selected will be volunteers, employees, or contract employees.

This policy also applies to private contractors who, contract with the City of The Dalles for construction, services or programs where State of Federal funds pay for all or part of the contracted construction, services or program above the statutory limit.

EXEPTION: The City will allow deviation from this policy for qualified DBE or ACDBE under Federally funded transportation related projects through the FAA, FHWA and or FTA.

## SCOPE OF POLICY

In all employment actions, the City of The Dalles will base decisions on qualifications and employee conduct. No employment decision shall be made on the basis of a protected class as described in City Policy, State or Federal law. A summary of protected classes is located in the footnotes on the previous page. In the case of layoffs, the City will follow the Collective Bargaining Agreement or seniority if the agreement is silent on layoffs for all unionized employees.

In all contracts where the City is the principle, or recipient of the good or service the City shall require the Contractor to provide documentation showing compliance with State and Federal law as it pertains to equal employment and affirmative action when required. The City shall not agree to a contract until said documentation in provided by the contractor. Requirements may be found in the statutes listed on the first page of this policy.

## EMPLOYMENT AFFIRMATIVE ACTION

The City of The Dalles will take affirmative action to ensure all employment decisions are based on legitimate employment reasons and devoid of discriminatory practice. Such actions include and are not necessarily limited to the following.

- Regularly provide Supervisors, Managers and Department Heads with EEO training for supervisors.
- Regularly provide all employees with EEO training that focuses on identifying and reporting suspected discriminatory practices.
- At hire, provide all new employees an Employee Handbook and review the new hire of EEO, Bullying, Retaliation, Whistle Blower and Appropriate Conduct Policies.
- When recruiting to fill a position, advertise the recruitment broadly with a focus on locations or mediums where a protected class is more likely to view it.
- All recruitments will state The City of The Dalles is an Equal Employment Opportunity, Affirmative Action Employer (EEO/AA).
- When making selections for interviews of candidates, base selection purely on stated qualifications and bar hiring manager from viewing candidate demographic information prior to selection.
- Periodically review the effectiveness of this and other policies, at least every 10 years.

Julie Krueger, City Manager

4-1-21
Date

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

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# ADA ACCOMMODATION PROCEDURE

## Statement of Reasonable Accommodation

To request an accommodation, alternative format of communication, and/or modification of policies and procedures in order to access and benefit from a City program, service and activity, please submit a Reasonable Accommodation Request form (alternative formats available upon request) contact the City Attorney, who serves as the City's ADA Coordinator at the City Attorney's Office, 313 Court Street, The Dalles, OR 97058, 541-296-5481 ext. 1122, as soon as possible, but no later than five (5) business days before the scheduled event you wish to participate in. The Reasonable Accommodation Request form is provided at the end of the procedure. In addition, a form may be obtained from Human Resources or the City Attorney.

## Complaint Process

Any person who believes that he or she or any other program beneficiary has be subjected to unequal treatment or discrimination in the receipt of benefits or services from the City because of a person's disability may file a Complaint with the City Attorney.

The complaint must be filed within 180 days of the alleged discriminatory act or occurrence.

## Informal Resolution

Every effort will be made to obtain early resolution of complaints at the lowest level possible. The option of informal meeting(s) between the City Attorney, City staff, or other affected persons may be utilized for resolution. If informal resolution is not successful or the complainant wishes to proceed with a formal investigation, then the complainant may appeal the matter to the City Manager, who shall proceed with a formal investigation.

## Formal Resolution

Upon receipt of an ADA complaint, the City Manager will review the complaint and determine whether the City has jurisdiction over the complaint, whether the complaint contains the necessary information, and whether further investigation is needed. The City Manager will notify the complainant and respondent department within five (5) working days of receipt of the complaint, of the City Manager's initial determination regarding the complaint.

The City Manager will provide the respondent department with the opportunity to respond in writing to the allegations in the complaint. The respondent department shall have 15 days from receipt of the initial notification from the City Manager, to furnish a response to the allegations in the complaint. Upon receipt of the written response from the respondent department, the City Manager will then determine if further investigation is warranted. If further investigation is

warranted, the City Manager shall conduct an investigation of the complaint, which may include, but is not limited to interviews with the complainant, departments, program recipients or any other persons with information relevant to the complaint.

Within 30 days of the receipt of the complaint, the City Manager will cause to be prepared a written investigative report. The investigative report shall include a narrative description of the incident, identification of persons interviewed, findings, and recommendations for disposition. The written report shall be reviewed and finalized by the City Manager.

Once the investigative report has been completed and appropriate action determined, the complainant and respondent department shall receive a copy of the investigative report, a statement of appropriate action, and notification of appeal rights.

Within 15 days of the complainant and respondent department rece1vmg a copy of the investigative report and determination of appropriate action, the City Manager will offer to meet with the complainant to discuss the determination of appropriate action along with the findings and conclusions in the investigative report. A complainant may seek reconsideration of the determination of appropriate action if the complainant produces evidence of new facts that were not previously considered and could not have been reasonably discovered during the investigation.

**Outside Agencies**

If a complainant is not satisfied with the results of the investigation or the disposition of the complaint, the complainant may file a complaint directly with the United States Department of Justice or other appropriate state or federal agency. Use of the City's procedure is not a prerequisite to the pursuit of other remedies.

**Resolution or Accommodation Not Precedent**

The resolution of any specific complaint or accommodation requires consideration and balancing of circumstances, such as the specific nature of the disability; the nature of the access to services, programs, or facilities at issue and the essential eligibility requirements for participation; the health and safety of others; and the degree to which an accommodation would constitute a fundamental alteration to the program, service, or facility, or cause an undue hardship to the City. Accordingly, the resolution by the City of any one complaint does not constitute a precedent upon which the City is bound, or upon which other complaining parties may rely.

**CITY of THE DALLES**
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

# REASONABLE ACCOMMODATION REQUEST FORM

Date: _____

Contact Information

Name: _____

Street Address: _____

Phone (day): _____ Phone (eve): _____

Email: _____

Preferred Method of Contact: _____

Accommodation Request

1. Please specify the City Department responsible for the program, service, activity, policy or communication for which you seek accommodation:

2. Please specify the reasons you are requesting accommodation (check all that apply):

[ ] to allow me to participate in a program or activity offered by the Department.

Please specify the program or activity: _____

[ ] to ask for an exception to a rule, policy or procedure. Please specify the rule, policy or procedure:

[ ] Other reasons, please specify (for example, the way that a Department communicates with you):

3. Describe the accommodation you are requesting:

4. Describe how this accommodation will assist you (please attach additional pages as needed):

Thank you for completing this form. Your request will be acknowledged within five (5) business days and you will be notified of what steps the City will take to address your request.

Should you be unsatisfied with the response to your request you may appeal to the City Attorney at: 313 Court Street, The Dalles, OR 97058; 541-296-5481 ext. 1122; (TTY) 7-1-1 or 1-800-735-1232.

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# COMPLAINT OF ADA NONCOMPLIANCE

Date: _____

**Contact Information**

Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Phone (day): _____ (evening): _____

Email: _____

Preferred Method of Contact: _____

**Allegation of ADA Noncompliance**

1. Please specify the City Department responsible for the noncompliance for which you would like to lodge a complaint:

2. Please describe the problem you encountered:

3. Date the alleged violation occurred:

4. Location where the alleged violation occurred:

5. Please provide the names, if known, of any individuals at the City involved in the problem you encountered:

6. What change would you wish to see that would be helpful in solving this problem:

*To include more information, please attach additional pages as needed.

Thank you for completing this form. Your complaint will be acknowledged within five (5) business days and you will be notified of what steps the City will take to address your complaint.

Should you be unsatisfied with the response to your complaint, you may appeal to the City Attorney at: 313 Court Street, The Dalles, OR 97058; 541-296-5481 ext. 1122 *I* (TTY) 7-1-1 or 1-800-735-1232. For information on requesting a Reasonable Accommodation Request form or the ADA Complaint process, please contact the City Attorney's Office at: 313 Court Street, The Dalles, OR 97058; 541-296-5481 ext. 1122 *I* (TTY) 7-1-1 or 1-800-735-1232.

## ADDITIONAL SEPARATE PAYROLL CHECK POLICY

The following policy is necessary to bring the City into compliance with IRS regulations that govern these issues. Non-compliance with the IRS regulations in these matters creates a liability to both the City and individual employees who may be subject to retroactive taxes and penalties in the event of an IRS compliance audit. Any interpretation of this policy will follow IRS regulations.

Any employee may request one additional separate check to be issued for them during a regular payroll process for any portion of the monies due to them at that time. An additional separate check is defined as a check written in addition to the primary pay check or primary disbursement of net wages through direct deposit.

A written request for such an additional separate check must accompany the employee's time sheet for that pay period.

IRS regulations state that any additional separate checks issued to an individual during a regular payroll process shall be taxed at a rate of 25%, regardless of the tax rate normally applied to that employee's regular paycheck or disbursement.

9/11/08
Date

Nolan K. Young
Nolan K. Young, City Manager

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
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# CITY OF THE DALLES POLICY AND PROCEDURES FOR A DRUG AND ALCOHOL TESTING PROGRAM

## 1.0 PURPOSE

As an employer, the City of The Dalles has a responsibility to its employees, to those who use its services, and to the general public to ensure safe operating and working conditions. To satisfy these responsibilities, the City must establish a work environment where employees are free from the effects of drugs, alcohol, or other impairing substances.

The City recognizes each individual's value and contribution to the services it provides to the public. Due to concern for the safety and welfare of its employees, this policy provides for assistance to employees who wish to overcome an alcohol or drug dependency problem. The City's health insurance program and Employee Assistance Program are available to employees and their families.

This Drug and Alcohol Policy ("the Policy") is intended to satisfy the City's obligations under the drug and alcohol testing rules (49 CFR 382 and related parts) established by the Federal Highway Administration (FHWA), changes in which will supersede specific policy provisions.

## 2.0 PROGRAM APPLICATION

This Policy shall apply to all employees of the City, except for employees of the Police Department who shall be subject to the City Police Department Drug and Alcohol Policy and Testing Procedures.

## 3.0 DEFINITIONS

3.1 Applicability: This policy applies to all employees, except that Random Testing applies only to employees listed in Attachment B, and Pre-Employment Testing applies only to positions identified in Attachment D. This policy applies when an employee is on City owned, controlled or leased property, or when performing any City-related business, and for the duration of any scheduled or non-scheduled non-working period when the employee is expected to return to work later that day.

3.2 Drug Test: The compulsory production and submission of urine by an employee for chemical analysis to detect the presence of prohibited drugs or a breath test to detect alcohol.

3.3 Reasonable Suspicion: That quantity of proof or evidence that is more than a hunch, but less than probable cause. Reasonable suspicion must be based on specific factual and articulable observations by a supervisory employee concerning the work performance, appearance, behavior, objective facts, and derived inferences from these facts about the conduct of an individual that would lead the reasonable person to suspect that the individual is or has been using drugs or alcohol while on or off duty.

3.4 Under the Influence: If use of alcoholic liquor or an alcohol "hangover" adversely affects an employee's physical or mental faculties while at work to any perceptible degree,

or the employee's blood or breath content exceeds .02 percent, the employee shall be considered under the influence of alcohol for purposes of this policy. If use of a controlled substance or withdrawal symptoms adversely affects an employee's physical or mental faculties while at work to any perceptible degree, or the employee tests positive for any such substances by screening and confirmation tests, the employee will be deemed under the influence for purposes of this policy.

3.5 Controlled Substances: as used in this policy, a "controlled substance" includes, but is not limited to, any controlled substance listed in Schedules 1 through 5 of the Federal Controlled Substances Act, including marijuana which is otherwise lawful to use under Oregon, Washington, or any other state's law.

3.6 Over-The-Counter Drugs: Are those which are generally available without a prescription from a medical doctor and are limited to those drugs which are capable of impairing the judgment of an employee to safely perform his or her duties. It is the employee's responsibility to determine whether or not any particular over-the-counter drug is safe for use.

3.7 Prescription Drugs: Are defined as those drugs which are used in the course of medical treatment and have been prescribed and authorized for use by a licensed practitioner, physician or dentist.

3.8 Substance Abuse Professional: Is any licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

3.9 Marijuana: Means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which incapable of germination.

## 4.0 EDUCATION AND TRAINING

4.1 Employee Education: Employees will be furnished with educational materials that explain the requirements of 49 CFR 382 and this Drug and Alcohol Policy.
Employees will be required to sign a form acknowledging receipt of this information. Employees hired for or transferred into an applicable job position will receive specific information on the topics listed above and be required to sign a form acknowledging receipt of this information.

4.2 Supervisor Training: Supervisors who may be required to make "reasonable suspicion" determinations will receive training on recognition of the physical, behavioral, speech and performance indicators of probable alcohol and controlled substance use. The duration of the training will be at least sixty (60) minutes each for:

A. Alcohol; and
B. Controlled Substances.

Training will include use recognition, with additional follow-up training to maintain and

increase supervisory proficiency. The training shall cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances. Association shop stewards shall also be included in this training.

## 5.0 PROCEDURES AND RULES

5.1 Possession of Prohibited Drugs, Marijuana, or Alcohol: By City Authority, employees are prohibited from engaging in the manufacture, distribution, dispensing, possession, use or being under the influence of or being impaired by alcohol or illegal drugs, or from possessing, using or being under the influence of marijuana or marijuana infused products, on City premises, in City vehicles, in a private vehicle while conducting City business, or while conducting business related activities off City premises. Employees may not consume alcohol or controlled substances during rest breaks or meal periods. Employees may not have any detectable amount of narcotic, hallucinogen, stimulant, drug, or other controlled substance in their system while on City premises, in City vehicles, or while conducting business related activities off City premises.

Employees are prohibited from bringing onto City property, or possessing on City property, any item or object which contains any "controlled substance", including for example, marijuana brownies or candy containing marijuana. No employee may knowingly serve items containing marijuana or any other "controlled substance" to anyone at any time while on City property. Employees are prohibited from bringing marijuana-related equipment or any devices marketed for use or designed specifically for use in ingesting, inhaling or otherwise introducing marijuana (among other drugs) such as pipes, bongs, "vape pens", smoking masks, roach clips, and or other drug paraphernalia, on to City property. Employees are also prohibited from bringing equipment, products or materials that are marketed for use or designed for use in planting, propagating, cultivating, growing, or manufacturing marijuana, including live or dried marijuana plants, on to City property. The prohibitions described in this paragraph do not apply to employees engaged in law enforcement work.

The use of marijuana is expressly prohibited under this policy, even if its medical or recreational use is authorized under state law. Employees who use medical marijuana in connection with a disability should discuss with their supervisor and Department Manager other means of accommodating the disability in the workplace, as the City will not agree to allow an employee to use medical marijuana as an accommodation.

5.2 Searches: By City authority, the City shall have the right to conduct searches and inspections of any and all City owned leased or controlled facilities, properties, vehicles and equipment. This shall include the right to search or inspect City-owned, leased or controlled desks, lockers, file cabinets, vehicles and the like, which are assigned to and normally subject to the exclusive use and control of a single employee. The City may also search or inspect any object, including but not limited to vehicles, briefcases and lunch boxes, brought onto City owned, leased or controlled properties or other City job sites, if there is reasonable suspicion that alcohol or a controlled substance will be found. Refusal by the employee to submit to and cooperate with a properly authorized search or inspection shall be cause for disciplinary action.

5.3 The use of any prescription drug at a time or in a manner not specifically called for by the prescribing physician is prohibited. In addition, when a prescription is obtained, the employee shall advise the prescribing physician of the fact that he or she is subject to a drug testing policy, and seek assurance from the prescribing physician that the substance in question may be taken without violation of this policy. Employees are required to notify

their immediate supervisors when taking prescription medications with warning labels relating to the operation of vehicles, heavy equipment, or machinery. The City does not request the name of the medicine or the condition for which it was prescribed, only notification of relevant warnings. If an employee's use of such prescription drugs could adversely affect the City's operations or the safety of City employees or other persons, the City may reassign the employee using the prescription drugs to other work or take other appropriate action to accommodate the physical or mental effects of the medication. Failure to report notice of relevant warnings for prescription drugs covered by this policy will subject the employee to disciplinary action, up to and including termination.

5.4 Off-Duty Consumption of Alcoholic Beverages: All employees shall report to work, at all times, free of intoxicants and in no event will the employee consume any kind of alcoholic beverage within four (4) hours of his or her scheduled reporting time for work, while on duty, or during any break, meal, rest period or other interruption of work. By City authority, when an employee is placed on standby for possible call out, he or she shall consume no alcoholic beverage for the duration of such standby period. If an employee who is not on standby is subject to call-out, and in the event that employee has consumed any alcoholic beverages within the preceding eight-hour period, the employee shall advise his or her supervisor of that fact, the amount, and when the alcohol was consumed. It is the responsibility of the employee to ensure that any medication, mouthwash, food, candy or other substances that he or she consumes prior to work and while on the job does not contain significant quantities of alcohol.

5.5 Off-Duty Consumption of Marijuana: Evidence of consumption of marijuana or marijuana-infused products can remain in a person's body for a period of days. Employees subject to the testing procedures provided for in this policy, who consume marijuana or marijuana-infused products while off-duty, who become subject to the testing procedures provided for in this policy, should be aware that such testing procedures could result in a determination that the employee has violated this policy. A violation of this policy occurs if off-duty use of marijuana or marijuana-infused products results in a positive test for the presence of marijuana under the provisions of Section 6.0.

5.6 Notification of Drug-Related Arrest: By City authority, an employee who is arrested, cited, or otherwise served with charges which allege the buying, selling, transportation, manufacture, cultivating, possession or consumption of any controlled substance, shall notify his or her supervisor of the arrest, citation or service of charges at the time of the start of his or her next regularly scheduled work shift. Such arrest, citation or service of charges shall not in or of itself serve as the basis for disciplinary action against the employee. The City may, however, conduct its own investigation of the incident in question and may initiate disciplinary action based on the findings of that investigation. In addition, any such arrest, citation or service of charges shall give the City the right to conduct reasonable suspicion testing under 6.4 of this policy and/or refer the employee to a Substance Abuse Professional (SAP) for an evaluation.

5.7 Compliance with Policy: Any employee who refuses to comply with a properly requested drug test shall immediately be removed from duty and shall be subject to discharge, by City authority. Refusal can include, but is not limited to, an inability to provide a sufficient urine specimen or breath sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test. By City authority, any employee who is suspected or found to have provided false information in connection with a test, falsified results through tampering, contamination, adulteration, or substitution, will be required to undergo an

additional observed collection, and may be subject to disciplinary action up to and including discharge. Violations of other terms and conditions of this policy shall also be the basis for possible disciplinary action.

5.8 Proper Application of the Policy: The City is dedicated to assuring fair and equitable application of this substance abuse policy. By City authority, employees who violate this policy may be subject to disciplinary action, up to and including termination. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, could be subject to disciplinary action, up to and including termination.

## 6.0 TESTING PROCEDURES

Testing shall be conducted in a manner so as to assure a high degree of accuracy and reliability and using techniques, equipment and laboratory facilities which have been approved by the U. S. Department of Health and Human Services (DHHS). All testing will be conducted consistent with the procedures put forth in 49 CFR, Part 40, as amended.

*Drug Testing Procedures*: Testing shall be done for any substance required by 49 CFR Part 40 or the Federal Motor Carriers Safety Administration (FMCSA); or those who are required to hold a Commercial Driver's License due to their employment. Drug testing is done by analyzing a urine sample, collected in a private location. Urine samples are divided into two containers by the collection site person- in the employee's presence. These two samples, called "primary" and "split" are sent to a testing laboratory certified by DHHS. The testing is a two-stage process. First, a screening test is performed. If it is positive for one or more of the drugs, then a confirmation test is performed for each identified drug using state-of-the-art gas chromatography/mass spectrometry (GC/MS) analysis. GC/MS confirmation ensures that over-the-counter medications or preparations are not reported as positive results.

All drug test results are reviewed and interpreted by a physician (Medical Review Officer or MRO) before they are reported to the employer. If the laboratory reports a positive result to the MRO, the MRO contacts the employee (in person or by telephone) and conducts an interview to determine if there is an alternative medical explanation for the drugs found in the employee's urine specimen. For all the drugs except PCP, there are some limited, legitimate medical uses that may explain the positive test result. If the employee provides appropriate documentation and the MRO determines that it is legitimate medical use of the prohibited drug, the drug test result is reported as negative to the employer. After being notified of a positive test result, the employee has 72 hours to request a test of the "split" specimen, which will then be sent to another DHHS-certified lab for testing.

*Alcohol Testing Procedure*: Tests for breath alcohol concentration shall be conducted using an evidential breath testing (EBT) device approved by the National Highway Traffic Safety Administration (NHTSA), operated by a trained Breath Alcohol Technician (BAT). Two breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a "negative" test. If the alcohol concentration is 0.02 or greater, a second confirmation test must be conducted. The employee and the individual conducting the breath test complete the alcohol testing form to ensure that the results are properly recorded. The confirmation test, if required, must be conducted using an EBT that prints out the results, date and time, a sequential test number, and the name and serial number of the EBT to ensure the reliability of the results. The confirmation test results determine any

actions taken. By City authority, an alcohol concentration of 0.02 or greater will be considered a positive alcohol test.

6.1 Confidentiality of Test Results: The City of The Dalles affirms the need to protect individual dignity, privacy and confidentiality throughout the testing process. The City recognizes that drug and alcohol concerns are sensitive in nature. Employees should also understand that some discussion of positive test results, dependency problems and rehabilitation concerns are of vital importance to certain people inside and outside the City and may be necessary. All results of drug and alcohol testing will be submitted to the City under the supervision of the City Manager who shall act as custodian of al screening information. All records will be maintained in a separate, secure medical file in City Hall. The City Manager, and persons designated by the Manager, shall receive notification of test results and have access to records. Except as required by law, no records shall be released to anyone other than the employee and authorized City representatives without the employee's written consent.

6.2 Employee-Requested Testing: Any employee, who questions the results of a required drug test under Sections 6.3 through 6.6 and 7.4 of this policy, may request that an additional test be conducted. This test must be conducted at a different DHHS-certified laboratory. The test must be conducted on the split sample retained from the original specimen. All costs for such testing are paid by the employee, unless the result of the split sample invalidates the result of the original test. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR, Part 40, as amended. The employees' request for a split-sample test must be made to the Medical Review Officer (MRO) within 72 hours of notice of the original sample verified test result. Request after 72 hours will only be accepted if the delay was due to documentable circumstances that were beyond the control of the employee.

6.3 Pre-Employment Testing: After an individual has been offered a safety-sensitive position listed in Attachment D, but immediately before the individual performs the safety-sensitive function for the first time, the individual will be required to submit to and pass a urine drug test as a condition of employment. Receipt by the City of a negative drug test is required prior to employment. This requirement applies to employees who are otherwise eligible for promotion or transfer into safety-sensitive positions which are listed in Attachment D. By City authority, failure of a pre-employment drug test will disqualify an applicant for employment for a period of 120 days, and will also disqualify an employee from being eligible for promotion or transfer into a safety-sensitive position. The inability of an applicant or an employee to provide an adequate specimen for a pre-employment drug test will also be considered a failure of the test. Evidence of the absence of drug dependency from a SAP that meets with the approval of the City and negative pre-employment drug test will be required prior to further consideration for employment. The cost for the assessment and any subsequent treatment will be the sole responsibility of the individual.

All applicants for a position with the City Police Department shall undergo drug testing immediately following the offer of employment or transfer into another department position. Receipt by the City of a negative drug test result is required prior to employment.

6.4 Reasonable Suspicion Testing: All employees shall be subject to a fitness for duty evaluation, and urine and/or breath testing when there are reasons to believe that drug or alcohol use is adversely affecting job performance. Reasonable suspicion referrals must be made by a supervisor who has received training to detect the signs and symptoms of drug and alcohol use and who reasonably concludes that the employee may be adversely affected

or impaired in performance due to drug or alcohol use. The determination that reasonable suspicion exists to require alcohol or controlled substances testing must be based on specific, contemporaneous, articulable observation concerning the appearance, behavior, speech or body odors of the employee. If an alcohol test is not administered within two (2) hours following determination of reasonable suspicion, a record must be prepared and maintained on file stating why the test was not promptly administered. If the test is not administered within eight (8) hours, attempts to test shall be ceased and the reason for not administering the test added to the record. A written record shall be made of the observations leading to an alcohol or controlled substance reasonable suspicion test, and signed by the supervisor or City official who made the observations. This must be done within 24 hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier. Observations may include indications of the chronic and withdrawal effects of controlled substances.

6.5 Post-Accident Testing: Employees shall be required to undergo drug and alcohol testing if they are involved in an accident with a City of The Dalles vehicle that results in a fatality. A written record must be prepared and maintained on file stating (1) why an alcohol test was not administered within 2 hours of the accident; (2) why an alcohol test was not possible within the 8 hour limit; and (3) why a drug test was not administered within 32 hours. This includes all surviving employees who are on duty and in the vehicle(s) involved in the accident, and any other employees whose performance could have contributed to the accident.

For all other Incidents resulting in injury or property damage, the affected employee's supervisor must determine whether or not a drug/alcohol test is warranted by completing the Post Accident Supervisor Checklist found in Appendix A of the Citywide Incident Reporting/Analysis Policy. This checklist lays out a set of objective criteria by which an employee will be evaluated to determine potential intoxication. Only if after evaluating the employee, the supervisor determines that the employee is potentially intoxicated, the employee will be escorted to the testing facility to undergo testing.

For Incidents that do not result in injury or property damage, supervisors should adhere to the reasonable suspicion testing procedure outlined in provision 6.4 of this Policy.

6.6 Random Testing: Employees listed on Attachment B shall also be subject to random, unannounced testing. The selection of employees for random drug and alcohol testing shall be made using a scientifically-valid method that ensures that each covered employee shall have an equal chance of being selected each time selections are made.

## 7.0 POSITIVE TEST RESULTS

7.1 Employee Placed on Leave: Upon receipt of a positive drug or alcohol test result, the employee shall be placed on leave pending possible discharge. By City authority, such leave shall be without pay, unless the employee chooses to use accumulated compensatory or vacation time. The purpose of the leave shall be to provide an opportunity for a second test, as provided in Section 6.2 hereof, to consult with a SAP, if desired, and when applicable, to enter into a return-to-work agreement.

7.2 Second Test: By City authority, if a second drug test is conducted on the split sample and if the results are negative, the employee shall be reinstated in his or her job without loss of seniority, and without loss of pay or benefits for the period of the leave. If the second test is negative, any time charged to vacation or to the employee's compensatory time account shall be reinstated.

7.3 Referral to a Substance Abuse Professional: When the employee is placed on leave, he or she shall also be encouraged to consult with a City-approved SAP. The cost of such consultation shall be paid by the employee (unless covered by medical insurance). The purpose of such consultation shall be to determine whether or not the positive drug or alcohol test was the result of the employee's addiction to alcohol or drugs. The City shall maintain a listing of currently approved SAP's and shall also provide any available information as to whether or not the SAP is approved for insurance carrier coverage of the cost of their services.

7.4 Return-to-Work Agreement: If the SAP's evaluation of the employee indicates the presence of an addiction to drugs and/or alcohol, and if the employee is willing to make a commitment to complete a treatment program specifically designed to address his or her needs, the City and the employee may enter into a return-to-work agreement whereby the employee will be allowed to return to City employment, when he or she successfully completes that portion of the treatment plan which is required prior to a return to work.

By City authority, only by being offered, accepting and performing in accordance with the terms of a return-to-work agreement will an employee who has tested positive for drugs or alcohol avoid discharge. Upon return to work following treatment for drug and/or alcohol addiction, any employee who fails to continue to conform to all remaining applicable terms and conditions of the return-to-work agreement, or who tests positive in a subsequent drug or alcohol test, will be subject to discharge.

In addition to the drug and alcohol testing applicable to all employees covered by this Policy, an employee who is subject to a return-to-work agreement shall undergo drug and/or alcohol testing upon returning to work, and shall be subject to unannounced follow-up drug and/or alcohol testing. The number and frequency of such follow-up testing shall be as directed by the Substance Abuse Professional, but shall consist of at least six (6) tests in the first twelve (12) months following the employee's return to duty. The requirement for follow-up testing may extend for up to 60 months from the employee's return to duty.

## 8.0 PAYMENT OF PROGRAM COSTS

The City will pay for all drug and alcohol testing conducted under the provisions of 6.3, 6.4, 6.5, and 6.6 of this Policy. Hourly employees shall be paid for all time required for traveling to the testing site, conducting the test and/or rendering the sample, and returning from the testing site at their regular straight time or overtime rate as applicable. The time required for job applicant testing shall not be paid unless the applicant is a City employee at the time of the test.

Employee-requested testing shall be paid for by the employee, as provided for in part 6.2 of this Policy.

The cost of all drug and alcohol testing required pursuant to a return-to-work agreement shall be paid by the City and all time associated with such testing shall not be compensated. A return-to-work agreement can provide the employee shall be responsible for paying the portion of the treatment program costs not covered by medical or other insurance, provided those treatment costs are reasonable in relationship to the employee's ability to pay.

## 9.0 INFORMATION RESOURCES

The following additional information is attached to this Policy and procedures.

Attachment A: Glossary of Terms
Attachment B: Random Testing Program Application
Attachment C: Warning Signs of Substance Abuse/Addiction

Attachment D: Positions Subject to Pre-Employment Testing

Information on this Policy and associated procedures is available from:

Safety Officer
City Hall
(541) 296-5481 x1128

Human Resources Director
City Hall
(541) 296-5481 x4448

Questions may also be addressed directly to the City's drug and alcohol testing management service:

BIO-MED Testing Service
(503) 585-6654

## 10.0 TERMINATION/SAVINGS CLAUSE

10.1 Savings: If any court with jurisdiction over the City of The Dalles determines that any portion of 49 CFR 382 is unlawful and unenforceable, and the Department is no longer obligated to comply with that portion of 49 CFR 382, the comparable provision of this Policy and procedures shall be terminated. Upon the issuance of such a decision, the Department may develop a substitute provision for the terminated provision in the same manner as this Policy and procedure was developed. Any provision of this Policy and procedures which is not directly based on the portion of 49 CFR 382 affected by the determination of the court shall remain in full force and effect.

10.2 Certificate of Receipt: As a condition of employment, each employee subject to the requirements of this Policy and procedures is required to sign the attached statement certifying that he/she has received a copy of the Policy and procedures. The original of the signed certificate will be maintained in the employee's official personnel file. Upon request, the employee shall be provided a copy of the signed certificate for his/her personal records.

10.3 Effective Date: In order for the City to comply with the Federal Highway Administration regulations, the original version of this Policy was signed into effect on a provisional basis by Margaret M. Renard, City Manager, on December 20, 1995, with an effective date of January 1, 1996.

Signed this 10 day of March, 2020.

Julie Krueger, City Manager

Attachment A

GLOSSARY OF TERMS

**BAC** Blood Alcohol Content

**BAT** Breath Alcohol Technician

**CDL** Commercial Driver's License

**CFR** Code of Federal Regulations

**DHHS** US Department of Health and Human Services

**DOT** Department of Transportation

**EBT** Evidential Breath Testing

**FHWA** Federal Highway Administration

**FTA** Federal Transit Administration

**GC/MS** Gas Chromatography - Mass Spectrometry

**MRO** Medical Review Officer

**NHTSA** National Highway Traffic Safety Administration

**RWA** Return-to-Work Agreement

**SAM/HSA** Substance Abuse & Mental Health Services Administration

**SAP** Substance Abuse Professional

Attachment B

RANDOM TESTING PROGRAM APPLICATION

## Safety Sensitive

Water Quality Manager
Regulatory Compliance Manager
Water Treatment Operators
Water Treatment Operators in Training
Water and Sewer Lab Technician
City Engineer Project Engineer
Engineer in Training
Community Development Inspector
General Fund Maintenance Worker

## Commercial Driver's License

Transportation Manager
Equipment Operators
Certified Mechanics
Waste Water Collection Operators
Waste Water Collection Operators in Training
Water Distribution Operators
Water Distribution Operators in Training
Public Works Maintenance Worker

Attachment C

# WARNING SIGNS OF SUBSTANCE ABUSE/ADDICTION

Substance abuse or dependence can be difficult to identify. Typically, it is surrounded by avoidance and denial. There is no single, clear test to assess abuse or dependence.

If a person is abusing or is dependent on any mood altering substance, you will observe several of the following symptoms:

- Increased sick leave
- Leaving work early/arriving late
- Frequent, unscheduled absences
- Escalated conflicts (work or home)
- Physical/verbal abusiveness
- Excessive amount of personal telephone time
- Mood swings, high and low
- Alternate periods of high and low productivity
- Borrowing money/financial problems
- Over-reaction to criticism
- Increased irritability
- Temper outbursts/argumentativeness
- Fatigue/lethargy
- Increased accidents on the job
- Withdrawal from co-workers

These are hallmark symptoms of substance abuse. If there is a pattern of these symptoms at work or at home, a professional evaluation can determine if substance abuse/dependence is present.

Problems associated with substance abuse/dependence are complex. Various types of treatment are appropriate, depending on the severity and longevity of abuse or dependence.

Employee Assistance Program

The Employee Assistance Program is available to eligible City employees and their immediate family members in order to determine if a substance abuse problem exists and, if so, what type of intervention and treatment will be most helpful.

To contact the Employee Assistance Program: Call EASE, Inc. at
(503) 228-3223 or (800) 654-9778

Attachment D

POSITIONS SUBJECT TO PRE-EMPLOYMENT TESTING

## Safety Sensitive

Water Quality Manager
Regulatory Compliance Manager
Water Treatment Operators
Water Treatment Operators in Training
Water and Sewer Lab Technician
City Engineer Project Engineer
Engineer in Training
Community Development Inspector
General Fund Maintenance Worker

## Commercial Driver's License

Transportation Manager
Equipment Operators
Certified Mechanics
Waste Water Collection Operators
Waste Water Collection Operators in Training
Water Distribution Operators
Water Distribution Operators in Training
Public Works Maintenance Worker

Note: All positions requiring a CDL are "safety sensitive" as defined by Title 49 of the Code of Federal Regulations

**CITY of THE DALLES**
313 COURT STREET
THE DALLES, OREGON 97058

Administrative Policy: **DRUG/ALCOHOL SCREENING FOR EMERGENCY HIRES**

**Number: 2000-02**
**Effective Date: September 1, 2000**

## 1.0 PURPOSE

The purpose of this directive is to establish a policy related to the drug/alcohol screening of temporary employees hired under emergency situations.

## 2.0 SCOPE

It should be the policy of the City of The Dalles to allow the hiring of temporary City employees under certain conditions with retroactive drug/alcohol screening.

## 3.0 POLICY

The City's current drug/alcohol policy requires that all new hires satisfactorily pass a drug/alcohol screening, prior to appointment by the City. This includes all probationary, regular, part-time and temporary positions. This policy will allow for the immediate hiring of individuals, under certain circumstances where drug/alcohol screening results will be applied retroactively.

## 4.0 SPECIAL CONDITIONS

A. Employees may be hired without the City completing a drug/alcohol screening, only if the following conditions exist:

   1. There is a threat to life, property, or a disruption of essential services to the City if the position is not filled immediately.

   2. There will be a substantial financial loss or disruption of normal operating procedures if the position is not filled reasonably soon.

B. The conditions above cannot be the results of inadequate planning. It must be the result of unforeseen circumstances, such as an emergency need or unforeseen loss of regular personnel during a critical time.

C. No permanent employee may be appointed under this provision. This is to be used only for temporary employees.

D. Under this policy the following efforts/provisions must be made prior to hiring a temporary employee without completing the pre employment drug/alcohol screening:

1. At the earliest possible date, a specimen sample for drug/alcohol screening purposes shall be obtained, preferably prior to the employee beginning work. The results of the drug/alcohol screening should be requested as expediently as possible.

2. If any employee hired under the provision of this policy is identified positive for drug/alcohol use through the required drug screening, the employee shall be terminated immediately.

## 5.0 AUTHORIZATION REQUIRED

This policy is only for use under the authorization of the City Manager, or in the absence of the City Manager the Acting City Manager (City Attorney). If significant efforts have been made to reach the City Manager without success, then efforts should be made to reach the City Attorney. If those efforts are also unsuccessful, the department head may then proceed with proper notification given to the City Manager at all reasonable message locations, i.e., e-mail, voice mail message, or mail locations. All such appointments are to clearly state that unsuccessful passing of the drug/alcohol screening shall be terminated. Nonconcurrence of an emergency situation as determined by the City Manager, could result in termination of the temporary appointment.

## 6.0 ASSIGNMENT

Temporary employees who have not successfully completed a pre employment drug/alcohol screening should whenever possible be assigned to work activities with minimum safety risk.

## 7.0 DISTRIBUTION

Distribution is to occur to all department managers with hiring authority and the City Attorney.

Nolan K Young — 8-17-05

Nolan K. Young, City Manager — Date

CITY of THE DALLES
HUMAN RESOURCES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481 x4448
FAX (541) 296-6906

# TOBACCO USE POLICY

## I. PURPOSE

This policy repeals and replaces the previous Tobacco Policy and Variance dated July, 27, 2000. The purpose of this policy is to establish personnel responsibilities as it relates to tobacco use on City owned property and in City owned vehicles. It is further the purpose of this policy to be consistent with Oregon State Law (ORS 433.835 to 433.875 and 433.990(5)).

## II. SCOPE

This policy covers tobacco use on City owned property, including vehicles and equipment that are designed to allow more than one-person occupancy at one time, and single occupant vehicles with an enclosed cab.

## III. POLICY

It is the policy of the City of The Dalles to provide a workplace that is as safe as possible. To that end, smoking tobacco in any City owned facility, vehicle or equipment designed to accommodate more than one person at one time, and single occupant vehicle with an enclosed cab is prohibited. Smoking tobacco is allowed outdoors, in designated areas, or areas more than ten-feet from any public entrance, exit, window that opens, and ventilation intake to a City owned facility, and in single occupant vehicles with an open cab design.

Smokeless tobacco may be used on City property, provided the using employee disposes of spit and used tobacco in a sealed container. Employees who use smokeless tobacco are responsible for maintaining a clean workspace free of smokeless tobacco or remnants of its use.

## IV. VIOLATION

Employees who violate this policy are subject to disciplinary action and potential action by the Oregon Health Authority. Any employee who becomes subject to the Oregon Health Authority by violation of this policy shall be personally liable for all costs associated with the act and any penalty.

Julie Krueger, City Manager

4-23-18
Date

ORIGINAL COPY

# CITY OF THE DALLES POLICE DEPARTMENT

# DRUG AND ALCOHOL POLICY AND TESTING PROCEDURES

## 1.0 PURPOSE

As an employer, the City of The Dalles has a responsibility to its employees, to those who use its services, and to the general public to ensure safe operating and working conditions. The use of intoxicants, including drugs and alcohol, whether on or off the job, may constitute a serious threat to the health and safety of the public, to the safety of the fellow officers, and to efficient operation of the Police Department. To satisfy these responsibilities, the City expects to have a work environment where employees are completely free from the effects of drugs, alcohol, or other impairing substances which are capable of impairing the judgment of an employee. Employees are expected to report to work in a condition to perform their duties in a safe, effective and efficient manner. At all times, both on and off duty, members of the Police Department are expected to abide by the laws of the United States, the State of Oregon, other states they enter, as well as any local laws, regulations or ordinances. An employee's "privacy" right or right to a "personal life" does not mean that the employee has the "right" to violate the laws this Department is responsible for upholding or otherwise endanger himself/herself or his/her coworkers by working under the influence of intoxicants. Violations of this policy may result in discipline, up to and including immediate termination.

The City recognizes each individual's value and contribution to the services it provides to the public. Due to concern for the safety and welfare of its employees, this policy also provides for assistance to employees who wish to overcome an alcohol or drug dependency problem, and the City's health insurance program and Employee Assistance Program may be available to assist employees and their families in these situations. Employees suffering from alcohol and/or drug dependency or abuse are encouraged to seek substance abuse counseling and rehabilitation through the employee assistance program or health plan providers. All treatment information is confidential. The employee's voluntary disclosure of treatment will not be the impetus for disciplinary action. However, such voluntary disclosure will not absolve the employee from discipline if disclosed after the testing or discipline process has commenced, nor will it prevent the employee from being disciplined for any conduct which is discovered to have violated this policy, including, but not limited to, unlawfully buying, selling, manufacturing, cultivating, transporting, possessing, dispensing or using intoxicants or any controlled substances at any time, whether on or off the job.

## 2.0 PROGRAM APPLICATION

This Policy shall apply to all employees of the Police Department. Prior City policies in this area are repealed to the extent they applied to employees of the Police Department.

## 3.0 DEFINITIONS

3.1 **Drug and Alcohol Test:** The compulsory production and submission of urine, breath or blood by an employee for chemical analysis to detect intoxicants.

3.2 **Controlled Substances:** Are defined as all forms of narcotics, depressants, stimulants, hallucinogens and cannabis, whose sale, purchase, transfer, use or possession is prohibited or restricted by law.

Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) and as further defined by 21 CFR 1300.11 through 1300.15, identify such substances.

3.3 **Intoxicants:** Any alcohol, controlled substance, over-the-counter drug, prescription drug, or other impairing substance.

3.4 **Over-The-Counter Drugs:** Are those which are generally available without a prescription from a medical doctor and are limited to those drugs which are capable of impairing the judgment of an employee to safely perform his or her duties. It is the employee's responsibility to determine whether or not any particular over-the-counter drug is safe for use.

3.5 **Prescription Drugs:** Are defined as those drugs which are used in the course of medical treatment and have been prescribed and authorized for use by a licensed practitioner, physician or dentist.

3.6 **Reasonable Suspicion:** That quantity of proof or evidence that is more than a hunch, but less than probable cause. Reasonable suspicion must be based on specific factual and articulable observations concerning the work performance, appearance, behavior, objective facts, and derived inferences from these facts about the conduct of an individual that would lead the reasonable person to suspect that the individual is or has been using drugs or alcohol while on or off duty.

3.7 **Substance Abuse Professional:** Is any licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

## 4.0 EDUCATION AND TRAINING

4.1 **Employee Education:** Employees will be furnished with educational materials that explain the requirements of this Drug and Alcohol Policy. Employees will be required to sign a form acknowledging receipt of this information. Employees hired for or transferred into an applicable job position will receive specific information on the topics listed above and be required to sign a form acknowledging receipt of this information.

4.2 **Reasonable Suspicion Training:** Anyone who may be required to make "reasonable suspicion" determinations must have training on standardized field sobriety testing which

qualifies them to recognize the physical, behavioral, speech and performance indicators of probable alcohol and controlled substance use.

## 5.0 PROCEDURES AND RULES

**5.1 Prohibited Conduct:** Except as authorized by office policy for job-related reasons (such as an officer in an undercover assignment), the following conduct is strictly prohibited and may subject an employee to immediate discipline, up to and including immediate discharge:

A. Unlawful buying, selling, manufacturing, cultivating, transporting, possessing, dispensing or using intoxicants or any controlled substances at any time, whether on or off the job.

B. Reporting for normally assigned work with a detectable odor of alcohol on the breath, any detectable amount of alcohol in the body (as validated by a second test) which results from the consumption of intoxicants, or when an employee has a detectable amount of any intoxicant or controlled substance found in employee's body (but excluding any substance lawfully prescribed for the employee's use if used in accordance with Section 5.3 of this policy).

C. Using any prescription drug at a time or in a manner not specifically called for by the prescribing physician. In addition, failing to advise the prescribing physician of the fact that he or she is subject to a drug testing policy, and seeking assurance from the prescribing physician that the substance in question may be taken without violation of this policy.

D. Failing to notify the shift supervisor of intoxicants which they know, or reasonably should know, might impair their ability to operate vehicles, safely use firearms and other equipment, or lawfully and safely carry out their duties and responsibilities, as prescribed in Section 5.5 below.

E. Failing to notify the shift supervisor of an employee's arrest, citation, or charges which allege unlawful buying, selling, manufacturing, cultivating, transporting, possessing, dispensing or using intoxicants or any controlled substances.

**5.2 Searches:** By City authority, the City shall have the right to conduct searches and inspections of any and all City owned, leased or controlled facilities, properties, vehicles and equipment. This shall include the right to search or inspect City-owned, leased or controlled desks, lockers, file cabinets, vehicles and the like, which are assigned to and normally subject to the exclusive use and control of a single employee. The City may also search or inspect any object, including but not limited to vehicles, briefcases and lunch boxes, brought onto City owned, leased or controlled properties or other City job sites, if there is reasonable suspicion that alcohol or a controlled substance will be found. Refusal by the employee to submit to and cooperate with a properly authorized search or inspection shall be cause for disciplinary action.

5.3 **Use of Prescription Drugs:** The use of any prescription drug at a time or in a manner not specifically called for by the prescribing physician is prohibited. In addition, when a prescription is obtained, the employee shall advise the prescribing physician of the fact that he or she is subject to a drug testing policy, and seek assurance from the prescribing physician that the substance in question may be taken without violation of this policy.

5.4 **Off-Duty Consumption of Intoxicants:** All employees shall report to work, at all times, free of intoxicants and in no event will the employee consume any kind of alcoholic beverage within four (4) hours of his or her scheduled reporting time for work, while on duty, or during any break, meal, rest period or other interruption of work. When an employee is placed on standby for possible call out, he or she shall consume no intoxicant for the duration of such standby period. It is the responsibility of the employee to ensure that any medication, mouthwash, food, candy or other substances that he or she consumes prior to work and while on the job does not contain intoxicants.

5.5 **Notification of Impairment Prior to Duty:** Employees are required to notify the shift supervisor prior to reporting for duty when they have taken prescription medications, over-the counter drugs, alcohol or other intoxicants which they know, or reasonably should know, might impair their ability to operate vehicles, safely use firearms and other equipment, or lawfully and safely carry out their duties and responsibilities. The City does not request the name of the medicine or the condition for which it is prescribed, only notification of relevant warnings or concerns of impairment.

5.6 **Notification of Intoxicant-Related Arrest:** By City authority, an employee who is arrested, cited, or otherwise served with charges which allege the unlawful buying, selling, manufacturing, cultivating, transporting, possessing dispensing or using of intoxicants or any controlled substance, shall immediately notify his or her shift supervisor of the arrest, citation or service of the charges. Such arrest, citation or service of charges shall not in or of itself serve as the basis for disciplinary action against the employee. The City may, however, conduct its own investigation of the incident in question and may initiate disciplinary action based on the findings of that investigation. In addition, any such arrest, citation or service of charges shall give the City the right to conduct reasonable suspicion testing under 6.2 of this policy and/or refer the employee to a Substance Abuse Professional (SAP) for an evaluation.

5.7 **Compliance with Policy:** Any employee who refuses to comply with a properly requested drug or alcohol test or to provide notifications required under this policy shall immediately be removed from duty and shall be subject to discharge, by City authority. Refusal can include, but is not limited to, an inability to provide a sufficient urine specimen or breath or blood sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test. By City authority, any employee who is suspected or found to have provided false information in connection with a test, falsified results through tampering, contaminating, adulterating, or substituting, will be required to undergo an additional observed collection, and may be subject to disciplinary action up to and including discharge. Violations of other terms and conditions of this policy shall also be the basis for possible disciplinary action.

5.8 **Proper Application of the Policy:** The City is dedicated to assuring fair and equitable application of this substance abuse policy. By City authority, employees who violate this policy may be subject to disciplinary action, up to and including termination. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, could be subject to disciplinary action, up to and including termination.

## 6.0 TESTING PROCEDURES

6.1 **Testing Mechanisms:** The following testing mechanisms shall be used for any test for intoxicants or controlled substances performed on members of the Department.

A. Any urine screening shall be performed by the use of Gas Chromatography/Mass Spectrometry (GC/MS) or such other test with a higher rate of reliability than the GC/MS test.

B. Alcohol testing may include standard field sobriety tests, breath test and/or standard laboratory urine or blood sample tests.

6.2 **Grounds for Testing:**

A. **Pre-Employment Testing**: All applicants shall undergo drug testing immediately following the offer of employment or transfer into another Department position. Receipt by the City of a negative drug test result is required prior to employment. Evidence of the absence of drug dependency from a SAP that meets with the approval of the City and negative pre-employment drug test will be required prior to further consideration for employment. The cost for the assessment and any subsequent treatment will be the sole responsibility of the individual.

B. **Reasonable Suspicion Testing:** All employees shall be subject to a fitness for duty evaluation, and drug testing when there is reasonable suspicion to believe that drug or alcohol use is adversely affecting job performance. Reasonable suspicion referrals must be made by someone who has received training to detect the signs and symptoms of drug and alcohol use and who reasonably concludes that the employee may be adversely affected or impaired in performance due to drug or alcohol use. The determination that reasonable suspicion exists to require alcohol or controlled substances testing must be based on specific, contemporaneous, articulable observation concerning the appearance, behavior, speech or body odors of the employee. A written record shall be made of the observations leading to an alcohol or controlled substance reasonable suspicion test, and signed by the individual who made the observations. This must be done within 24 hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier. Observations may include indications of the chronic and withdrawal effects of controlled substances.

C. **Post-Accident Testing:** Employees shall be required to undergo drug and alcohol testing if they are involved in an accident with a City of The Dalles vehicle that results in a fatality. This includes all surviving employees who are on duty and in the vehicle(s) involved in the accident, and any other employees whose performance could have contributed to the accident. In addition, post-accident drug and alcohol testing will be conducted for any employee who receives a citation under state or local law for a moving traffic violation as a result of an accident, or if the City determines that there is probable cause to believe that the actions of the employee(s) involved materially contributed to the accident.

Employees involved in an accident must refrain from alcohol use for eight (8) hours following the accident or until they undergo a post-accident alcohol test. Employees who leave the scene of the accident without justifiable explanation prior to submission to drug and alcohol testing shall be considered to have refused the test

D. **Random Testing:** Random testing of any kind is prohibited, unless pursuant to a last chance agreement entered between the City and the employee.

6.3 **Procedures to be Used When a Blood or Urine Sample is Given**: Each step in the collecting and processing of the urine or blood specimens shall be documented to establish procedural integrity and a chain of custody. The following procedure shall be used whenever an employee is requested to give a blood or urine sample:

A. Prior to testing, the employee will be required to list all prescribed medications, controlled substances, and/or over the counter medication currently being used. Prescribed medications or controlled substances listed must be substantiated by written communication from the attending physician.

B. Immediately after the sample is given, it will be divided into two (2) equal parts. Each of the two (2) portions of the sample will be separately sealed, labeled and stored in a secure and refrigerated atmosphere. One (1) of the samples will be tested by a lab designated by the City. The other sample will be held by such lab for the employee, until the employee either instructs that it be sent to their designated lab or destroyed.

C. Testing shall be conducted in a manner so as to assure a high degree of accuracy and reliability and using techniques, equipment and laboratory facilities which have been approved by the U. S. Department of Health and Human Services (DHHS). The test shall be administered in such a matter as to protect the authenticity and reliability of the sample and the privacy of the individual.

D. The testing is a two-stage process. First, a screening test is performed using any of the screening procedure set forth in Section 6.1 of this Policy. If it is positive for one or more of the drugs, then a confirmation test is performed for each identified drug using state-of-the-art gas chromatography/mass spectrometry (GC/MS) analysis. GC/MS confirmation ensures that over-the-counter medications or preparations are not reported as positive results.

E. If the test is positive for the presence of any intoxicants or controlled substances, the employee will be notified of the positive results within 24 hours after the City learns of the results, and will be provided with copies of all documents pertinent to the test sent to or from the City by the laboratory. The employee will then have the option, at his or her own expense, of having the untested sample submitted to a laboratory of the employee's own choosing which meets the standards specified in Section 6.3 of this Article. The employee has 72 hours after being notified of a positive test result to request a test of the "split" specimen, which will then be sent to another DHHS-certified lab for testing.

6.4 **Confidentiality of Test Results:** The City of The Dalles affirms the need to protect individual dignity, privacy and confidentiality throughout the testing process. The City recognizes that drug and alcohol concerns are sensitive in nature. Employees should also understand that some discussion of positive test results, dependency problems and rehabilitation concerns are of vital importance to certain people inside and outside the City and may be necessary. All results of drug and alcohol testing will be submitted to the City under the supervision of the City Manager who shall act as custodian of all screening information. All records will be maintained in a separate, secure medical file in City Hall. The City Manager, and persons designated by the Manager, shall receive notification of test results and have access to records. Except as required by law, no records shall be released to anyone other than the employee and authorized City representatives without the employee's written consent.

## 7.0 POSITIVE TEST RESULTS

7.1 **Employee Placed on Leave**: Upon receipt of a positive drug or alcohol test result, the employee shall be placed on leave pending possible discharge. By City authority, such leave shall be without pay, unless the employee chooses to use accumulated compensatory or vacation time. The City will credit any leave the employee was required to burn out of his/her account, if a follow-up test results in a negative finding. The purpose of the leave shall be to provide an opportunity for a second test, as provided in Section 6.3 hereof, to consult with a SAP, if desired, and when applicable, to enter into a return-to-work agreement.

7.2 **Second Test:** If a second drug test is conducted on the split sample and if the results are negative, the employee shall be reinstated in his or her job without loss of seniority, and without loss of pay or benefits for the period of the leave. If the second test is negative, any time charged to vacation or to the employee's compensatory time account shall be reinstated.

7.3 **Referral to a Substance Abuse Professional**: When the employee is placed on leave, he or she shall also be encouraged to consult with a City-approved SAP. Unless requested by the City, in which case the cost shall be paid by the City, the cost of any consultation shall be paid by the employee, or covered by medical insurance. The purpose of such consultation shall be to determine whether or not the positive drug or alcohol test was the result of the employee's addiction to alcohol or drugs. The City shall maintain a listing of currently approved SAP's and shall also provide any available information as to

whether or not the SAP is approved for insurance carrier coverage of the cost of their services. The City shall have access to all information developed from examinations and consultations for which it pays the cost.

7.4 **Return-to-Work Agreement**: At the sole discretion of the City in situations which do not involve unlawful conduct in violation of this policy, if the SAP's evaluation of the employee indicates the presence of an addiction to drugs and/or alcohol, and if the employee is willing to make a commitment to complete a treatment program specifically designed to address his or her needs, the City and the employee may enter into a return-to-work agreement whereby the employee will be allowed to return to City employment, when he or she successfully completes that portion of the treatment plan which is required prior to a return to work.

Upon return to work following treatment for drug and/or alcohol addiction, any employee who fails to continue to conform to all remaining applicable terms and conditions of the return-to-work agreement, or who tests positive in a subsequent drug or alcohol test, will be subject to discharge.

In addition to the drug and alcohol testing applicable to all employees covered by this Policy, an employee who is subject to a return-to-work agreement shall undergo drug and/or alcohol testing upon returning to work, and shall be subject to unannounced follow-up drug and/or alcohol testing. The number and frequency of such follow-up testing shall be as directed by the Substance Abuse Professional and the City, but shall consist of at least six (6) tests in the first twelve (12) months following the employee's return to duty. The requirement for follow-up testing may extend for up to 60 months from the employee's return to duty.

## 8.0 PAYMENT OF PROGRAM COSTS

The City will pay for the cost of all drug and alcohol testing conducted under the provisions of 6.2 of this Policy. Hourly employees shall be paid for all time required for traveling to the testing site, conducting the test and/or rendering the sample, and returning from the testing site at their regular straight time or overtime rate as applicable. The time required for job applicant testing shall not be paid unless the applicant is a City employee at the time of the test.

Employee-requested testing under Section 6.3(E) of this Policy shall be paid for by the employee.

The cost of all drug and alcohol testing required pursuant to a return-to-work agreement under Section 7.4 of this Policy shall be paid by the employee and all time associated with such testing shall not be compensated. All treatment program costs shall be paid by the employee except as may be reimbursed by medical or other insurance.

## 9.0 INFORMATION RESOURCES

Information on this Policy and associated procedures is available from:

Nolan Young
City Manager
(541) 296-5481, ext. 1118

## 10.0 TERMINATION/SAVINGS CLAUSE

**10.1** **Savings**: If any court with jurisdiction over the City of The Dalles determines that any portion of this Policy is unlawful and unenforceable, the unlawful and unenforceable provision of this Policy shall be terminated, but the provisions of this Policy which are not directly affected by the determination of the court shall remain in full force and effect. Upon the issuance of such a determination, the Department may develop a substitute provision for the terminated provision, subject to any applicable duty to bargain.

**10.2** **Certificate of Receipt**: As a condition of employment, each employee subject to the requirements of this Policy is required to sign the attached statement certifying that he/she has received a copy of the Policy. The original of the signed certificate will be maintained in the employee's official personnel file. Upon request, the employee shall be provided a copy of the signed certificate for his/her personal records.

Signed this 13 day of October, 2003.

Nolan K Young
Nolan K. Young, City Manager

# POLICY CONCERNING MEAL EXPENSES

The following policy is necessary to bring the City into compliance with IRS regulations that govern these issues. Non-compliance with the IRS regulations in these matters creates a liability to both the City and individual employees who may be subject to retroactive taxes and penalties in the event of an IRS compliance audit. Any interpretation of this policy will follow IRS regulations.

A. Meal Expenses not associated with overnight travel.

Meals provided to or purchased by a City employee under the following circumstances are considered to be non-taxable and reimbursable, or are eligible for payment with a City credit card:

- ✓ Meals provided as part of the registration fee for conferences, meetings or training sessions related to City business;
- ✓ Meals purchased when a formal organized meeting related to City business is conducted during that meal period;
- ✓ Meals purchased by a City employee at a meeting, conference or celebration when that employee is representing the City at the event, and such occurrences are infrequent.

B. Meal Expenses associated with overnight travel.

The reasonable cost of meals for a City employee associated with travel away from The Dalles on City business that requires an overnight stay are reimbursable and non-taxable. City credit cards may be used to purchase such meals. Snacks beyond the normal definition of meals, i.e. breakfast, lunch and dinner, will not be reimbursed by the City.

C. Meal Expenses authorized for reimbursement and classified as taxable.

Meals purchased by a City employee under the following circumstances, if authorized for reimbursement by the Department Manager, are considered by the IRS to be taxable, and shall <u>not</u> be purchased with a City credit card:

- ✓ Meals purchased during a conference, meeting or training not associated with an overnight stay, when the participants are released for the meal period and allowed to have their meal where they wish, regardless of the number of meeting attendees or topic of conversation during the meal;
- ✓ Meals purchased while traveling to attend a conference, meeting or training not associated with an overnight stay;
- ✓ Meals purchased during periods of overtime work that are not provided at the employer's premises.

D. Meal Expenses provided in overtime or emergency situations.

Meals which are provided to City employees who are required to perform services outside normal working hours (for example, in the event of an emergency) are not taxable to the employee, and the meal may be provided at the site of the emergency or the job site where the employee is being required to provide services.

E. General Provisions.

Meals that do not fall into the non-taxable categories above, but are related to out of town travel or in town meetings having to do with City business, are eligible for taxable reimbursement through the payroll process with approval of the Department Manager. Such meals may not be purchased with a City credit card. Requests for reimbursement for such meals must be accompanied by a receipt for the purchase and a taxable reimbursement request form, signed by the Department Manager, must be attached to the employee's time sheet. Approved reimbursements of this type will be paid through the regular payroll cycle.

**NOTE**: In order to comply with IRS Accountability Plan rules, receipts are required for all meals purchased with a City credit card or for reimbursement of all meals purchased by an employee. If an employee chooses not to be reimbursed for expenses, the IRS does not allow the employee to claim the expenses on their personal tax return.

9/11/08
Date

Nolan K Young
Nolan K. Young, City Manager

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

# RESTRICTIONS ON POLITICAL ACTIVITIES BY CITY EMPLOYEES POLICY

**Purpose:** This policy replaces a memorandum on the same subject dated March 14, 2001.

**Scope:** This policy effects all City employees, and appointed members of Boards, Commissions, Committees and Task Forces while they are acting in their official capacity. This policy and its restrictions affect behavior while working, on-duty or while in the commission of official duties of the City. The term "employee" in this policy is that defined in ORS 260.432(5).

**Policy:** No person shall attempt to, or actually coerce, command or require a public employee to influence or give money, service or other thing of value to promote or oppose any political committee or to promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder.

No employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate. No employee shall gather signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours, except when such activities may be a function of their position affecting local initiatives or measures. However, this section does not restrict the right of a public employee to express personal political views.

An employee may be involved in voluntary campaign activity during the employee's personal time. Employees may campaign for or against measures or candidates in their personal, as opposed to official capacity while off the job. If an employee makes public presentations or a speech regarding a proposed initiative measure, while on work time or in their official capacity, the employee must be sure the speech is factual and neutral in its presentation.

An employee violating this policy may be subject to disciplinary action, up to and including termination of employment.

Julie Krueger

Julie Krueger, City Manager

5-25-18

Date

# Restrictions on Political Campaigning by Public Employees - ORS 260.432

*Published by*

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**Secretary of State**

**Elections Division** Rev. 01/2016

# Contents

# Using this Manual

This manual details allowable and restricted activities, consistent with ORS 260.432 and advice from the Attorney General. It is adopted by Oregon administrative rule. Violations of this rule are to be enforced as violations of ORS 260.432. This manual details for public agencies and individuals allowable and restricted activities, consistent with ORS 260.432 and the Attorney General's advice and provides information on the Elections Division prior review process.

## Icons

The following icons are used in this manual to emphasize information:


**alert icon**
indicates alert; warning; attention needed


**info icon**
indicates additional information


**deadline icon**
indicates a deadline


**example icon**
indicates an example


**form icon**
indicates a reference to a form


**search icon**
indicates information located elsewhere

## Assistance

If you have any questions about the material covered in this manual or need further assistance, please contact:

Elections Division
255 Capitol St NE Suite 501
Salem OR 97310

elections.sos@state.or.us
www.oregonvotes.gov

**503 986 1518**
**fax 503 373 7414**

**1 866 673 VOTE/673 8683**
se habla español

**tty 1 800 735 2900**
for the hearing impaired

# Getting Started

An Attorney General letter dated October 5, 1993 states:

> "Public bodies may use public funds to inform voters of facts pertinent to a measure, if the information is not used to lead voters to support or oppose a particular position in the election. However, we also have pointed out that 'informational' material may be found to 'promote or oppose' a measure even if it does not do so in so many words if the information presented to the public clearly favors or opposes the measure and, taken as a whole, clearly is intended to generate votes for or against a measure."

## ORS 260.432 Statutory Provisions

Essentially, public employees may not engage in political activity while on the job. This manual will go into detail about what it means to promote or oppose, and when a public employee is "on the job during work hours." The statute has three specific paragraphs:

ORS 260.432(1) states that a person - including public employers and elected officials - may not require a public employee to promote or oppose any political committee or any initiative, referendum or recall petition, ballot measure or candidate.

ORS 260.432(2) states that public employees (including school administrators, city managers, police chiefs, etc.) may not be involved in **promoting or opposing** any political committee or any initiative, referendum or recall petition, measure or candidate **"while on the job during working hours."**

ORS 260.432(3) states that each public employer must have posted - in all appropriate places where public employees work - a notice about the prohibitions of ORS 260.432. See the final page of this manual for a sample notice.

## When Does 260.432 Apply?

- → for initiative, referendum and recall petition efforts, as soon as a prospective petition is filed with the appropriate elections filing officer (for a statewide initiative, this is the date the sponsorship prospective petition is filed);
- → for a ballot measure referred to the ballot by a governing body (district, city, county, state) as soon as the measure is certified to the ballot. A county, city or district measure is certified to the ballot when the elections official files the referral with the county election office;
- → for a candidate, as soon as the person becomes a candidate under the definition in ORS 260.005(1)(a); and
- → for political committees, whenever the political committee is active.

The prohibition ceases to apply at 8:00 pm on the date of the election at which the candidate, measure, recall or referendum is being voted on. The prohibition ceases to apply to a petition (initiative, referendum or recall) on the date the petition is withdrawn or becomes void.

# Overview of Restrictions and Allowable Activities

Public employees may not use their work time to support or oppose measures, candidates, recalls, political committees or petitions. When this manual refers to engaging in "political activity" or "advocacy", it means only that political activity or advocacy which is restricted by the statute- supporting or opposing measures, candidates, recalls, political committees or petitions. Supporting or opposing political issues which do not fall into any of those categories is not restricted by the statute.

Oregon election law does not specify any amount of work time that may be used before a violation occurs, so a public employee may be found in violation even though they used a minimal amount of work time.

An elected official or any other employer of a public employee may not require or direct public employees to prepare or distribute advocacy materials.

## Who must follow ORS 260.432?

All non-elected public employees are covered by 260.432. Elected officials are covered insofar as they direct other public employees to engage in political activities.

See Candidates and Elected Officials, page 10.

Federal employees, including persons principally employed by state or local executive agencies in connection with programs financed in whole or in part by federal loans or grants, are covered by the federal Hatch Act, which is administered by the U.S. Office of Special Counsel.

## Appointed Board Members and Commissioners

ORS 260.432 applies to appointed board and commission members when they are acting in their official capacity. Appointed board or commission members are acting in their official capacity when they are at a meeting of the board or commission, working on a duty assigned by the board or commission, working on official publications (including website materials) for the board or commission, or when appearing at an event in an official capacity.

Appointed board or commission members may use their titles to engage in political advocacy (including endorsing candidates, measures, etc.) as long as they are not acting in an official capacity when authorizing use of their title.

(ex) On personal time, a candidate approaches a planning commission board member and asks for their endorsement. The candidate asks if they can use the board member's title, and the board member agrees. This is allowable.

(ex) Example: A candidate, attending a planning commission meeting, asks the board members for an endorsement and some board members agree. This is not allowable, because the board members are at a meeting and therefore acting in an official capacity.

(Q) See Use of Public Employee Title on page 11 for more information.

## Salaried and Hourly Employees: What is "On the Job"?

Salaried employees' work time is not as easily measured as hourly workers. If the work performed falls generally within the job duties of the public employee, the work is performed in an official capacity regardless of the time of day or location.

If a salaried employee applies for expense reimbursement for a function, they are considered on the job.

A regular workday may not be definable for a position, or may not have a specific time period. It is based on the activities and whether the person is acting, or appears to be acting, in an official capacity.

Personal note-keeping by salaried employees to record when the employee is on or off duty is suggested. During public appearances, the employee is encouraged to specifically announce to the audience that the employee is not acting in his or her official capacity if they are engaging in political advocacy. Such an announcement would not negate a subsequent statement or action that indicates the public employee is acting in his or her official capacity (such as handing out official publications, or speaking on behalf of the jurisdiction).

(ex) If a salaried police officer attends a meeting about a bond measure on his own time (i.e. while not "on duty") and advocates for the measure, he should announce to the audience that he is there in his capacity as a citizen, and is not representing the police department.

However, if the police officer went on to hand out official publications from the jurisdiction, the police officer would be acting in his or her official capacity (despite their previous announcement) and would be subject to the requirements of ORS 260.432.

(ex) A school superintendent is acting in his or her official capacity at all school board meetings and school functions.

→ A salaried public employee may be acting in his or her official capacity even when using personal equipment and personal time, if the activity is related to work duties.

ex A public employee who, on their own computer on the weekend, drafts a press release about how a measure might affect their agency, and signs the document with their title, is acting in their official capacity.

→ Salaried employees have the right to participate in political activity on their own time. An employee would not be on the job solely because they may be subject to a call back to duty at any time.

Common activities that are always undertaken in an official capacity (regardless of time of day or location) and are therefore subject to the requirements or ORS 260.432 include:

→ posting material to an official website (and approving material to be posted to an official website)

→ drafting or distributing an official publication from the jurisdiction

→ Appearing at an event as a representative of a jurisdiction

See Use of Public Employee Title on page 11 for more information.

## Volunteer personnel at a public agency

Volunteers (other than members of appointed boards or commissions) receiving no compensation are not considered public employees and therefore are not restricted by ORS 260.432. Workers compensation coverage is not considered compensation.

These volunteers may be bound by the policies of the jurisdiction. The policies may include limits on political advocacy during their volunteer activities as well as limits on access to agency resources for advocacy purposes. While a volunteer will not be liable under ORS 260.432, a public employee may have exposure if the public employee directs a volunteer to engage in political advocacy.

## Government Contractors

Public employees may not direct government contractors to engage in political activity as part of the contracting service.

Contractors are bound by the policies of the jurisdiction and the terms of the contract. While a contractor will generally not be liable under ORS 260.432, a public employee may have exposure if the public employee directs a contractor to engage in political advocacy.

ex A school district may hire a public relations firm to help communicate with the public about an upcoming measure. If the public relations firm drafts material to be approved and disseminated by public employees, the material must be impartial. If the material is not impartial, the public employee who approved it would be liable for a violation of ORS 260.432.

## National Voter Registration Act (NVRA) and ORS 247.208(3)

While the restrictions imposed under ORS 260.432 apply generally to all public employees, ORS 247.208(3) imposes a separate, rigorous set of restrictions that apply only to persons who provide voter registration services required under the National Voter Registration Act (NVRA). NVRA is a federal Act enacted by Congress in 1993.

Public employees or other persons providing NVRA-required voter registration services on behalf of a designated public agency may not:

→ seek to influence the political preference or party registration of a person registering to vote;

→ attempt to discourage a customer from registering to vote;

→ display any indications of political preference or party allegiance (including the choice of candidates for partisan political office);

- → make any statement or take any action towards a person registering to vote that would lead the person to believe the voter registration has any bearing on the availability of services or benefits;
- → seek to induce any person to register to vote or to vote in any particular manner.

These restrictions prohibit public employees from wearing political buttons while performing NVRA services, which is more restrictive than the general rule that is explained on page 8.


See OAR 165-005-0070 for detailed guidelines.

# Personal Expression by Public Employees

## Signs and Posted Information

### Campaign Signs

Oregon election law does not address the size, location or timing of political campaign signs. Many local jurisdictions (cities and counties) have ordinances or policies that address campaign signs.

Public employees may generally have political stickers on their cars or post political signs in their work area, as long as they do so on personal time and such action does not violate any employer policy. Public employers are encouraged to have written policies about posting political material at work.


See National Voter Registration Act (NVRA) on page 6 for signage rules specific to NVRA employees.

### Union Bulletin Boards

Public employee unions may have a designated bulletin board to post information. The location and contents of those bulletin boards are regulated by collective bargaining agreements and are not subject to the requirements of ORS 260.432.

### Distribution of Political Material within a Government Agency

Public employees may not distribute material that contains political advocacy while on the job during work hours, except public employees may, as part of their job duties, process and distribute incoming mail addressed to specific employees that contains political advocacy.

Political material may be distributed in public jurisdictions if the person doing the distribution is not on the job, if other people would be granted equal access, and if it does not violate the jurisdiction's policies.


A teacher, while not on the job (before or after work or during lunch), may place information about his candidacy for a local office in the boxes of the other teachers at the school so long as any other candidate who asked would be allowed to distribute materials into the boxes.

Unions may distribute political materials to their members pursuant to their contract.


See Email on page 14 regarding responding to or forwarding political emails.

### Verbal Communication

ORS 260.432 does not restrict the right of a public employee to express personal political views during their personal time. However, it does restrict some verbal communication while on the job during working hours (or while acting in an "official capacity").

A public employee cannot promote or oppose a political position while they are on the job during work hours.

(ex) A City Manager gives a presentation to staff about a pending measure. During the presentation, he says "I hope we all agree that it is important that this measure passes". That verbal communication would constitute a violation.

Public employers may add additional policies.

### Public Presentations and Speeches

A public employee cannot give a speech or presentation advocating a political position if they are on the job or acting in their official capacity. An elected official may give political presentations and speeches, so long as no public employee work time is utilized.

When making a presentation that contains political advocacy during non-work time, the public employee should announce that they are acting in their capacity as a private citizen. The employee should also document that they were not on the job.

(ex) Employees may document that they are not on the job by keeping: a log, payroll records that indicate when they were on the job, time off slips, etc.

### Meetings

Public employees may attend meetings at which political issues are discussed, so long as they do not engage in political advocacy themselves while on the job or acting in their official capacity.

Public employees cannot be compelled to attend political presentations. If a public agency has a mandatory staff meeting and a political group is making a presentation, the agency must make it clear that attendance at the political presentation is optional. Public employees who do attend the political presentation must do so during non-work time. Political advocacy presentations should not occur in close proximity to events requiring public employee attendance.

## Buttons, T-Shirts, and Uniforms

### Political Buttons and Clothing

Public employees may wear political buttons or clothing at work so long as it does not violate their employer's policy.

A public employer may not request or require that public employees wear political clothing, buttons, etc.

(ex) It would not be a violation for a teacher, on their own, to choose to wear a "Vote Yes on Measure 1234" button to school (so long as that did not violate school policy). It would be a violation for school administration to give out "Vote Yes on Measure 1234" buttons and email to encourage teachers to wear them to school on Election Day.

### Uniforms

Generally, wearing a uniform while engaging in political activity is governed by the uniform policy of the jurisdiction that issues the uniform. Wearing a uniform to a political event, or while giving a political presentation, is not a violation of ORS 260.432, unless other elements of the presentation violate requirements of this rule. Public employees who wear uniforms and engage in advocacy should notify the audience that they are not acting in their official capacity.

# Lobbying and Legal Challenges

## Legal Challenges by Public Jurisdictions

Public employee's work involvement in legal court challenges as part of their regular job duties is not a violation of ORS 260.432.

(ex) Examples of legal challenges include whether an initiative petition meets constitutional requirements, whether a ballot title complies with statutory standards, etc.

## Legislation and Lobbying

Legislative bills are not covered by ORS 260.432. Therefore it is allowable, under election law, for public employees to lobby governing bodies. Once a referral has been certified to the ballot, political advocacy is restricted by ORS 260.432.

(i) For more information about lobbying, contact the Oregon Government Ethics Commission.

# Public Property

If a governing body makes their property available for advocacy activities, they must grant equal access for all political groups to use public property. This includes charging the same fee or requiring the same permit.

If a candidate (or group supporting or opposing a recall, measure, initiative, etc.) requests to use public property for political purposes, then the government agency must allow the same access at the same price (if any) to any other candidate.

Public agencies may have policies that regulate the use of public property. The policy may be more restrictive than the requirements of ORS 260.432.

(i) ORS 294.100 provides a limited remedy for possible inappropriate use of public resources. That statute is not within the jurisdiction of the Elections Division, and therefore we cannot give advice about compliance with that statute.

An elected official is not required to grant equal access to their office or equipment, even if it is in a public building.

## Contact Lists

If lists are available to the public, a public employee must grant equal access to anyone who requests the list. This includes any list that the public body administers. The public body must charge the same fee, if any.

A candidate may not use any list administered by a public body that is not available to all other candidates. Candidates may use contact lists that they created (including constituent contacts collected as an elected official) without granting equal access to other candidates.

(ex) This issue commonly arises with the use of personnel lists, public utility lists, email lists, voter lists, etc. Public bodies must allow equal access to these lists.

## Government Logos

A governing body must allow equal access to logos for political purposes, meaning that if any candidate is allowed to use the logo, all candidates must be allowed. It is not allowable to allow certain candidates (or other political groups), such as incumbents, to use logos but prohibit another candidate from doing the same.

Government agencies are encouraged to have written policies about use of their logos.

### Public Records

Governing bodies must grant equal access to public records. All requestors of records should be charged the same fee, if any.

### Advertising

Public jurisdictions which raise funds through advertisement must grant equal access to any political group or person. The public body must charge the same fee, if any, to any candidate or other political group for the same level of advertising space or time.

Public employees should not design an advertisement or verbally promote a sponsor candidate or political group at an event. A public employee may edit the advertisement for size, clarity, etc. but should not edit the substance of the advertisement.

(ex) A school district produces game programs for football games. A candidate asks to have a half page ad placed in the program. A public employee charges the candidate the same fee any other person or group would have been charged for the space, and places the candidate's pre-designed ad into the program.

Public jurisdictions are encouraged to have written policies on advertising which incorporate the requirements of ORS 260.432.

## Candidates and Elected Officials

An elected official may engage in political activity during work time. Elected officials are not considered public employees for the purposes of ORS 260.432.

A person appointed to fill a vacancy in an elective public office is considered an elected official for purposes of this statute.

Elected officials cannot request public employees who are on the job or acting in an official capacity to engage in political advocacy. A request made by an elected official is considered a command.

An elected official's quote, opinion piece, letter or speech advocating a political position may not be published in a jurisdiction's newsletter or other publication produced or distributed by public employees.

See Material Produced by Governing Bodies, page 12. See Voters' Pamphlet, page 13, for an exception to this standard.

(ex) Public employees may not prepare the text for a speech, a press release, constituent mail that advocates a vote, candidate filing forms, voters' pamphlet filing forms, file contribution and expenditure (C&E) transactions online, etc. during their work time.

An elected official, as part of a governing body, may vote to support or oppose a measure put before the body. The elected official may publicly discuss the vote. Elected officials may not use public employee staff time, except for ministerial functions.

See Material Produced by Governing Body, page 12.

An elected official may only solicit volunteer help from public employees during employee breaks or other personal time.

### Candidate Forums

A governing body may sponsor a candidate forum if it is open to all candidates, though not all candidates must attend.

Public employees may use work time to arrange the forum. The public employee may perform administrative support functions in conjunction with the forum and may attend on work time.

All public employee involvement in the forum must be impartial. Public employees may not draft or select questions for the candidates.

### Scheduling Political Appearances

Public employees may maintain the schedule of elected official candidates. Public employees may not solicit political scheduling opportunities for an elected official, but may respond to scheduling requests. Prohibited activities include organizing campaign events, communicating on political matters with the press or constituents, or initiating any other political activity on behalf of the official.

As discussed in the measure section, incoming calls about measures must be answered in a strictly factual manner.

### Visits by Candidate or Candidate Representative

A candidate may request to visit a government agency work site. The public agency must grant equal access to all candidates. The government agency should not initiate candidate visits, except for candidate forums.

Public employees involved in the arrangements for the visit may perform administrative duties necessary to arrange the event.

No public employee may take any actions to promote or oppose the candidate before or during the visit. This includes taking a political position when announcing the event, holding a campaign sign during the event or assisting the candidate in distributing campaign materials.

# Sharing Information with the Media

### Use of Public Employee Title

Public employees may use their work title in political activity so long as the title is the only indication that the public employee is acting in an official capacity. Use of a title may give people the impression that a public employee is acting in an official capacity, so it is suggested that public employees use caution. However, a violation of ORS 260.432 will only be found where a public employee is on the job or acting in an official capacity. Public employees may not always have control over whether people or political groups add a title to a publication.

(ex) A public employee, after work on personal time, is asked whether they are willing to endorse a candidate with the purpose of including the endorsement on the candidate's website. The public employee agrees. Regardless of whether the candidate adds the title of the public employee on their own or whether the public employee specifically agrees for his or her title to be included, the public employee would not be in violation of ORS 260.432 because the endorsement occurred after hours and the title is the only indication that the public employee is acting in an official capacity.

→ It would be a violation for a public employee to receive a call at work from a candidate and agree to endorse the candidate, regardless of whether the candidate includes the title in the endorsement, because the public employee is on the job during work hours.

See Salaried v. Hourly: "On the Job" on page 5.

### Guest Opinions or Letters to the Editor by Public Employees

If a public employee is asked in their official capacity to produce a guest opinion related to a ballot measure or candidate, the content must be impartial.

A public employee may write a letter to the editor that contains political advocacy so long as they do so on their own time and not in their official capacity.

### Agency Interaction with Media

A spokesperson for an agency may respond to media inquiries about the possible effects of a measure or initiative so long as the information they provide is impartial. The public employee must not state or imply support or opposition.

A public employee may draft and distribute an impartial news release, except for a news release regarding a resolution advocating a political position on a measure.

See Resolutions (Vote Taken) by an Elected Governing Body, page 15.

Information that is entirely factual may nonetheless be considered advocacy (for example, by omitting required cost information).

See Determining Impartiality for Documents, page 17.

# Material Produced by Governing Bodies

Any covered political materials produced by public employees while on the job during work hours must be impartial. The Elections Division is available to review documents prior to publication to ensure compliance with ORS 260.432. If the document is submitted to the Elections Division and approved in writing, there will be no violation of ORS 260.432 as long as what is printed does not deviate from the approved version. This review process will be completed within five business days of the submission of the document.

### Contact

Oregon Secretary of State, Elections Division
☎ **503 986 1518**
**Fax 503 373 7414**
✉ elections.sos@state.or.us

When the Elections Division receives a document for prior review (usually submitted by fax or email), it will review it utilizing the impartiality requirements on page 18 of this manual. It will then reply to the jurisdiction, usually by email, with a statement that the document as submitted is acceptable, or with notes about how to make the document more impartial. The jurisdiction may re-submit the material incorporating the suggested changes as many times as necessary.

### Who is Liable for Advocacy Material

Any public employee who authors or drafts material that contains advocacy may be in violation of ORS 260.432. This includes any public employee who creates material for inclusion in an advocacy document.

A supervisor who requests that an advocacy document be created, or oversees the project, may also be in violation of ORS 260.432, even if they are not the author of the document.

A public employee may edit material that is subsequently found to contain advocacy if the public employee only edits for grammar, spelling and other non-substantive issues. A public employee may not edit advocacy materials if they make or suggest substantive changes. It is not a violation for a public employee to design materials that are subsequently found to contain advocacy so long as they are not involved in the substantive content of the document.

It is not a violation of ORS 260.432 for a public employee, at the direction of a supervisor, to post advocacy materials to a website or otherwise distribute them. The supervisor who directed the distribution of materials may be in violation of ORS 260.432.

See Determining Impartiality of Documents, page 17.

# Letterhead and State Seal

## Government Letterhead

Election law does not regulate the use of government letterhead.

We recommend agencies have policies in place governing letterhead that incorporate the requirements of ORS 260.432.

## State Seal

ORS 186.023 governs the use of the Oregon State Seal. Elected officials may use the state seal in an official capacity, but not as a candidate for public office.

For questions about the use of the Oregon State Seal, contact the Secretary of State, Executive Office at 503-986-1523.

# Specific Kinds of Materials

## Voters' Pamphlet

A public employee's duties may include producing an official voters' pamphlet. Public employees may not prepare measure arguments or candidate statements for inclusion in the voters' pamphlet while on the job during work hours.

See page 16 for information about ballot titles and explanatory statements.

## Postcards

Postcards produced or distributed by public employees must be impartial. The postcards must meet the impartiality requirements, described on page 18.

When a public employee is involved in the production of a series of small mailers, each piece must be individually impartial. Read together, the series of mailers must also be impartial. For ballot measure material, any discussion of the measure's effects must be balanced with the amount of taxes or fees.

## "Don't Forget to Vote" Materials

Public employees may produce "don't forget to vote" materials as long as they are impartial. These materials can contain information about the date of the election, how to return ballots, etc. and can also include information about a measure, as long as that information is impartial.

## Previously Published Materials

Public employees may respond to public records requests with information that contains advocacy, but may not proactively distribute advocacy material.

See Websites, page 14, for information about links to previously published materials.

## Video and Audio Productions

Video and Audio productions created or distributed by public employees must be impartial.

Public employees who record video of public meetings may do so even if non-public employees (or public employees who are not on the job or acting in their official capacity) engage in advocacy on the video. Public employees may not make recordings where the purpose of the video or audio production is advocacy. Public employees may not edit a video so that the resulting product is advocacy.

Public employees may broadcast videos of meetings for public access channels and post the videos on government websites, even if the videos contain advocacy. Posting only excerpts of the meeting where there is advocacy with an intent to advocate would be a violation.

## Websites

No advocacy material may be posted on any government website or blog unless it is part of an official function of the agency.

(ex) An elections website may contain voters' pamphlet information.

→ Any public body may post information that is a record of a public meeting, even if it contains advocacy.

Candidates and other political groups may link to government websites, but government websites may not contain links to advocacy material. Even if a public employee posts advocacy material on the government website during their personal time or on their personal equipment, the public employee would be acting in their official capacity and therefore would violate ORS 260.432.

Government websites may contain public records about measures or candidates. Those public records must be treated the same as other public records, which do not contain advocacy. Public records which contain advocacy cannot be proactively distributed or placed in a prominent location on a website when a measure or other restricted issue is pending.

(ex) A city manager may produce a memorandum to the city council about the need for a possible future bond measure referral. If the city council refers the bond measure, then that memorandum cannot be proactively distributed after the measure is certified. The city could respond to a public records request for the memorandum or maintain it with, for example, the minutes for the meeting in an archival section of the website.

Government agencies should have a policy in place for their website that incorporates the requirements of ORS 260.432.

## E-mail

Public employees may open and read emails that contain political advocacy. They may not, while on the job during work hours, send or forward emails that contain advocacy, except as outlined below.

A public employee may forward an email containing advocacy to their personal email, so long as this does not violate the employer's policies. Public employees may unsubscribe or otherwise ask to be removed for an email list while they are on the job.

A public employee may forward an email containing links to advocacy material only when that material is germane to the government agency and the public employee does not provide commentary.

(ex) A wildlife official may forward emails to other public employees that contain a link to an article about an upcoming measure that would change the way the state regulates the wolf population. They may not include commentary that endorses or opposes the article or issue. They may include commentary germane to how the measure would affect the agency, so long as the commentary is impartial. The wildlife official may not forward an advocacy article about a measure that would impose a public school bond (or any other issue not related to the agency).

Agencies are advised to have a policy on use of government email that incorporates the requirements of ORS 260.432.

## New Media (Twitter, Facebook, etc.)

Public employees may not post to government Twitter, Facebook, etc. material that contains political advocacy.

If a government agency interacts with candidates or covered political groups in new media (i.e., if a candidate left a comment on an agency Facebook post), the agency must ensure that they treat all candidates or political groups equally and that any agency interaction remains impartial.

If a government agency allows comments on social media posts, it must ensure that comments that support or opposite restricted political issues are treated equally.

(ex) An official school district facebook page posts a "don't forget to vote" message. Several people comment supporting and opposing a school district bond measure that is on the ballot. It would be a violation if the school district deleted the negative comments and maintained the positive comments. It would not be a violation to delete a comment opposing the measure if the comment also violates school district comment policy (e.g. the comment contained profanity).

Agencies are advised to have policies on use of government new media accounts that incorporate the requirements of ORS 260.432.

# Initiatives, Measures, and Ballot Titles

## When Does ORS 260.432 Apply?

- → for initiative, referendum and recall petition efforts as soon as a prospective petition is filed with the appropriate elections filing officer;
- → for a ballot measure referred to the ballot by a governing body (district, city, county, state) as soon as the measure is certified to the ballot. A district or city measure is certified to the ballot when the elections official files the referral with the county election office.

The actions taken by a governing body and its public employees in the planning stages of a possible measure are not subject to ORS 260.432.

Public employees may produce and distribute advocacy material about referrals prior to the measure being certified to the ballot. Any public employee work time used to change, amend, edit, distribute, etc. a document found to be supporting or opposing a referral between the date it is certified to the ballot until the date of the pertinent election could be a violation of ORS 260.432.

Public employees may respond to public records requests for documents that contain advocacy, even if the measure has been certified. They may not proactively distribute those materials after the measure is certified.

A public employee may not distribute prior measure materials that contain advocacy where the same or similar issue is currently on the ballot.

(ex) If a school district has a recurring bond levy, district employees may not proactively distribute any materials from the previous levies (even though those elections have passed) during the period between certification and the current election.

### Resolutions (Vote taken) by an Elected Governing Body

Elected boards of governing bodies may take a position on a ballot measure (or initiative, referendum or recall petition) provided there is no use of public employee work time to advocate that position.

With regard to a governing body's resolution that advocates a political position on a ballot measure, initiative, referendum or recall, a public employee:

| May | May Not |
|---|---|
| Edit the jurisdiction's name and board member names to conform it to the requirements for the resolution | Draft, type, or edit the resolution |
| Prepare neutral, factual information for the board to use in taking a position on the measure, including impartial information on how the measure could affect the jurisdiction. | Recommend how to vote on the resolution |
| Be available at the board meeting to offer impartial information upon request. | Sign a resolution, unless the public employee's signature is ministerial and included only to attest that the board took the vote |
| Respond to direct questions from the media about the resolution, if their response is impartial. | Prepare a news release or other announcement of the resolution. |
| If the jurisdiction lists all votes on resolutions in a regularly published publication, they may include the vote in an impartial manner. | Include the vote or position of the governing body in a jurisdiction newsletter or other publication. |
| Use work time to record the vote if that is part of the employee's work duties. | |
| Use work time for regular job duties, such as responding to public records requests, taking minutes, retyping the resolution to conform to the required format, etc. | |

## Ballot titles

Public employees may use work time to draft ballot titles. A public employee may also defend a challenged ballot title.

Because the impartiality requirements and ballot title challenge process in ORS chapter 250 are distinct from the requirements of ORS 260.432, this office will not review ballot titles for impartiality. Public employees who draft ballot titles as part of their job duties do not violate ORS 260.432 by drafting a ballot title.

See Legal Challenges by Public Jurisdictions, page 9.

## Explanatory statements

Public employees may use work time to draft explanatory statements.

Because the impartiality requirements and explanatory statement process in ORS chapters 251 are distinct from the requirements of ORS 260.432, this office will not review explanatory statements for impartiality. Public employees who draft explanatory statements as part of their job duties will not be found in violation of ORS 260.432 for drafting an explanatory statement.

See Legal Challenges by Public Jurisdictions, page 9.

### Public Employers Discussing Possible Effects of a Measure with Public Employees

A public employer may tell employees about the possible effects of a measure so long as the information presented is impartial and balanced. They may not encourage (implicitly or explicitly) public employees to support or oppose the measure.

Pursuant to ORS 260.665, it is a crime to threaten loss of employment (or other loss) or offer a thing of value to induce someone to vote in a particular manner.

### Measure Forums

A forum to allow political proponents and opponents to debate ballot measures may be held using public employee work time as long as equal access is granted.

Measure forums are governed by the same principles as candidate forums.

See Candidate Forums, page 10.

# Determining Impartiality of Documents

## Elections Division Review of Documents

The Elections Division offers a review service to give advice on whether a document complies with the requirements of ORS 260.432.

To submit a document for review, you may:

elections.sos@state.or.us
**Fax 503 373 7414**
255 Capitol Street NE, Suite 501, Salem, OR 97310

Any Elections Division review of a document must occur before publication or distribution of the document. The Elections Division does not review documents for accuracy, only for impartiality.

ORS 260.532 governs false statements in elections material. It prohibits false statements of material fact about candidates, political committees, or measures. That statute is not enforced through the Elections Division, but instead requires an aggrieved party to pursue their claim in court.

Approval by the Elections Division provides a safe harbor for compliance with ORS 260.432. Should the Elections Division receive a complaint, it will be rejected as long as what was published is exactly what was submitted for review and all recommended changes were made.

When governing bodies receive Elections Division advice, they may choose to make some or all of the changes. If a complaint is received, the governing body will only be provided a safe harbor if they:

1 Accepted and made all of the changes recommended by the Elections Division

2 Did not otherwise alter the document

Once a document has been reviewed and all of the changes are made, a governing body may include a disclaimer that reads: "This information was reviewed by the Oregon Secretary of State's Office for compliance with ORS 260.432." This is the only acceptable disclaimer.

# Impartiality Requirements

The overall inquiry for determining impartiality is whether the material "promotes or opposes" a candidate, initiative, measure, political committee or recall. In order to be impartial for the purposes of ORS 260.432, a document must meet three requirements:

- → Documents must not explicitly urge a yes or no vote;
- → Documents must be factually balanced;
- → Any document that talks about what a measure would pay for must also fully describe how much it would cost.

The requirements are discussed in further detail below.

## 1 Vote Yes/No

The contents of the document must not urge a yes or no vote for the measure. There should be no "vote yes" or "vote no" language. The document must not include phrases such as:

- → "Vote Yes on Measure 99,"
- → "Support for Measure 99 is encouraged,"
- → "The County is asking voters to approve,"
- → "Why Should I Vote for Measure 99?"
- → "Voters are asked to support Measure 99,"
- → "At election time, please support the Home Rule Charter,"
- → "On May 15, 2012, Anytown voters are being asked to continue their support of the community youth by renewing the Youth Action Levy, Measure 57," and
- → "Please support our incumbent mayor."

Even if the remainder of the document is impartial, explicitly urging someone to vote in a particular manner would be a violation of ORS 260.432.

## 2 Balance of Factual Information

Documents produced by governing bodies must not be one-sided. They must include a balance of factual information.

## 3 Description of Cost

If a measure proposes to affect taxes or fees, the cost of the measure to an individual taxpayer or consumer must be included. In the context of a bond levy, this is generally the cost per $1,000 of assessed value. The cost must not be worded in a way to minimize it. It is allowable to include an estimate if the exact cost is not known.

(ex) It would be advocacy to describe the cost as "less than", "merely", or "only" $X.

It is allowable to indicate that a bond renewal would not "raise taxes" where the jurisdiction states that the bond, if renewed, would continue to cost $X per $1000 assessed value. It is also allowable to state how much the bond would raise taxes compared to the previous bond, as long as the full cost information (generally cost per $1000) is also included.

(ex) "The ABC Library bond will not raise taxes. If the bond is renewed the rate will remain at $1.23 per $1000 assessed value."

"The ABC School bond is an increase of $.25 per $1000 assessed value over the previous bond. The total rate if the bond is passed would be $1.45 per $1000 assessed value."

For measures that use funding mechanisms other than cost per $1000 assessed value, the cost must be described in a way that clearly informs the public of how the measure would affect taxes.

# Enforcement

## Complaints (ORS 260.345)

Any Oregon elector may file a signed, written complaint with the Secretary of State, Elections Division alleging that a violation of ORS 260.432 (or any other election law) has occurred. The Elections Division also has its own authority to initiate an investigation when it has reason to believe a violation has occurred.

When a complaint is received, the Secretary of State will acknowledge receipt of the complaint to the complainant and the subject of the complaint within 48 hours of receiving the complaint. When the complaint is against a jurisdiction and not any specific individuals, it will be acknowledged to someone the Elections Division believes has responsibility for the area where the public employees are alleged to have violated the statute. The acknowledgment will be in writing.

(ex) If a complaint is against a City and it is not clear who is responsible, it will be acknowledged to the City Manager.

Because ORS 260.432 is a civil statute, the complaint and all investigative documents are public information. The complaint and all correspondence are available for any person who makes a public records request.

### Investigation

Once a complaint is received, an investigation is conducted. The Elections Division will collect information and make inquiries. The subject of the complaint will be invited to respond to the allegations and provide any relevant information. As part of the investigation, the Elections Division may review materials not submitted with or mentioned in the complaint, and those materials may be the basis for a violation. The Elections Division may consider any information it considers relevant to the question of whether individuals in the jurisdiction violated ORS 260.432.

The investigation is independent of any election. The election will not dictate when a determination is made, and any determination will not change the outcome of the election.

### Determination

If the Elections Division determines there is insufficient evidence of a violation of ORS 260.432, it will issue a letter to the complainant and subject of the complaint closing the case.

If the Elections Division determines there is sufficient evidence to indicate individual(s) violated ORS 260.432, it will issue a Notice of Proposed Civil Penalty (PPN). The PPN will lay out the basis for the violation. When the person subject to the penalty receives the notice, they may:

- → Choose to pay the penalty, or
- → Contest the charges by requesting a hearing

If the person does not contest the penalty, the Elections Division will issue a default final order imposing the civil penalty. If the person chooses to pay the penalty, payment may be submitted by check made payable to the Secretary of State or paid by credit card over the phone. Payment may be mailed to the Elections Division at any time after the PPN is issued, but must be received not later than 60 calendar days after the default final order is issued.

If the person chooses to contest the charges, they must submit a hearing request form (which will be included with the PPN) and an answer, explaining their reasons for contesting the charges and including any relevant mitigating circumstances.

### Mitigating Circumstances

The Elections Division will consider reducing, in whole or in part, the civil penalty where the violation is the direct result of an error by an elections officer. The burden is on the person alleged to have committed the violation to show that this mitigating circumstance exists and caused the violation.

## Hearing Process

Hearings are conducted by an administrative law judge with the Office of Administrative Hearings (OAH) in Salem. On the hearing request form, the person subject to the civil penalty may select either a hearing in-person or by telephone.

When the Elections Division receives the hearing request and answer, they will forward this information, as well as the PPN and exhibits, to OAH. OAH will schedule a hearing not later than 45 calendar days after the deadline for requesting a hearing and notify the parties of the hearing date. A 15 calendar day extension may be granted if requested in writing by the person subject to the civil penalty.

### Submitting Exhibits

Not less than five business days prior to the commencement of the hearing, each party, including the Elections Division, must deliver copies of the exhibits it intends to offer into evidence at the hearing. Exhibits must be delivered to the administrative law judge, all parties, and the Elections Division.

Any documentary evidence submitted after the deadline may be admitted only if the administrative law judge finds that inclusion of the evidence in the record is necessary to conduct a full and fair hearing.

### Conduct of In-Person or Telephone Hearing

If the hearing is in-person, it will be held in a hearing room at the Office of Administrative Hearings in Salem. If the hearing is by telephone, the parties will call the phone number provided in the Notice of Hearing sent by the Office of Administrative Hearings. The hearing will be presided over by an administrative law judge who will describe the hearing process at the beginning of each hearing. The parties will then be given the opportunity to give opening statements, present and examine witnesses, and give closing statements.

If the party that requested the hearing does not appear within 15 minutes of the time set for a hearing, the administrative law judge will declare the party in default unless the party gives notice of a reason for the inability to appear at the designated time and requests and receives a continuance.

### Opportunity to Opt Out of In-Person or Telephone Hearing

A person that requests a hearing may decide that he or she does not want to appear at the hearing, but still wants to contest the penalty. The person may submit notarized testimony and other evidence for entry into the hearing record before the administrative law judge in lieu of attending the hearing. The Elections Division must receive the testimony no later than three business days before the day of the scheduled hearing.

The Elections Division may also submit notarized testimony. The Elections Division testimony must be received by OAH not later than 5:00 pm on the scheduled date of the hearing. If the Elections Division fails to submit notarized testimony, the Elections Division exhibits become part of the case file and may establish the basis for liability.

### Proposed Order

Not later than 30 calendar days after the hearing is closed, OAH sends the administrative law judge's proposed order to the parties. The proposed order will provide a deadline to file written exceptions to the proposed order. If the Elections Division chooses to amend the proposed order issued by the administrative law judge, the Elections Division will send an amended proposed order to the parties, which will provide a deadline to file written exceptions to the amended proposed order.

## Final Order

After reviewing and considering the written exceptions, if any, the Elections Division will issue a final order no later than 90 calendar days after the hearing is closed. If the final order imposes a civil penalty, the party has 60 calendar days to pay the penalty or file an appeal.

## Judicial Review

After the issuance of a final order or default final order, the person subject to the civil penalty is entitled to judicial review of the order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 calendar days of the service date of the order.

Restrictions on Political Campaigning by Public Employees - ORS 260.432

# ATTENTION ALL PUBLIC EMPLOYI

**The restrictions imposed by the law of the State of Orego political activities are that "No public employee shall solic money, influence, service or other thing of value or other or oppose any political committee or promote or oppose nomination or election of a candidate, the gathering of si an initiative, referendum or recall petition, the adoption or the recall of a public office holder while on the job duri hours. However, this section does not restrict the right of employee to express personal political views."**

**It is therefore the policy of the state and of your public er you may engage in political activity except to the extent p state law when on the job during working hours. (ORS 26**

CITY of THE DALLES
HUMAN RESOURCES
313 COURT STREET
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# CITY OF THE DALLES
# PERSONAL APPEARANCE AND HYGIENE POLICY

## I. Introduction

The City of The Dalles is a public organization with employees who have frequent contact with the public. In addition, employees of the City of The Dalles as well as the public have a reasonable expectation that City facilities and employees will be presented in a professional manner and free of offensive or excessive odors. Supervisors are directed to pursue corrective action for any violation of this policy. If a violation continues, an employee will be subject to disciplinary action, up to and including termination of employment.

## II. Appearance

All personnel are expected to arrive at work for their scheduled shift ready to work and dressed appropriately for the work the employee performs. All clothing regardless of position should be clean and free of holes and tears.

a) Administrative staff are expected to dress in "casual professional" attire. Generally, attire should be button-up shirt, polo shirt or similar. Pants should be casual slacks, or nice jeans that are un-faded and free of holes, frays and stains. Skirts and dresses should be professional and be free of holes, frays and stains. T-Shirts, tank tops, flip-flops, and sweatshirts are not professional and shall not be worn while at work or conducting City business.
    1) Facial hair, if any, shall be well groomed and professional in appearance. Accommodations may be made for religious or medical reasons.

b) All other personnel shall wear work appropriate clothing, including uniforms and personal protective equipment, that is serviceable and free of holes, frays and stains.
    1) Hair and facial hair, if any, shall be trimmed as may be necessary to prevent hair from being caught in equipment or prohibit the use of a respirator. Accommodations may be made for religious or medical reasons.

c) If a manager or supervisor determines an employee's dress or appearance is not appropriate as outlined in these guidelines, he or she may take corrective action and require the employee to leave the work area and make the necessary changes to comply with these guidelines. The employee will be required to use vacation time to cover the amount of time necessary for the employee to change and comply with this policy; otherwise, the time spent will be unpaid.

## III. Hygiene

All employees are expected to maintain good personal hygiene and be free of excessive body odor, perfume, cigarette or other smoke, and cologne. The City recognizes that positions within the City are physically demanding. Employees should take preventative action to avoid offensive smells by using antiperspirant/deodorant or by smoking in open areas where the smoke is less likely to remain on the employee's clothes or hair. The City also understands that some personnel and members of the public may have allergic or other sensitivity to smells. The City further understands that some employees may have a medical

condition that causes increased body odor. Those employees should follow the advice of the medical provider. Accommodations may be made for religious or medical reasons.

Julie Krueger
Julie Krueger, City Manager

1-8-18
Date

# POLICY CONCERNING CELLULAR PHONES

The following policy is necessary to assist the City in complying with IRS regulations that govern these issues. Non-compliance with the IRS regulations in these matters creates a liability to both the City and individual employees who may be subject to retroactive taxes and penalties in the event of an IRS compliance audit. Any interpretation of this policy will follow IRS regulations.

Effective August 1, 2008, the City will discontinue the practice of providing City employees with a City-owned cellular phone, subject to the exceptions listed below. As of the effective date of this policy, employees who have been issued a City-owned cellular phone, and those employees who in the future are designated by their Department Manager to be provided with a monthly allowance to purchase a personal cellular phone to be used for City-related business and for personal business of the employee, shall receive a monthly allowance as set forth in this policy. The monthly allowance shall be paid at the end of the month payroll for the applicable month (for example, the allowance for August shall be paid August 31).

Each employee who receives a cellular telephone allowance is responsible for obtaining their own usage plan, phone, and other equipment, and for the care and maintenance of said equipment. Employees receiving this allowance are further responsible for immediately notifying their Department Manager and the Finance Department in the event their cellular plan is cancelled or terminated. The cell phone allowance, at the level of use estimated to be necessary by the Department Manager, is considered to cover the costs of the use of the employee's cell phone for City related calls, both initiated and received. No adjustments will be made to the allowance based on actual use, although the employee should discuss with the Department Manager any significant change in use after the initial estimate is made. In the event an employee receiving a cellular telephone allowance chooses to retain a plan where the allowance is not sufficient to pay for the costs of the plan, the employee shall be responsible for paying for the balance of the costs of the plan.

The amount of the monthly allowance shall be set by the City Manager at levels according to estimated ranges of usage determined by each Department Manager for appropriate positions within their department. The monthly allowance will be subject to the authority of the City Manager to adjust the monthly allowance on a periodic basis to attempt to conform generally to commercially available cellular telephone usage plans.

Department Managers will need to provide Personnel Action Forms (PAFs) to notify the Finance Department of the names of employees entitled to receive the allowance and the amount of the allowance for that employee. Since this method of payment is not expense-substantiated, the allowance is considered a taxable fringe benefit under IRS regulations and will be included in the employee's regular monthly paycheck.

Personal use of a cellular phone which is determined by a Department Manager to be disruptive to the efficient operation of the department is subject to restriction, and failure to comply with any restrictions placed upon personal use of the cellular phone can be grounds for disciplinary action.

The exceptions to the practice of the City furnishing cell phones for employees shall include the "Nextel" walkie-talkie system used by the Public Works Department and the Community Development Department Development Inspector, the cellular phones used by Public Works employees who are working in a designated "on-call" status (including where the phone has been assigned to an employee primarily responsible for non Public Works Buildings on both a regular and fill-in basis), the cellular telephone assigned to the person performing the duties of Maintenance Repair Technician, the cellular phones which are assigned to particular vehicles in the City Police Department, the cellular phones assigned on a temporary basis to the Detective position with the Police Department, and any cellular phone purchased by the Wasco County Library District for the District's outreach project. Personal use of the cellular phones listed in this paragraph shall be restricted to the following situations:

A. A family emergency.

B. A departmental schedule change requiring an employee to stay in the field or at a job worksite longer than expected.

C. When departmental business delays an employee from arriving on time at a prescheduled personal meeting (doctor appointment, etc.).

D. When authorized by a supervisor or department manager, under special circumstances.

Non-compliance with the provisions restricting the use of these cellular phones can be grounds for disciplinary action, and reimbursement of charges for cellular phone use which does not fall within the listed exceptions above for personal use. The Department Manager shall audit the billing records for these phones to identify any personal phone calls before submitting those bills to the Finance Department for payment.

The provisions of this Policy shall supercede the provisions concerning cellular phone usage set forth in the Policy Concerning Personal Use of City-Owned Property, revised August 26, 2002.

9/11/08
Date

Nolan K. Young
Nolan K. Young, City Manager

# POLICY CONCERNING CITY VEHICLE USAGE

The following policy is necessary to bring the City into compliance with IRS regulations that govern these issues. Non-compliance with the IRS regulations in these matters creates a liability to both the City and individual employees who may be subject to retroactive taxes the penalties in the event of an IRS compliance audit. Any interpretation of this policy will follow IRS regulations.

**General Provisions**: The use of City owned vehicles is restricted to City operational or business purposes, subject to the exceptions provided in this policy. "De Minimus" use of a City owned vehicle, which is defined as an infrequent and limited use, is permissible under the following circumstances:

A. An employee stops at a store or restaurant to purchase food while on a lunch or dinner break.

B. An employee using a City owned vehicle to travel out of town may stop at a restaurant to purchase a meal (excluding facilities where alcohol is the chief item for sale, casinos, or other establishments where entertainment is provided; provided further that this exclusion does not apply when the purchase of a meal at such a facility is in connection with attendance at an authorized conference or training session).

City owned vehicles shall only be used to transport City employees subject to the following exceptions:

1. The ride along program authorized for the City Police Department.

2. Transportation of a public official, or consultants(s), or other authorized person(s) in conjunction with official City business, which authorized persons shall include, but not be limited to, persons riding as passengers in a City owned vehicle operated by a City employee, when the employee is using the vehicle for travel to attend a conference or seminar, which travel has been authorized by the employee's supervisor or department manager, or the City Manager.

City owned vehicles shall not be used for transportation of domestic animals belonging to City employees.

Violations of the restrictions on the use of City owned vehicles can result in disciplinary proceedings.

**City Police Department**: Any personal use of City owned vehicles which are provided to employees who fall within IRS Category 1 (which includes the Police Chief and Police Captain), which does not qualify as use for commuting to and from work, will subject the employee to being taxed upon that personal use of a City owned vehicle. No personal use of City owned vehicles which are furnished to employees who fall within IRS Category 2 (which includes the

position of Detective and Senior Sergeant) is permitted, with the exception that travel to and from the employee's residence for lunch or dinner is permitted when the employee is a full time law enforcement officer on official duty using a marked or unmarked law enforcement vehicle.

Personal use of a marked or unmarked police vehicle shall only be allowed under the following circumstances:

- The need for the use must occur infrequently and result from the occurrence of an unplanned event, such as a child becoming ill while attending school and no other family member is Available to pick the child up from the school.

- The request for personal use of a police vehicle must be approved by a supervisor, or the Police Captain or Police Chief.

- The use of marked patrol cars to transport family members (for example, picking up a sick child from school) is discouraged and should only occur when there is no available alternative method of transporting the family member.

**Public Works Department**: The use of City owned vehicles is restricted to employees who are actually serving in an "on-call" status and employees engaged in the performance of departmental business. Use of a City owned vehicle is restricted to City employees, which would prevent a City employee from allowing a family member or other non-City employee from riding in the vehicle while it is being used by the City employee who is on "on-call" status. City owned vehicles shall not be used for any personal use by a City employee who is serving on an "on-call" status or engaged in the performance of departmental business, except for the "de minimus" use described above.

Nolan K Young

Nolan K. Young, City Manager

3-8-13

Date

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**Attendance College Classes during work hours**
**Effective Date: December 18, 2009**

## 1.0 PURPOSE

The purpose of this policy is to establish a uniform policy regarding attendance of college classes during scheduled work hours.

## 2.0 SCOPE

This policy shall apply to all City Employees. In cases of a conflict with a Collective Bargaining Agreement, that agreement will be the controlling document.

## 3.0 POLICY

**3.1** College classes taken during an employee's regularly scheduled work day may be considered as hours worked only if the city is requiring the employee to take the class as continuing education or training for their job or a job they are responsible for backing up.

**3.2** If the City is not requiring the class, the employee may still attend class during regular work hours only if all the following conditions are met:

- Class is only offered during work hours, so there is no opportunity to take the class online or on the employees own time.
- Class is related to current work duties or duties employee is responsible for backing up of another position; or the class would allow employee to gain training/education that would qualify them for advancement to other positions with the City including classes unrelated to those duties, but required for certification programs or degrees.
- Employee receives approval for a modified work schedule that still allows the employee to meet their job duties and required hours of work (typically 40 hours per week). Any change in the work schedule must be approved by Department Manager and City Manager and must fulfill 40 hours (or normal number of hours) worked during a normal workweek. In order to comply with BOLI regulations, the legally required rest breaks and half hour meal break cannot be used to make up time spent away from work for the class unless the class is within the timeframe required for that rest or meal break. However, if the employee has a normally scheduled lunch break of one hour, one half of that hour (the portion not required by BOLI) may be used to make up the time spent away from work.
- Approval is obtained from City Manager prior to registration.

Nolan K Young
Nolan K. Young, City Manager

January 4, 2010
Date

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# CITY-WIDE SAFETY COMMITTEE POLICY

To meet the requirements of the *Oregon Safe Employment Act* (ORS 654.001-654.991) and OAR 437-001-0765, the following policy has been developed for the City of The Dalles and its employees.

The City-Wide Safety Committee will comply with all appropriate parts of OAR 437-001-0765. Because of the diversity of the City departments and the need to properly administer their safety policies and procedures, the City of The Dalles has formed a City-Wide Safety Committee, as well as separate safety sub-committees for the defined areas listed below:

City Police Department
Administration (City Hall)
Public Works Department
Water Treatment Plant
Library

## CITY-WIDE SAFETY COMMITTEE FORMATION AND MEMBERSHIP

1. The City-Wide Safety Committee shall be made up of representatives from each of the defined areas listed above. Representation must comply with Section 3 of OAR 437-001-0765.
2. The City Safety Officer shall be assigned to the Committee as the Subject matter Expert (SME) and may serve as Chairperson.
3. The City-Wide Safety Committee members shall consist of representatives from the satellite committees provided representation complies with Section 1 above.
4. The City-Wide Safety Committee members shall have training in the principles of accident and incident investigations for use in evaluating those events. Additionally City-Wide Safety Committee members must have training in hazard identification and the Basics of Safety Committee and Meetings.
5. Membership rotation shall be staggered appropriately to provide continuity of the committee's goals.
6. The committee shall be directly responsible to the City Manager.

## CITY-WIDE SAFETY COMMITTEE DUTIES

1. Conduct committee meetings from written agenda prescribing order of business during meeting.
2. Hold regular meetings once per month.
3. Establish procedures for conducting workplace safety and health inspections.
4. Establish investigation procedures through consultation with the Safety Officer that will identify and correct hazards.
5. Evaluate accident and incident investigation and make recommendations on preventative measures.
6. Evaluate management's accountability system for safety and health, and make

recommendations for improvement.

7. Minutes recorded, posted and issued to each committee member. Shall be maintained according to Oregon Public Records Retention Law.

8. Records of meetings will include, at a minimum: Names of attendees, meeting date, all safety & health issues discussed, recommendations for corrective action and reasonable date by which responsible manager must respond; name and title of person responsible for follow up on any recommended corrective action, and all reports, recommendations, and evaluations made by the Committee.

**CITY-WIDE SAFETY COMMITTEE FUNCTIONS**

1. Evaluate the City's safety and health programs, policies and training procedures.

2. Make written recommendations regarding the safety program for the City as a complete entity and specific policies/procedures for each satellite committee.

3. Define the accountability system and procedure for investigation of safety-related accidents and illness.

4. Establish procedures for review of corrective action taken on the committee's recommendations.

5. Determine reasons why corrective action has not been taken.

6. Set time limits for response to recommendations.

7. Perform Hazard Survey inspections and investigation of accidents if deemed necessary by review of satellite data.

8. Annually evaluate employer's and employees' overall commitment to workplace safety and submit results in a formal report to the City Manager.

9. All recommendations shall be brought to the City Manager, or his/her designee for approval and/or direction before implementation.

Julie Krueger, City Manager

4-9-18
Date

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# City of The Dalles
# Safe Workplace Action Plan

In 1970 Congress passed the Occupational Safety and Health Act (Public Law 91-596), which was followed three years later in Oregon with the passage of the Oregon Safe Employment Act (ORS 654.001-654.991). In order to comply with and, to the greatest extent possible meet the intent of these laws, the City of The Dalles has developed this Safe Workplace Action Plan.

City Council and City Management will take every opportunity to more clearly and noticeably promote the City's attitude and culture that the City is a safe place to work and that the safety of its employees is of prime importance. Promotion of an attitude and culture which focuses upon the safety of employees will be accomplished by the following actions:

1. Continue to maintain and reinforce the City's Safe Workplace culture through:
    - Conducting monthly City-Wide Safety Committee Meetings. Safety Committee meetings will normally take place in the City Hall Conference Room, except when site visits are part of the agenda. Minutes will be produced in a timely manner following each meeting, to be reviewed by the City Manager and distributed to all Committee members and Department Managers. Any Action Items resulting from a meeting will be reviewed at the next regular Safety Committee meeting and the status of that will be recorded in the minutes to ensure follow up on those items.
    - Conducting weekly division safety meetings to disseminate information and discuss safety topics. Any issues regarding unsafe equipment, work areas or circumstances, or the need for mitigating equipment to make a situation safer will be reported to the Department Manager, who will report it to the City-wide Safety Committee to ensure follow up on these items.
    - Conducting daily morning crew meetings to discuss safety, traffic control, etc., prior to starting the day's work and to discuss any issues that might have occurred the previous day.
    - Maintaining an open channel for all employees to discuss safety issues with the Safety Officer, any Safety Committee member and/or address their safety concerns to lead workers, supervisors and Department Managers.
2. Continue to identify primary hazards for each department using historical injury information and employee feedback, and reviewing safe work practices and procedures.
    - Work with SAIF Safety Management Consultant to provide reports on injuries within each Department to Department Managers for past three years for analysis, discussion and determination of preventive actions:
        - Most common injuries in the Public Works Departments have been from lifting, slips and falls.

        - State required training based on need will be scheduled on a calendar year basis.
        - All policy and procedures relating to Public Works functions will be maintained and updated on an annual basis.
        - Annual consultations with SAIF, OR-OSHA and ODOT will be scheduled on an annual basis.
    - Police Department recent injuries most commonly occur during incidents when dealing with persons being detained. Reports concerning accidents over an extended period will be analyzed for other causes of injuries or accidents.
        - Monthly safety meetings will be conducted to analyze injury reports and determine cause.
        - State required training based on need will be scheduled on a calendar year basis.
        - Will conduct monthly site surveys. Any findings from the site survey will be documented and corrected in a timely manner.
    - The Library and City Hall
        - Will conduct quarterly Safety Meetings and site surveys. Any findings from the site survey will be documented and corrected in a timely manner. Safety meeting minutes will be distributed to committee members in a timely manner.
        - State required training based on need will be scheduled on a calendar year basis.
        - All policy and procedures relating to City Hall or Library functions will be maintained and updated on an annual basis.
- Continue to require reporting and analysis of "near misses" as well as actual incidents to determine root causes and provide that information to Safety Committee for analysis on a monthly basis.
- Maintain Standard Operating Procedures and continue to complete Job Safety Analysis reports on an annual basis. Engage affected employees in the process, for those positions that are perceived to have a higher degree of hazard or that have already resulted in an injury/incident.

3. Develop and maintain accurate information on the specific physical requirements of the essential functions for each position.
    - Job descriptions were updated to provide this information in 2008. Continue to review and update job descriptions as changes are made to duties and equipment used by each position.

- Provide written job offers that specify position physical requirements to all potential new hires and attach an updated job description and the Safety statement from the Personnel Policies.
- Provide updated job descriptions with specific physical requirements to doctors involved in the treatment or evaluation of any employee for light duty.
- Continue to use, and monitor closely, light duty as a transition and incentive to bring the employee back to full duty, as the employee's capabilities allow. Identify opportunities to use benefit programs, such as the SAIF Employer at Injury Program, to allow workers to return to transitional duty, thereby enabling more workers to resume regular work sooner and/or avoid permanent limitations.

4. Continue to consider issues related to an employee's continued physical ability to perform the essential functions of their position:
   - Continue to look for opportunities to provide equipment or solutions to assist workers in performance of the essential functions of their positions in a safe manner.
   - Continue to partner with SAIF to purchase equipment, furniture and fixtures that will provide assistance and/or provide opportunities for injured employees to return to work or light duty.
   - Consider requiring "fitness for duty" examination for an employee that demonstrates an inability to safely perform the essential functions of his/her position.

Julie Kruger

Julie Kruger, City Manager

5-9-18

Date

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# Incident Reporting & Analysis

**Purpose:**

The purpose of the Incident Reporting and Analysis Policy is to outline the requirements that pertain to reporting and the analysis of incidents involving personal injury, property damage and near misses. Tracking and analyzing incidents highlights opportunities for various improvements relating to worker safety, and operational efficiency.

**Scope:**

The Incident Reporting & Analysis policy applies to all City of The Dalles Employees.

**Definitions:**

- Accident
  - All sudden or non-sudden events that cause injury to a person and/or damage to property. Even minor injuries such as cuts or sprains are considered accidents.
- Incident
  - All safety related events that either resulted, or nearly resulted in an accident. All accidents are incidents, but not all incidents are accidents.
- Property Damage
  - Quantifiable damage to city property.
- Catastrophe
  - An accident where two or more employees are fatally injured, or three or more employees are admitted to a hospital/medical facility.
- Illness
  - A diagnosed health condition that is the result of occupational exposure.

**Responsibilities:**

Employer

A) Ensuring that all incidents are properly reported and investigated in accordance with this policy.
B) Ensuring that all corrective actions are promptly and completely carried out.
C) Ensuring that employees understand that retaliation against another individual for reporting safety incident and accidents is a violation of the Employee Handbook.
   a. Employee safety suggestions and concerns may be anonymously reported directly to the Safety Officer via text, email or phone call. The Safety Officer will use discretion to determine an appropriate response to these reports.

Employee

A) Reporting any Incident to the Safety Officer and/or manager/supervisor as soon as possible.

B) Reporting any near miss or safety concern to the Safety Officer and/or manager/supervisor as soon as possible.

**Procedure:**

1. Incident reporting: The employee shall follow the outlined procedure to report any injury, illness, near miss or property damage.
    a. If medical care is needed, call 911.
    b. If medical care is not urgent, please report the incident to your immediate supervisor and then seek medical attention.
    c. The affected employee along with their supervisor will complete side one of the Incident Reporting & Analysis form. Provide as many details as possible. The form should be completed within 48 hours of when the incident occurred.
    d. Upon completion of the form, the form shall be submitted to the Safety Officer.
    e. The Safety Officer will use the Incident Form along with the Incident Classification Index to determine an appropriate response. This response may range from a follow up meeting with the affected employee to a full root cause analysis. This response will be based on incident severity.
    f. Corrective actions and any incident analysis will be listed on side two of the Incident form.
    g. Any incident resulting in medical care being necessary requires the additional completion of a SAIF 801 form. The SAIF 801 should be completed by the affected employee and their supervisor. The SAIF 801 form must be forwarded to the Human Resources Department at City Hall within 48 hours of when the incident occurred.
    h. The Human Resources Director, or Safety Officer in the Director's absence will submit the SAIF 801 form within 5 working days of a supervisor gaining knowledge of the claim.
    i. Incident reports with redacted personal information will be forwarded to the chairperson of the satellite safety committee operating under the affected employee's department once the initial incident investigation has been completed. Upon discussion, committee members can suggest any additional corrective actions that should be taken.
    j. Incident reports with redacted personal information will be forwarded to all members of the city-wide safety committee for review. Additional suggestions for corrective action may be discussed at committee meetings.

2. Vehicle damage: Any City employee who is involved in a motor vehicle accident while driving a City-owned vehicle, City-leased vehicle, or other vehicle being used on official City business, whether it is their fault or not, and whether the amount of damage is minor or not, shall follow this process.
    a. Stop at once! Check for personal injuries and call 9-1-1 for an ambulance if needed.
    b. No vehicle shall be moved from the scene until the police arrive or photographs are taken, unless a greater hazard would be created by failure to remove the vehicle(s) from the scene.

c. If occurring on the public right of way, contact the City of The Dalles Police Department by vehicle radio or by telephone and provide the following information:
    i. Accident involves City employee and vehicle
    ii. Location of the accident
    iii. Name of the caller
        1. If the accident occurs outside the City of The Dalles, contact Oregon State Police (OSP) or the law enforcement agency with local jurisdiction.
d. Contact your supervisor and provide the information listed in section C. The supervisor should report to the scene of the accident as soon as possible and take photos of the accident if possible.
e. Exchange information with the other driver. If the other vehicle is unattended, leave a note and contact the owner as soon as possible. Write down names, license numbers, and other information regarding the accident and those people involved in it. Record all information on the insurance card of your vehicle. Be sure to record the name and address of the witnesses and the name and badge number of the responding police officer.
f. It is the responsibility of the driver to submit the DMV form (Oregon Traffic Accident and Insurance Report) to the DMV within 72 hours if there is any bodily injury and/or more than $2500 damage to any vehicle or property, or if any vehicle is towed from the scene as a result of the damage. The Oregon Traffic and Accident Insurance Report can be downloaded from the internet.
g. The affected employee along with their supervisor must complete side one of the Incident form within 48 hours to provide necessary details surrounding the damage, injury and/or illness. This should be promptly submitted to the Safety Officer.
h. The Safety Officer will use the Incident Form along with the Incident Classification Index to determine an appropriate response. This response may range from a follow up meeting with the affected employee to a full root cause analysis. This response will be based on incident severity.

3. Drug and Alcohol Testing: Post incident testing shall be conducted in accordance with City Policy. All City Employees are potentially subject to post incident drug and alcohol testing.
    a. For a CDL driver involved in an accident, which resulted in a fatality or issuance of a moving violation, federal regulations require DOT post-accident testing protocol.
    b. For employees not operating a Commercial Motor Vehicle, supervisors will determine whether or not a post incident test shall be administered by completing the post-accident supervisor checklist. This checklist is designed to provide objective criteria by which an employee will be evaluated to determine potential intoxication.
        i. Non-DOT post-accident protocol is followed, which requires use of the non-DOT testing form and a Disclaimer Form for conducting the Breathalyzer Test
    c. In either case DOT or non-DOT protocol the employee must be transported by the manager, or designee, as soon as possible for drug and alcohol testing. The employee shall be tested as soon as possible, but for alcohol testing the time shall not exceed a period of eight hours.
        i. Refer to the City Policy and Procedure for Drug and Alcohol Testing Program for additional information.

d. Immediate result testing should be used whenever possible. If not possible, the employee is placed on paid administrative leave pending the receipt of the test results.
    i. I. DOT Approved Drug and Alcohol Testing Facilities in The Dalles.
        1. MCMC Occupational Health and Services, 1805 E 19th St, The Dalles, OR 97058. Calling ahead is advisable.
        2. If the MCMC Occupational Health is closed, use Mid-Columbia Medical Center at 1700 East 19th St. Call the Laboratory (541-296-7225) ahead of arrival time to assure that a Breathe Alcohol Technician will be there.

4. Fatality and Catastrophe: The City Manager or designee is required to report all work place fatalities or catastrophes to OR- OSHA within eight hours of knowledge. The OR-OSHA central office can be reached at 503-3 78-3272 or 1-800-922-2689 or by contacting Oregon Emergency Response Line at 1-800-452-0311.
    a. OR-OSHA requires that employers and their representative do not disrupt the scene of the fatality or catastrophe, other than to conduct the rescue of an injured person, until authorized OR-OSHA Manager (or designee), or directed by a recognized law enforcement agency to do so.
    b. Furthermore, all employee injuries resulting in admission to a hospital require notice to OR-OSHA within 24 hours of knowledge. Such notice shall be accomplished by the City Manager or designee. If the accident occurs on a weekend or holiday, the supervisor shall contact the City Manager, the Human Resources Director or the City Attorney.

Approved by: Julie Krueger Date: 4-3-19

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# CITY OF THE DALLES
## Safety Vest Policy

### A. PURPOSE

The purpose of this policy is to enhance the City's efforts to improve our "Safety Culture" and provide the best possible safety practices and protection for our employees. An additional benefit of implementing this proposal will result in a marked improvement of our overall professional appearance. The requirements of this policy are the minimum standard for all operations.

### B. APPLICABLE LEGAL STANDARDS

**1. OAR 437-002-0134 Personal Protective Equipment**

**(7) High Visibility Garments**

*Employees exposed to hazards caused by on highway type moving vehicles in construction zones and street/highway traffic must wear highly visible upper body garments. The colors must contrast with other colors in the area sufficiently to make the worker stand out. Colors equivalent to strong red, strong orange, strong yellow, strong yellow-green or fluorescent versions of these colors are acceptable. During hours of darkness, the garments must also have reflective material visible from all sides for 1000 feet.*

Any employee, including the responsible supervisor, found to have not abided by this City policy and Oregon Occupational Health and Safety Administration laws are subject to disciplinary action. Appropriate methods of disciplinary actions are defined in the employee handbook or applicable collective bargaining agreement.

**2. OAR 437-002-0134 Personal Protective Equipment**

**(2) Equipment**

***(a)*** *Where employees provide their own protective equipment, the employer is responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment.*

**(4) Payment for protective equipment**

***(e)*** *The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.*

***(f)*** *Where an employee provides adequate protective equipment he or she owns pursuant to paragraph (2)(a) of this section, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment.*

### C. DEFINITIONS

1. **High Visibility Safety Apparel-** Personal protective safety clothing intended to ensure the person wearing the safety apparel is conspicuous during both daytime and nighttime, and other low-light condition usage.

**2. ANSI Class II Safety Apparel-** Is intended for working environments that pose a greater risk. This can include workers who are on a roadway where traffic is moving under 50 mph. These vests are larger than their class 1 counterparts because they require more high visibility and reflective areas to be present.

## D. GENERAL RESPONSIBILITIES

### 1. EMPLOYER

a. Provide orange colored ANSI Class II, or higher, safety vest with the standard logo which includes the City logo and proper wording.

b. Replace orange colored ANSI Class II, or higher, safety vest with the standard logo if they become overly soiled or torn and cannot be cleaned or repaired to an acceptable condition.

c. Provide orange colored ANSI Class II, or higher, flame resistant safety vest to be used for hot work in the field. Hot work is any work that involves working with or around open flames or sparks, or anything that could potentially start a fire, including but not limited to welding, cutting, grinding, and brazing.

d. Managers and supervisors shall decide if high visibility apparel is faded or soiled beyond reasonable usefulness in terms of the apparel being conspicuous, and conservatively interpret City standards for Class II high-visibility apparel effectiveness. When there is any doubt whether apparel offers employees the high-visibility characteristics intended by the City, it shall be replaced with new apparel which unquestionably meets City intent to maintain very high levels of visibility and professionalism.

### 2. EMPLOYEE

a. All City employees, with the exception of administrative staff, will wear a City-issued orange colored ANSI Class II, or higher, safety vest with the standard logo as an outer garment at all times when on duty and outdoors.

b. All vests and clothing shall be used and be secured so as to prevent a hazard, and to ensure that loose clothing will not become caught or entangled in machinery or equipment.

c. Two orange colored ANSI-approved class II safety vests will be carried in each WICKS vehicle to be used in the field when working within a right-of-way, or designated work zone/ project area.

d. During flagging operations vests shall be closed in front at all times.

e. All City employees will wear a City-issued orange colored ANSI Class II, or higher, flame resistant safety vest as an outer garment at all times while performing hot work outside of any City facility.

   i. Flame resistant vests will not be used for tasks other than hot work.

   ii. Flame resistant vests will be used in addition to the required PPE for hot work.

f. City-issued orange colored ANSI Class II, or higher, safety vest with the standard logo need not be worn:

   i. While attending indoor meetings or training classes.

   ii. If City-issued safety yellow-green rain coat is worn as an outer garment.

   iii. If an orange ANSI Class II, or higher, high-visibility safety shirt with the standard logo is worn as an outer garment.

   iv. By Law Enforcement personnel, except when engaged in traffic control and supplied with

an outer garment meeting OSHA and DPSST requirements.

v. By WICKS staff while on the water treatment property, except when conducting distribution sampling.

By: Julie Krueger Date: 12-5-17
Julie Krueger, City Manager

Effective November, 2017

**CITY OF THE DALLES**

**Safety Vest Policy**

**CERTIFICATE OF RECEIPT AND TRAINING**

I, the undersigned employee of the City of The Dalles, hereby certify that I have received a copy of the written – Safety Vest Policy, November, 2017. I understand that I am obligated to comply with the provisions of this policy. I understand that the original of this certificate will be placed in my official Personnel File as a record documenting my receipt of said policy.

By initialing the following statements I acknowledge that my employer has provided training and I know at least the following:

When Safety Vests are necessary; X_____

What Safety Vest is necessary; X_____

How to properly don, doff, adjust, and wear Safety Vests; X_____

The limitations of the Safety Vests, X_____

The proper care, maintenance, useful life and disposal of the Safety Vests. X_____

When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required above, the employer must retrain each such employee.

Circumstances where retraining is required include, but are not limited to situations where:

- Changes in the workplace render previous training obsolete; or
- Changes in the types of PPE to be used render previous training obsolete; or
- Inadequacies in an affected employee's knowledge or use of assigned safety vests indicate that the employee has not retained the requisite understanding or skill.

**NAME (Please print):** _____

**SIGNATURE:** _____

**DATE:** _____

# City of The Dalles
# Work-Place Privacy and Confidentiality Policy

The City of The Dalles (City) recognizes our employees' right to privacy. In achieving this goal, the City adopts these basic principles:

1. The collection of employee information typically is limited to information the City needs for business and legal purposes.
2. Personal information and information in confidential records ordinarily will not be disclosed, except as permitted or required by law, or as authorized by the employee.
3. Verifications of employment dates, job title, and wages may be provided without written approval.
4. Internal access to employee records will be limited to those employees having an authorized need-to-know.
5. You are permitted to review your personnel file, except for information which is considered exempt from disclosure under Oregon Public Records Law, ORS 192.410 through 192.505, and you may correct inaccurate factual information or submit written comments in disagreement with any material contained in your personnel records. An employee's personnel file shall include the contents listed in Section 47.2 of the City's Exempt Employee Handbook.
6. All employees have a responsibility not to accidentally disclose information about employees through overheard conversations, mislaid documentation, and faxes, e-mails and hard copies of correspondence sent to a wrong destination. Unauthorized communication of confidential information is regarded as a serious matter.
7. The City's IT Department maintains reasonable safeguards to ensure the security, confidentiality, and integrity of personal identifying information stored in the City's systems.
8. All employees are required to follow these principles, as well as any other City policy or practice related to confidential information. Violations of this may result in disciplinary action, up to and including termination.

**Entity**

Oregon law provides that "every person has a right to inspect any public record of a public body in this state." "Public body" includes cities and counties and other public entities, such as the City of The Dalles. Although there are some exceptions (such as personnel files), most records in a public body are available to the public for inspections. It is the intent of the City to be responsive to requests for public records. Employees are to forward all requests for public information to the City Attorney's office.

**Medical Records**
The City stores employee medical records in access-protected folders, separate from master personnel files.

Generally, employees "own" their medical information, which means that without the employee's permission, the City does not typically inform other employees of an individual's medical condition(s).

**Personnel Records**
The City of The Dalles maintains personnel files for each employee. Access to these files is on a need-to-know basis and is restricted to authorized persons only.

Persons authorized to have access to personnel records include city personnel who are determined by the City Manager, City Attorney, or the employees' Department Head to have a need for such records to fulfill a City related function which relates to employment matters concerning the affected employee or others, the City's Human Resources Representative, and the individual to whom the file applies; the employee may also give written permission for an otherwise unauthorized individual to view his/her file.

Information in the personnel files may be treated as exempt from public disclosure as provided in ORS Chapter 192. Information which cannot be treated as confidential under the law includes: name, job title, salary, and dates of employment with the City of The Dalles. Other information in the files may be subject to public disclosure by order of a court or tribunal of competent jurisdiction.

**Change in Personal Data**
Since personnel records are used to administer pay and benefits, and other employment decisions, employees are responsible for keeping information current regarding changes in name, address, phone number, exemptions, dependents, beneficiary, etc. Keeping your personnel records current can be important to you with regard to pay, deductions, benefits and other matters. If you have changes in any of the following items, please notify the HR Representative to assure that the proper updates/paperwork are completed as quickly as possible:

- Name
- Marital status/Domestic Partnership (for purposes of benefit eligibility determination only)
- Address
- Telephone number
- Dependents
- Person to be notified in case of emergency
- Other information having a bearing on your employment
- Tax withholding

**Social Security Numbers**
Social security numbers may not be printed on materials that will be mailed, unless an employee has requested the mailing and all but the last four digits have been removed. This does not apply to records required by state or federal law (examples: W2s, 1099s, etc.).

Also, social security numbers may not be printed on a card used to access products or services, nor will the City publicly post or display employees' Social Security numbers, such as on a website.

If computer files containing this personal information have been subject to a breach, then the City will notify you as soon as we are reasonably able to do so.

**Communications**

Conversations: Please be careful when discussing confidential information about employees in public areas, where it might be overheard; or when talking on the telephone.

Written information: Please use care not to leave written information about employees where unauthorized persons can view it. This includes leaving confidential documents sitting in printer trays or placing such documents in open recycling bins. Please send internal "mail" in sealed envelopes, marked "confidential."

Nolan K. Young, City Manager

06/11/15
Date

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

# CITY POLICY FOR WORK DURING PERIODS OF POOR AIR-QUALITY

To ensure all employees work in an environment free of hazards to the greatest extent possible, The City of The Dalles has adopted this policy. The City's Safety Officer, in coordination with Oregon Department of Environmental Quality and the U.S. Center for Disease Control, will notify Managers of the air quality in The Dalles.

**Purpose:**

The purpose of this policy is to use the information provided by Oregon's Department of Environmental Quality to determine the current condition of air decomposition as well as how it is forecasted in order to appropriately establish a safe working environment for City Employees.

**Scope:**

The scope of this policy applies to the City of The Dalles employees who are exposed to outdoor air during their scheduled work day.

**Definitions:**

- Air Quality Index- The Air Quality Index is a color-coded tool that categorizes air quality.
- N95- An N95 respirator is a respiratory protective device designed to achieve a very close facial fit and efficient filtration of specific airborne particles.

**Responsibilities:**

Employer:

- It is the responsibility of the employer to provide accurate and updated information to employees regarding the quality of air within city limits during their scheduled work days.
- It is the responsibility of the employer to provide personal protective equipment necessary to ensure employees have limited exposure to health and safety hazards.

Employee:

- It is the responsibility of the employee to adhere to the guidelines listed in this policy.

**Procedure:**

1. The air quality will be measured using the Air Quality Index provided by the Oregon Department of Environmental Quality at the beginning of the each given work day.
2. The following guidelines will be implemented based on the current Air Quality Index:

| Air Quality Index PM2.5 24-hour Average (µg/m3) | Guideline |
|---|---|
| 35.5 - 55.4 Unhealthy for Sensitive Groups | Employees are given the option to wear the N95 Respirator and understand that the mask is available to them. |
| 55.5 - 150.4 Unhealthy | 1. Non- essential employees are required to wear the N95 Respirator while working outdoors.<br><br>2. Non- essential employees who choose not to wear the required N95 Respirator while working outdoors are required to leave for the day using sick time. |
| 150.5 - 250.4 Very Unhealthy | All essential employees who work outdoors will continue working. They will be provided and must wear an N95 Respirator. |

3. When the initial daily Air Quality Index is greater than 35.5, the level will be evaluated again mid-day to ensure no changes have occurred.
4. Employees are expected to continue daily tasks without additional required interventions for an Air Quality Index less than or equal to 35.5 Air Quality Index PM2.5 24-hour Average (µg/m3).

**References:**

Air Quality Index. (n.d.). Retrieved September 13, 2017, from http://www.deq.state.or.us/aqi

Julie Krueger

Julie Krueger, City Manager

9-21-17

Date

**CITY of THE DALLES**
HUMAN RESOURCES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481 ext. 8
FAX (541) 296-6906

# Bilingual Incentive Pay Policy

Some employees who have regular interaction with the public and are entitled to a bilingual (Spanish-English) pay, shall be qualified for such incentive by meeting the criteria below. Once the employee meets the qualifications, that employee's pay will receive the additional incentive bonus on the following month's base pay as a percentage thereof.

I. Time of Employment

1. All non-sworn personnel eligible for bilingual incentive pay required under an effective Collective Bargaining Agreement shall qualify for the incentive following completion of their initial Trial Service Period, or six-months of employment whichever is greater and demonstrated fluency.

2. All sworn personnel eligible for bilingual incentive pay required under an effective Collective Bargaining Agreement shall qualify for the incentive following completion of one-year of employment in the sworn position, and demonstrated fluency.

3. All exempt personnel are eligible for bilingual incentive pay provided an essential function of their positions is communicating directly with the public; and the employee demonstrates fluency as described in Section II. Positions that require bilingual fluency shall not receive an additional incentive. The incentive is included in the base pay for those positions.

II. Fluency and Incentive

1. Upon completion of the time of employment indicated above, an employee shall demonstrate to the City, their fluency in verbal and written communication in Spanish and English before becoming qualified to receive the bilingual incentive pay.

2. The incentive to employees determined to be fluent in verbal and written communication shall be 5% of their base pay. An employee fluent in only verbal or written shall receive 2.5%. Employees failing to show fluency in either verbal or written shall not receive an incentive.

Julie Krueger

Julie Krueger, City Manager

4-2-21

Date

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481

# Hearing Conservation Program

1. Purpose
    a. To identify, monitor and correct for occupational exposure to potentially hazardous noise levels in the work place.
2. Scope
    a. This policy applies to all City of The Dalles Employees who may be exposed to potentially hazardous noise during the course of their work activities.
        i. This includes the following employees:
            1. General Services Maintenance
            2. Sworn Law Enforcement Personnel
            3. Public Works Personnel
                a. Wastewater Collections Division
                b. Water Distribution Division
                c. Transportation Division
                d. Water Treatment Division
                e. Engineering
                f. Development Inspector
3. Definitions
    a. Sound
        i. Pressure waves created by vibrating objects.
    b. Standard Threshold Shift
        i. A Standard Threshold Shift, or STS, is defined in the occupational noise exposure standard at 29 CFR 1910.95(g)(10)(i) as a change in hearing threshold, relative to the baseline audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000, and 4000 hertz (Hz) in one or both ears.
    c. Decibels
        i. A unit used to measure the intensity of a sound or the power level of an electrical signal by comparing it with a given level on a logarithmic scale.
    d. Hearing Protection
        i. Personal protective equipment device designed to isolate the inner ear from potentially harmful noise.
    e. Dosimeter
        i. A device that measures noise levels over time. A dosimeter may be utilized to calculate an employee's exposure level.
    f. Audiogram
        i. A hearing ability test designed to highlight any potential hearing loss incidents. Audiograms are typically performed annually.
    g. Action Level
        i. An 8-hour time-weighted average of 85 decibels measured on the A-scale, slow response, or equivalently, a dose of fifty percent.
            1. At this point, an employee must be enrolled in the hearing conservation program.

h. Time Weighted Average
    i. Average exposure over a given period. Usually 8 hours (normal work shift).
i. Audiologist
    i. A trained medical technician qualified to perform audiometric testing.
j. Potentially Hazardous Noise
    i. Any noise above 85 dB can cause hearing loss if the duration of the exposure exceeds 8 hours.

4. Background (Statistics from NIOSH/CDC, 2019)
    a. Hearing loss injuries are very common in the United States. Hearing loss affects many industries such as construction, manufacturing, maintenance workers, and even law enforcement.
        i. In the United States, hearing loss is the third-most common chronic physical condition among adults after hypertension and arthritis.
        ii. About 12% of the U.S. working population has hearing difficulty.
        iii. About 24% of the hearing difficulty among U.S. workers is caused by occupational exposures.
        iv. About 8% of the U.S. working population has tinnitus ('ringing in the ears') and 4% has both hearing difficulty and tinnitus.
    b. Causes of Occupational Hearing Loss
        i. OHL can occur when workers are exposed to loud noise or ototoxic chemicals.
        ii. Noise is considered loud (hazardous) when it reaches 85 decibels or higher, or if a person has to raise his/her voice to speak with someone 3 feet away (arm's length).
        iii. Ototoxic chemicals can cause OHL, make the ear more susceptible to the damaging effects of hazardous noise, or both. For example, a person taking certain ototoxic pharmaceuticals may lose hearing, become more susceptible to noise, or both.
            1. Ototoxic chemicals include:
                a. Solvents (styrene, trichloroethylene, toluene)
                b. Metals and compounds (mercury compounds, lead, organic tin compounds)
                c. Asphyxiants (carbon monoxide, hydrogen cyanide)
                d. Nitriles (3-Butenenitrile, cis-2-pentenenitrile, acrylonitrile)pharmaceuticals (certain antineoplastic agents)
                    i. Think CS (chlorobenzylmalononitrile)
        iv. Traumatic Brain Injury is also known to cause varying degrees of hearing loss.
    c. Exposure Surveillance
        i. About 22 million workers are exposed to hazardous noise each year.
        ii. About 10 million workers are exposed to solvents and an unknown number are exposed to other ototoxicants.
    d. Hearing loss is often permanent and irreparable. This is why it is so essential to monitor employees for evidence of exposure to potentially hazardous noise.
    e. Age Related Hearing Loss (presbycusis)
        i. As humans get older, hearing loss begins to occur. Presbycusis is one of the variables that is accounted for when audiograms are performed.
    f. Noise Sources

| Noise Source | Decibel Level | comment |
|---|---|---|
| 1883 Krakatoa Eruption* | 174 | *Ruptured the eardrums of people 40 miles away from the blast. Could be heard 1200 miles away from blast. |
| Jet take-off (at 25 meters) | 150 | Eardrum rupture |
| Aircraft carrier deck | 140 | Permanent damage likely from short term exposure. |
| Military jet aircraft take-off from aircraft carrier with afterburner at 50 ft (130 dB). | 130 | Permanent damage likely from short term exposure. 64 times as loud as 70 dB |
| Thunderclap, chain saw. Oxygen torch (121 dB). | 120 | Painful. 32 times as loud as 70 dB. |
| Steel mill, auto horn at 1 meter. Turbo-fan aircraft at takeoff power at 200 ft (118 dB). Riveting machine (110 dB); live rock music (108 - 114 dB). | 110 | Average human pain threshold. 16 times as loud as 70 dB. |
| Jet take-off (at 305 meters), use of outboard motor, power lawn mower, motorcycle, farm tractor, jackhammer, garbage truck. Boeing 707 or DC-8 aircraft at one nautical mile (6080 ft) before landing (106 dB); jet flyover at 1000 feet (103 dB); Bell J-2A helicopter at 100 ft (100 dB). | 100 | 8 times as loud as 70 dB. Serious damage possible in 8 hr exposure |
| Boeing 737 or DC-9 aircraft at one nautical mile (6080 ft) before landing (97 dB); power mower (96 dB); motorcycle at 25 ft (90 dB). Newspaper press (97 dB). | 90 | 4 times as loud as 70 dB. Likely damage 8 hr exp |
| Garbage disposal, dishwasher, average factory, freight train (at 15 meters). Car wash at 20 ft (89 dB); propeller plane flyover at 1000 ft (88 dB); diesel truck 40 mph at 50 ft (84 dB); diesel train at 45 mph at 100 ft (83 dB). Food blender (88 dB); milling machine (85 dB); garbage disposal (80 dB). | 80 | 2 times as loud as 70 dB. Possible damage in 8 h exposure. |
| Passenger car at 65 mph at 25 ft (77 dB); freeway at 50 ft from pavement edge 10 a.m. (76 dB). Living room music (76 dB); radio or TV-audio, vacuum cleaner (70 dB). | 70 | Arbitrary base of comparison. Upper 70s are annoyingly loud to some people. |
| Conversation in restaurant, office, background music, Air conditioning unit at 100 ft | 60 | Half as loud as 70 dB. Fairly quiet |
| Quiet suburb, conversation at home. Large electrical transformers at 100 ft | 50 | One-fourth as loud as 70 dB. |
| Library, bird calls (44 dB); lowest limit of urban ambient sound | 40 | One-eighth as loud as 70 dB. |
| Quiet rural area | 30 | One-sixteenth as loud as 70 dB. Very Quiet |
| Whisper, rustling leaves | 20 | |
| Breathing | 10 | Barely audible |

[modified from **http://www.wenet.net/~hpb/dblevels.html**] on 2/2000. SOURCES: Temple University Department of Civil/Environmental Engineering (www.temple.edu/departments/CETP/environ10.html), and *Federal Agency Review of Selected Airport Noise Analysis Issues*, Federal Interagency Committee on Noise (August 1992). Source of the information is attributed to *Outdoor Noise and the Metropolitan Environment*, M.C. Branch et al., Department of City Planning, City of Los Angeles, 1970.

*Independent Source

6. Procedure
    a. Annual Testing
        i. Affected Employees will be subject to audiograms on a yearly basis.
            1. A mobile testing service will be contracted to test all available employees at the location of greatest convenience for affected employees.
            2. Supervisors must ensure that all of the affected employees under his/her supervision complete one of the following:
                a. An audiogram during the scheduled mobile testing unit session
                b. An audiogram performed by a certified audiologist.
    b. Standard Threshold Shifts
        i. Employee Notification
            1. Employees will be notified in writing of any potential standard threshold shift within 5 days of the results of the audiogram being made available.
        ii. Incident Investigation
            1. Safety Officer will interview any employee shown to have experienced a standard threshold shift to determine possible causes.
        iii. Follow up audiogram
            1. Employees who on their annual audiogram show a standard threshold shift or other abnormality, will be sent to receive a follow up audiogram to confirm/refute the potential shift.
                a. This step ensures that any abnormal audiogram results due to sickness, flying, or other causes are not recorded as instances of occupational hearing loss.
            2. Follow up audiograms must be conducted within 21 days of the original audiogram.
        iv. Follow up medical evaluation
            1. Employees who undergo a confirmed standard threshold shift shall meet with an independent audiologist for further evaluation.
                a. The City will request that the audiologist makes a determination as to the cause of the standard threshold shift.
                b. Employees who refuse to see the audiologist in the circumstances described above shall sign a waiver releasing the City from any liability for any potential hearing loss.
    c. Recordkeeping
        i. Recordable Standard Threshold Shifts will be recorded on OSHA 300 log as well as the 300A summary.
            1. All recordable Standard Threshold Shifts will be recorded unless an audiologist determines that the Standard Threshold Shift was not work related.
            2. All potential recordable standard threshold shifts warrant the completion of an incident form. The employee shall provide any and all perceived causes of the hearing loss incident.
7. Responsibilities
    a. Departments
        i. Identifying tasks where exposure to potentially hazardous noise is likely.
        ii. Providing and ensuring that employees wear hearing protection as appropriate.

b. Safety Officer
    i. Arranging for mobile testing units to conduct annual audiogram sessions.
    ii. Conduct any necessary training to support the City's hearing conservation effort.
    iii. All recordkeeping duties pertaining to hearing conservation.
    iv. Informing employees of any abnormalities or standard threshold shifts.

8. Review Schedule
    a. This policy will be reviewed annually or as otherwise needed.

Approved by: Julie Kuenzi Date: 2-7-2020

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

# Hearing Conservation Program Appendix A
# Notification of Standard Threshold Shift

Employee Name,

On _____ the City of The Dalles conducted annual audiometric testing on employees who have potential for being exposed to hazardous levels of occupational noise. Your test suggests that you have undergone a standard threshold shift in hearing ability that could be due to occupational exposure. Please schedule an appointment at MCMC Occupational Health for a secondary audiogram prior to _____. This secondary audiogram will either confirm or refute this standard threshold shift.

In the meantime, we will be treating this situation as an incident warranting investigation into any potentially harmful occupational exposure. Please fill out an Incident Reporting Form with your supervisor. Once either confirmed, or refuted you may be required to fill out a SAIF 801 form if medical attention is appropriate.

Included with this letter is a copy of your audiometric test results.

Please contact me with any questions or concerns.

Bailey

X _____ Date:_____

Bailey Volk
Safety Officer

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

# Hearing Conservation Program Appendix B

Employee Name,

As we have discussed previously, the yearly audiogram has signaled that you have potentially undergone a standard threshold shift in hearing ability. I was recently given access to a physician's review of the follow up audiogram which confirmed the results of the original audiogram. Since this confirms an injury, we will have to treat it as such moving forward. When you are able to, please complete the SAIF form 801 and submit it to the Human Resources Office enclosed in an envelope.

When we last spoke we discussed the potential source of this hearing damage and whether or not it could have been caused by something at work. Since you are only intermittently exposed to hazardous noise, and have been provided with hearing protection, we determined that there was the potential for the hearing loss to have been caused by something other than your occupational environment. I would like to offer, on behalf of the City, an opportunity to consult with a physician on this issue. This consultation will serve as an evaluation of whether or not the hearing loss is work related. All details aside from the conclusion of work relatedness will not be shared with us. In addition to hopefully providing you with some insight as to a potential cause, this determination will assist us in dealing with this from a regulatory standpoint. At this point in time, we are required to note this incident as an OSHA recordable injury as we must assume that it is work related until a physician determines otherwise.

To be clear, you are not required to undergo this evaluation and will not be sanctioned in any way regardless of your decision. However, if you choose to do so, it may be mutually beneficial to you as well the City. Please let me know what you decide and we will get you set up.

Best Regards,

Bailey Volk
Safety Officer
City of The Dalles
Office: 541-296-5481 ext. 1128
Cell: 262-527-5506

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481

# Hearing Conservation Program Appendix C

## Medical Exam Refusal Waiver

**Employee Name**: _____ **(Print)**

My signature on this form certifies the following statements to be true:

- I have been the subject of an annual audiogram.
- I have been informed that there has been a standard threshold shift in my hearing ability in writing within 5 days of the audiogram results having been received by my employer.
- I have been trained on the City's Hearing Conservation Program.
- My employer has made hearing protection available to me at no cost.
- My employer has informed me of the need for hearing protection when working around sources of potentially hazardous noise.
- My employer has asked me about any potential causes of the hearing loss in an effort to protect employee safety and health by remediating any and all applicable hazards.
    - Please state what you believe to be the cause of your hearing loss:
        - _____
          _____
          _____
          _____
- My employer has offered me at no cost to myself, a medical appointment with an independent physician specializing in hearing in order to evaluate any and all potential causes of the hearing loss.
- I understand that this medical evaluation has been offered to me as part of a good faith effort by my employer to determine the cause of the hearing loss.
- I am refusing the medical evaluation that has been offered to me at no cost.
    - Please state reason:
        - _____
          _____
          _____
          _____

X _____ **Date:** _____

Employee Signature

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

# Bloodborne Pathogens Exposure Control Plan

1. Objective
    a. To minimize the potential for employee exposure to bloodborne pathogens in the workplace.
    b. To ensure that actual or potential exposures are reported and mitigated according to all pertinent requirements and best practices.
    c. To educate employees who are likely to be exposed to potentially infectious materials about methods of protecting themselves from the risks involved with their work.
2. Definitions
    a. Decontamination
        i. The effective removal of contamination from clothing, or a piece of equipment.
    b. Engineering controls
        i. The designing or alteration of a job task using either tools, or other physical changes to minimize or eliminate risk of exposure to the employee.
    c. Exposure
        i. An actual or potential incident involving either percutaneous or mucocutaneous exposure to bloodborne pathogens or other potentially infectious materials.
    d. Hepatitis
        i. Inflammation of the liver. There are several different variations of this infection. Hepatitis A, B, C, D and E. Hepatitis can be acute (short term), or chronic (long term.) Symptoms typically include pain in the upper right part of your abdomen, yellowing skin, muscle/joint pain, fever and nausea. If left untreated chronic hepatitis can cause severe liver damage and even liver cancer.
    e. Hierarchy of Controls
        i. Controls should be prioritized in the following order:
            1. Elimination
            2. Substitution
            3. Engineering Controls
            4. Administrative Controls
            5. Personal Protective Equipment
    f. Infection
        i. The invasion and multiplication of microorganisms not normally present inside of the body such as viruses, bacteria and parasites.
    g. Medical Treatment
        i. Management and care of a patient to combat a disease or disorder. First aid, counseling, observation, or diagnostics are not considered to be medical treatment.
    h. Other Potentially Infective Materials (OPIM)
        i. Any material that is or is likely to be contaminated with blood, bodily fluids or other infectious materials.

i. Personal Protective Equipment (PPE)
    i. Wearable equipment design to protect employees from actual or potential hazards.
j. Regulated Waste
    i. Waste that contains or is likely to contain blood, bloody fluids or OPIM.
k. Sharps
    i. Needles, broken glass or other sharp objects that may or may not be contaminated with blood or OPIM.
l. Sharps Containers
    i. Containers that are specifically designed to contain sharp objects such as broken glass or hypodermic needles.
m. Work Practice controls
    i. Methods of completing a task that reduce potential for exposure and provide the employee with a high level of safety and health.

3. Classifications
    a. Affected Employees
        i. All employees who may be reasonably expected to encounter potentially infectious materials during the course of their work activities.
        ii. Affected employees may include but are not necessarily limited to the following:
            1. Police Department
                a. Officer
                b. Detective
                c. Sergeant
                d. Captain
                e. Chief
                f. Reserve Officer
                g. Animal Control Officer
                h. Evidence Technician
            2. Public Works
                a. Wastewater Collection Division
                b. Water Distribution Division
                c. Transportation Division
            3. City Hall
                a. Maintenance Personnel
                b. Codes Enforcement
            4. WICKS
                a. Water Treatment Manager
                b. Water Treatment Personnel
    b. Program Administrator
        i. The program administrator for the City of The Dalles will be the Safety Officer. The Safety Officer will be responsible for auditing the program, procedures and work practices to ensure efficacy in fulfilling the above noted purpose.
4. Hazards
    a. Routes of Exposure and Potential Transmission

i. Percutaneous Exposure
    1. Percutaneous exposure refers to exposure via any break in the skin which could exist as the result of a sharps injury, or other conditions that compromise dermal integrity. Transmission of infection is significantly more likely via percutaneous exposure than other exposure routes.

ii. Mucocutaneous Exposure
    1. Mucocutaneous exposure refers to exposure via the mouth, eyes or other mucous membranes. Transmission via mucocutaneous exposure is less likely than percutaneous exposure.

b. Common Pathogens

i. HIV Human Immunodeficiency Virus
    1. Human immunodeficiency virus, commonly referred to as HIV is a viral infection that targets the human immune system. The virus can be found in blood, semen, vaginal fluids, and other various body fluids. A contaminated needle causing a percutaneous exposure in a subject will transmit the virus approximately 0.3% of the time. If left untreated HIV will inhibit the immune system from responding to opportunistic illnesses and cancers usually causing death within a span of 9-11 years.

ii. HCV Hepatitis C Virus
    1. Hepatitis C Virus is a viral infection that causes inflammation of the liver. Chronic HCV can lead to live cancer liver failure, or cirrhosis. The virus can be found in blood or other internal bodily fluids. HCV among people who inject drugs is extremely common and infection rates among this group is estimated by the CDC to range anywhere from 38.1% to 68.0%. Approximately 80% of those who become infected with HCV will experience chronic symptoms. 10-20% of those infected with HCV will develop cirrhosis. Patients who have been diagnosed with cirrhosis have a 1-5% annual risk of developing hepatocellular carcinoma (liver cancer).

iii. HBV Hepatitis B Virus
    1. Hepatitis B Virus is a viral infection that causes inflammation of the liver. Chronic HBV can lead to liver cancer, liver failure, or cirrhosis. The virus can be found in blood or other internal bodily fluids. Percutaneous exposure via an infected needle in a subject will result in a transmittal rate of approximately 30%. While chronic symptoms only emerge in about 5% of normal adults who become infected with HBV, young children and infant rates of chronic infection range from 50%-90%. Chronic infection can lead to cirrhosis and hepatocellular carcinoma.

iv. Other Pathogens
    1. Although not common in the United States, there are many other potential pathogens that people may bring back from traveling abroad. Extra precautions shall be taken when the contamination source is known to have been outside of the country in the last several months.

a. Malaria
b. Syphilis
c. Ebola
d. Tuberculosis
e. Cholera
f. Diphtheria
g. West Nile Virus

v. Hypodermic Needles
1. City employees frequently come across hypodermic needles throughout the course of their job tasks. The most likely departments to be affected are Police, Public Works, and City Hall maintenance personnel. Needles may be found incidentally while walking through a park or may be present in a confined space where work is being performed. Extreme care should be taken when reaching into an area that you do not have visual access to. Areas most likely to have needles are those in which drug users frequent such as parks, or homeless encampments. Needles shall be mechanically transferred to a sharps container upon discovery. Needles shall not be picked up by hand unless no other option exists. When working in areas likely to contain needles, employee shall wear puncture resistant gloves.

vi. Broken Glass
1. Broken glass can potentially be found in pretty much all workspaces throughout the City. Broken glass shall be treated as a contaminated sharp and shall be disposed of using all of the precautions given to a hypodermic needle.

vii. Wastewater
1. Public Works personnel frequently are required to handle equipment that comes in contact with wastewater. Wastewater is likely to contain pathogens. Extreme care should be taken to ensure that wastewater does not come in contact with broken skin or mucus membranes. Any areas that come in contact with wastewater shall be flushed with clean water and soap as soon as is feasible. Impervious gloves should be used whenever an employee comes into contact with sewer infrastructure.

5. Procedures
a. Exposure Control
i. Equipment
1. Sharps Containers
a. Sharps containers will be made available at every establishment throughout the City.
b. Containers shall be replaced at least annually unless the container has not been used.
c. The container may be exchanged through Bi Mart's container exchange program or may be turned in to the Safety Officer.
2. Puncture Resistant Gloves

a. Puncture resistant gloves shall be provided to those employees who are required to work around contaminated sharps on a regular basis.

3. Sweeper and Dustpan
    a. Bloodborne pathogens spill containment kits shall be provided at each primary location around the City.
    b. Mechanical means for handling sharps will be provided to those employees who are required to work around contaminated sharps on a regular basis.
4. Tongs
    a. Tongs will be made available to those employees who frequently come across potentially contaminated sharps.
5. Handwashing Stations
    a. Handwashing stations are readily accessible at all primary locations around the City. Hand Sanitizer should be provided for employees working at auxiliary locations.

ii. Universal Precautions
1. Treat all material suspected of being contaminated as though it were contaminated.
2. Don't handle sharps with your hands.
3. Use mechanical means such as forceps, tongs or a broom/dustpan to pick up sharps whenever possible.
4. Do not store sharps anywhere outside of a container that is specifically designed to hold sharps.
5. Be aware of areas and tasks where exposure is likely.
6. Wash hands immediately after handling potentially contaminated materials.
7. Dispose of all PPE as regulated waste after use if it cannot be completely decontaminated.

b. Exposure Response
i. Reporting
1. All actual or potential exposure incidents must be reported to the affected employee's supervisor immediately. The supervisor will then contact the safety officer as soon as possible.
2. If practical, a sample of the material that the employee was exposed to should be kept for analysis by a medical professional.

ii. Evaluation/Treatment
1. All employees who have undergone an actual or potential exposure should seek medical attention immediately after reporting the exposure to their supervisor.
2. All medical issues will be kept confidential. However, employees should understand that some limited discussion with supervisors and administrators may be necessary to communicate and address procedures and the remediation of hazards.

3. Confidential medical attention will be made available to the affected employee and may include the following:
    a. Documentation of the exposure route and the circumstances surrounding the exposure.
    b. Identification and evaluation of the source of the contamination. This might be an individual, a discarded needle or wastewater sample.
    c. Blood test for HIV, HBV and potentially other contaminants.
    d. Post exposure prophylaxis when determined to be appropriate by a physician.

iii. Follow Up
1. All employees who have undergone an actual or potential exposure will be made aware of the City's Employee Assistance Program for counseling resources.
2. All illnesses that an employee experiences due to occupational exposure shall be reported to the safety officer.

c. Spill Cleanup
i. Spills involving potentially infectious materials shall be cleaned up as soon as feasible.
ii. Spill response kits specific to biohazardous material shall be kept at each primary location.
1. Impervious nitrile gloves shall be worn by anyone cleaning up the spill.
2. When potential for splashing/aerosolization of potentially infectious material exists, a respirator with particulate filters and eye protection such as safety glasses or a face shield must also be worn.
3. The affected area shall be covered by an absorbent medium to prevent splashing and the spread of contamination.
4. The area shall be thoroughly disinfected before and after the removal of the spilled material.
5. The material will be picked up and discarded into a bag designed to contain various biohazardous materials.
6. These bags shall be disposed of in a manner compliant with state regulations.
    a. Contact The Dalles Disposal for further information.

d. Regulated Waste
i. Regulated waste is defined as liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; contaminated sharps; and pathological and microbiological wastes containing blood or other potentially infectious materials.
ii. Regulated waste must be stored in containers specifically designed to hold biohazardous sharps.

iii. Containers shall be exchanged no less than once a year unless the container has not been used.
iv. Containers shall be inspected as part of each sites monthly or quarterly safety walkthroughs.
v. Containers shown to be defective shall be replaced immediately.

e. Body Fluids
i. Although Police personnel are probably the most likely to encounter bodily fluids, incidental exposure can occur for all employees. If a member of the public suddenly becomes ill at City Hall or the Library, employees may be exposed. Exposure can also occur when dealing with someone who is under the influence of drugs or alcohol, or when administering first aid to someone who is injured.

6. HBV/Tetanus Vaccines
a. All employees who are reasonably expected to be exposed to bloodborne pathogens as part of their normal work tasks will be offered vaccines for HBV and Tetanus at no cost to the employee. This vaccines shall be administered within the first 10 work days. If the employee declines this vaccination they will be required to fill out the HBV/Tetanus vaccination declination form. If the employee decides at a later date that they would like to be vaccinated, the vaccine will be made available at no cost to the employee.
b. Appointments for vaccines will be scheduled as part of the new hire orientation. Departments will be responsible for paying for employee vaccines.
c. The following personnel are eligible for the HBV/Tetanus Vaccines:
i. Police Department
1. Officer
2. Detective
3. Sergeant
4. Captain
5. Chief
6. Reserve Officer
7. Animal Control Officer
8. Evidence Technician
ii. Public Works
1. Wastewater Collection Division
2. Water Distribution Division
3. Transportation Division
iii. City Hall
1. Maintenance Personnel
2. Codes Enforcement
iv. WICKS
1. Water Treatment Manager
2. Water Treatment Personnel

7. Recordkeeping
a. A separate sharps injury log will be maintained by the safety officer for each City establishment.

8. Training

a. All city employees regardless of department or likelihood of exposure will receive training on bloodborne pathogens as well as this document. Training will include the following:
    i. How to identify situations where potentially infectious material may be present.
    ii. Hazards posed by exposure to potentially infectious material.
    iii. Precautions that need to be taken when handling such material.
    iv. Reporting procedures.

9. Review Schedule
    a. This program will be reviewed annually or whenever new rules warrant a change in procedures.

Approved by: Julie Kneeg Date: 11-21-19

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# Respiratory Protection

1. **Scope**
    a. This policy covers all City of The Dalles Employees who have the potential to be exposed to respiratory hazards while engaging in work-related activities.
2. **Purpose**
    a. To outline procedures for respiratory protection in order to reduce or eliminate potential exposure to respiratory hazards.
3. **Regulatory Position Statements**
    a. Justification of program
        i. Drawing on conclusions from previous OROSHA consultations and internal risk assessments there are no normal identified or anticipated situations where City of The Dalles Employees would face exposures to a recognized airborne hazard above a permissible exposure limit. Therefore, while this policy lays out mandatory internal procedures, it does not imply that any such exposures are expected to occur or that the City is required to have such a respiratory program. The procedures laid out in this document are designed to reduce small exposures to recognized hazards to near zero.
    b. Sewer Gas Exposure
        i. While Hydrogen Sulfide and Sulfur Dioxide are significant, acute potential respiratory hazards, the city maintains the following policy that no employees shall enter a confined space, or other area where there exists a concentration of 5 ppm for any length of time. Such spaces must be thoroughly ventilated to reduce the concentration of Hydrogen Sulfide and Sulfur Dioxide below this threshold.
4. **Definitions**
    a. Aerosol
        i. An aerosol is a solid particle that has become suspended in the air. These may or may not be respirable depending on size. Particles between 1-5 micrometers in diameter are most likely to impact inside of a human respiratory system.
    b. Exposure
        i. In the context of respiratory protection, exposure refers to the overall amount of a given substance that you would inhale. Exposure is a function of the concentration of a substance in the worker's breathing zone, multiplied by the time they spend performing a given task.
    c. Face Covering
        i. A layer of cloth or other material designed to act as a source control barrier to intercept and block respiratory droplets from being expelled from a person. This is useful when trying to prevent transmission of biological pathogens from person to person.
    d. Fume
        i. A fume refers to a broad range of airborne hazards including gases, vapors, or smoke that usually smells and can cause damage when inhaled.


Primary Author: Bailey Volk

e. Nuisance
    i. Exposure to a given substance that is bothersome but not necessarily hazardous.
f. Respirator
    i. A device that is worn by a user to either filter contaminants out of an external air source, or provide a source of clean air.
g. Vapor
    i. A substance diffused or suspended in the air. Normally a liquid or solid.

**5. Procedure**

a. Risk Assessment
    i. Potential respiratory hazards shall be reported to the safety officer.
    ii. Risk assessments for respiratory hazards will be conducted by the safety officer in collaboration with stakeholders and will be attached to this policy as appendices.
    iii. Risk assessments will look at the concentration of the hazard that an employee might be exposed to, and the duration of exposure.
b. Medical Screening
    i. Prior to initial use, all employees must undergo a medical evaluation to ensure that they are able to safely use a respirator. These evaluations can be obtained locally from MCMC Occupational Health.
        1. Using a respirator makes it harder to breathe. This can result in strain put on the body which in turn, can exacerbate pre-existing conditions.
    ii. Medical evaluations must be repeated every two years prior to fit testing.
c. Respirator Selection
    i. The safety officer along with the affected supervisor will engage in respirator selection for employees.
    ii. Factors that will be considered while selecting respirators include:
        1. The specific substance for which exposure is a concern.
        2. Expected employee exposure to said substance.
        3. The ways in which the hazard could potentially harm the employee.
    iii. Current respirator selection is as follows:
        1. Public Works, Sodium Silicofluoride Exposure
            a. Full Face Air Purifying Respirator with OV/Combo Cartridges
            b. Employees who are unwilling to cleanly shave their faces, may utilize PAPRs for this task.
        2. Public Works, Hydrogen Sulfide Nuisance Protection
            a. Full Face Air Purifying Respirator with OV/Acid Gas Combo Cartridges
        3. Public Works, Airborne Silica
            a. Half Face Respirator with P100 Cartridges
        4. Police Department, 2-chlorobenzylidene malononitrile (CS)
d. Cartridge Replacement
    i. Cartridges do not last forever. In order to reduce the potential for cartridge breakthrough, employees should change cartridges according to the following schedules:
        1. Public Works
            a. Every Sodium Silicofluoride charge.

b. Every time a respirator is used against nuisance Hydrogen Sulfide levels.
c. At the end of each shift where silica exposure occurs.

2. Police
   a. Every time respirator is used during deployment of CS gas.
3. All employees
   a. Replace N95 mask once per shift during periods of poor air quality.
      i. Pandemics, or other situations resulting in a shortage of supplies may require the re-use of N95s or use of an alternative to conserve supplies.

e. Respirator Fit Testing
   i. Respirator fit testing will be conducted annually.
   ii. Fit testing will not be required for employees whose respirator use is exclusively voluntary.
   iii. Fit tests for all respirators aside from N95 disposable masks will be conducted by the safety officer using the stannic chloride protocol.
   iv. Fit tests for N95 disposable masks will be conducted using test hoods and bitrex solution.
f. Cleaning and Maintenance
   i. All full face respirators shall be sanitized after use to remove chemicals, and biological contamination.
   ii. All respirators should be inspected prior to use.
   iii. If an employee notices that a respirator is not working properly, or is damaged during use, they will remove themselves from the area where exposure might occur in order to troubleshoot/repair the respirator.
g. Hazard specific procedures
   i. All Employees
      1. Particulate Matter (PM 2.5)
         a. When the atmospheric concentration is confirmed or believed to greater than an Air Quality Index (AQI) value of 151,
            i. Non-mandatory outdoor work will cease.
            ii. All employee will be provided with an N95 for voluntary use. The use of N95s will be required for those who have been previously medically cleared to wear a respirator.
            iii. Employees who have pre-existing conditions will be allowed to go home.
            iv. Updates on conditions will be sent out to all employees as conditions change.
      2. Biological Pathogens
         a. The use of source control will be required for all employees when mandated by the Oregon Health Authority and Oregon OSHA.
            i. Effective source control relies on the use of masks that have at least two layers, do not have exhalation valves, are tight fitting and allow the user to breathe freely.

ii. Law Enforcement
    1. Chemical Agents
        a. When a chemical agent is deployed in the field, all attending officers should have their respiratory protection ready to go. Respiratory protection is required at all times when downwind of the deployment zone or when entering a closed space where the agent has been deployed.
        b. Extreme care should be taken so as to minimize officer exposure to the chemical agent. Ventilate the space prior to entry if possible.
        c. The dispersal mechanisms of the chemical agents can cause ignitions. Extreme caution must be taken in storing, handling, and using these substances. Do not deploy these substances near flammable materials or materials that otherwise may produce hazardous decomposition products.
        d. Chemical agents must be stored in accordance with the rules set forth by the Oregon Fire Marshall.
    2. Emergency Response
        a. Certain emergency response scenarios may require that officers come into incidental contact with certain hazardous substances. When given an indication of the presence of such substances by either the emergency response framework, or by the safety officer, law enforcement officers shall retreat from the projected impact zone. Law enforcement is not trained or capable of handling HAZMAT response and will not attempt to do so beyond routine area containment efforts and directing of pedestrians and traffic from a safe distance.

iii. Public Works
    1. Water treatment particulates
        a. Employees that are required to load bags of Sodium Silicofluoride at either the surface water treatment plant, or at well sites must wear a fit tested, full face air purifying respirator equipped with particulate filters while performing said task.
    2. Silica
        a. Employees working in or near situations where respirable silica might be present are required to follow procedures laid out in 1926.1153 Table 1 (see appendix). When these procedures cannot be accomplished, employees must wear a fit tested N95 or greater respiratory protection to lower employee exposure to silica.
        b. When the procedures in Table 1 cannot be followed, Employees in or near situations where respirable silica might be present must wear at minimum a fit tested disposable N95 mask while working.
    3. Hydrogen Sulfide/Sulfur Dioxide
        a. Employees shall not enter environments containing 5ppm or more of either SO2 or H2S.

b. Continuous monitoring must take place whenever employees work in situations where H2S or SO2 might be present. (See Confined Space Entry Procedures)

4. Welding
    a. Welding operations shall be performed in a well ventilated environment or shall utilize local ventilation controls when possible.
5. Herbicides
    a. Certain herbicides such as Crossbow, Casoron, and Roundup may pose a respiratory hazard when used in an enclosed/poorly ventilated space. These should always be used in well ventilated areas. When particulates might be aerosolized, employees shall utilize N95 masks.

iv. All Employees

1. Particulate Matter (PM 2.5)
    a. N95s will be provided to all employees who might be exposed to hazardous levels of particulate matter during weather inversions, wildfire events or other emergency situations where respiratory hazards might be present. The use of such masks will be considered voluntary except for those employees who have already received medical clearance to wear a respirator.
2. Biological Pathogens
    a. During the remainder of the COVID-19 pandemic, and during other periods where biological pathogens are spreading, the city may require the use of face coverings to serve as source control in preventing respiratory droplets from traveling from person to person. The use of source control is not considered to be respiratory protection and will not be regulated as such.
    b. Certain positions within the city classified as high risk may be required to wear N95s when engaged in situations where there is a high likelihood of exposure to a biological pathogen of concern
3. Asbestos
    a. Employees shall consult with the safety officer prior to beginning any task where exposure to asbestos can be anticipated.

**h. Training**

i. Basic training on respiratory protection usage and hazards will be conducted annually with all employees who have been issued a respirator. This training will also address specific workplace hazards that the respiratory protection program is used to address.

ii. Information on voluntary respirator use and the health effects of PM2.5 will be sent out during periods of poor air quality via email to all employees.

**i. Update Schedule**

i. In March of each year, the respiratory protection program will be reviewed by the safety officer and other stakeholders.

X Julie Krueger **Date of Signature:** 6-17-21

Julie Krueger
City Manager

# Appendix A: Annual Respiratory Protection Training/Review

**What is a respirator:**
A respirator is a protective device that covers a nose and mouth or the entire face or head to protect the wearer against hazardous atmospheres. Respirators may be:

- Tight-fitting - that is, half masks, which cover the mouth and nose and full facepieces that cover the face from the hairline to below the chin; or
- Loose-fitting, such as hoods or helmets that cover the head completely.
- In addition, there are two major classes of respirators:
- Air-purifying, which remove contaminants from the air; and
- Atmosphere-supplying, which provide clean, breathable air from an uncontaminated source. As a general rule, atmosphere-supplying respirators are used for more hazardous exposures

**Why do employees need to wear respirators:**
When employees must work in environments with insufficient oxygen or where harmful dusts, fogs, smokes, mists, fumes, gases, vapors, or sprays are present, they need respirators. These health hazards may cause cancer, lung impairment, other diseases, or death.

Where toxic substances are present in the workplace and engineering controls are inadequate to reduce or eliminate them, respirators are necessary. Some atmosphere-supplying respirators can also be used to protect against oxygen-deficient atmospheres. Increased breathing rates, accelerated heartbeat, and impaired thinking or coordination occur more quickly in an oxygen-deficient or other hazardous atmosphere. Even a momentary loss of coordination can be devastating if it occurs while a worker is performing a potentially dangerous activity such as climbing a ladder.

**When do employees need to wear respirators:**
Employees need to wear respirators when an additional tool is needed to reduce their exposure to contamination at the worksite. Other strategies for preventing atmospheric contamination may include enclosing or confining the contaminant-producing operation, exhausting the contaminant, or substituting with less toxic materials.

Respirators have their limitations and are not a substitute for effective engineering and work practice controls. When it is not possible to use these controls to reduce airborne contaminants below their occupational exposure levels, such as during certain maintenance and repair operations, emergencies, or when engineering controls are being installed, respirator use may be the best or only way to reduce worker exposure. In other cases, where work practices and engineering controls alone cannot reduce exposure levels to below the occupational exposure level, respirator use is essential.

Where respirators are required to protect worker health, specific procedures are necessary to ensure the equipment's effectiveness.

**How can you ensure proper protection?**
OSHA's respirator standard requires employers to establish and maintain an effective respiratory protection program when employees must wear respirators to protect against workplace hazards. Different hazards require different respirators, and employees are responsible for wearing the appropriate respirator

and complying with the respiratory protection program.

The standard contains requirements for program administration, worksite-specific procedures, respirator selection, employee training, fit testing, medical evaluation, and respirator use, cleaning, maintenance, and repair.

Employees must use respirators while effective engineering controls, if they are feasible, are being installed. If engineering controls are not feasible, employers must provide respirators and employees must wear them when necessary to protect their health. The employee's equipment must be properly selected, used, and maintained for a particular work environment and contaminant. In addition, employers must train employees in all aspects of the respiratory protection program.

**How well does a respirator need to fit:**

If your mask does not make a tight seal all the way around your face when you inhale, you may breathe contaminated air that leaks around the edges of the face seal. Most respirators come in different styles and sizes, and fit different people differently because people's faces have different shapes. You also need training to know how to correctly put the mask on and wear it correctly. This information should be provided by the supplier of the respirator.

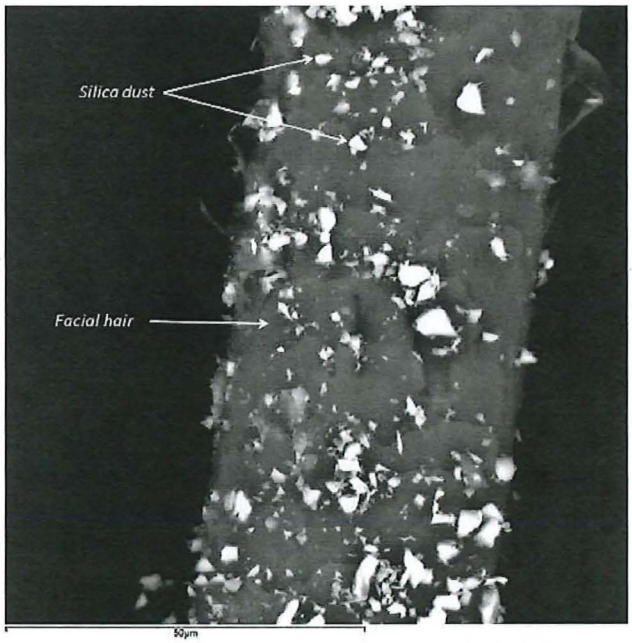
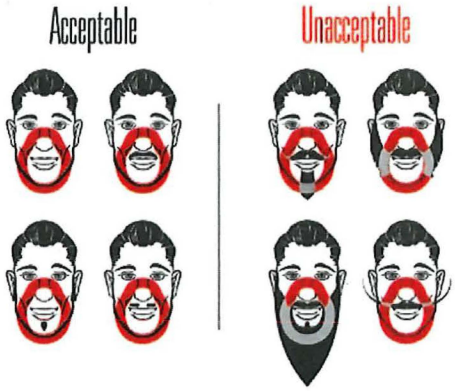



***Figure 1 – Male facial hair sized in relation to silica dust. Image obtained through the use of a Scanning Electron***

The only way to tell if a tight-fitting respirator fits you properly, and is capable of protecting you, is to fit test the respirator. Fit testing can be accomplished a number of different ways and should be done by a health and safety professional before workers wear a respirator in a hazardous environment. Respirators must be checked for proper fit each time they are donned to ensure they provide adequate protection.

**Respirator and beards/facial hair:**

Anything that prevents the face mask from fitting tightly against your face, such as a beard or long sideburns, may cause leakage. Therefore, beards, stubble, or sideburns will prevent a good facepiece seal and beards may interfere with the valve function. You cannot use the respirator if you are not clean shaven. If your respirator is a loose-fitting (hooded) positive pressure respirator (e.g., a powered air-purifying respirator, PAPR) then you may have a beard.




**Will the right cartridges/filters always protect me against that hazard:**

No. Respirators reduce exposure to the hazard, but if the exposure is such that it goes beyond what the filter is capable of handling (either because the amount of toxic gas or particles is more than what the filter is designed to handle, or because the exposure lasts longer than what the filter is designed to handle), the filter may not be effective in providing required protection. Also, there may be a small amount of leakage even if the fit of the

respirator has been tested. If so, and if there is a large amount of a toxic chemical in the outside air, even that small leakage can be dangerous.

**Can anyone wear a respirator:**
No. Breathing through a respirator is more difficult than breathing in open air. People with lung diseases, such as asthma or emphysema, elderly people, and others may have trouble breathing. People with claustrophobia may not be able to wear a full facepiece or hooded respirator. People with vision problems may have trouble seeing while wearing a mask or hood (there are special masks for people who need glasses). Employees must be medically evaluated before assigned to use a respirator.

**Will my cartridge/filter and respirator mask protect forever:**
No. Cartridges, filters, and masks get old. If the filter cartridges are outdated, have been open to the air or are damaged, you may not be protected. Cartridges that contain charcoal or other chemicals for filtering the air should be kept in air-tight packages until use. If cartridges are open or not packed in air-tight packaging, they should not be used. Even cartridges in original packaging have expiration dates that should be checked before purchase and use. Also, over time your mask can get old and break down. Keep your mask in a clean, dry place, away from extreme heat or cold. Inspect it before and after use according to the manufacturer's instructions. Cartridges also have a limited service life; they must be changed periodically during use.

**When should you change out your cartridges:**
Cartridges should be changed out based on a number of atmospheric conditions. Breakthrough occurs when the filter/absorbent material becomes saturated. The atmospheric conditions that determine how quickly breakthrough occurs include the types of respiratory hazards present, the concentration of hazards, and the type of work being performed. Working around greater concentrations and performing more strenuous work will decrease the overall life of cartrdiges.Increasingly difficult breathing and smelling a contaminant inside of your mask are tell tale signs that breakthrough has occurred. Tf either of these are noticed, change your cartridges immediately.

# Appendix B: Inspection Checklist

1. **Examine the facepiece for:**
    a. Dirt
    b. Cracks, tears, holes, or deformed shape from improper storage
    c. Inflexibility of rubber or silicone
    d. Cracked or badly scratched lenses (full face)
    e. Cracked or broken air-purifying element holder(s)
    f. Badly worn threads or missing gaskets
2. **Examine harness straps for:**
    a. Breaks
    b. Loss of elasticity
    c. Broken or malfunctioning buckles and attachments
3. Examine the inhalation and exhalation valve for
    a. Blockage
    b. Foreign material, such as dust, hair, and detergent residue
    c. Cracks or tears in the valve material
    d. Improper insertion of the valve body
    e. Cracks or breaks in the valve body
    f. Missing or defective valve cover
    g. Improper installation of the valve itself
4. **Examine the air-purifying element for:**
    a. Correct cartridge
    b. Loose connections, missing or worn gaskets and cross threading
    c. Expiration date on cartridges

## Appendix C: Mandatory Information for Voluntary Respirator Use

Respirators are an effective method of protection against designated hazards when properly selected and worn. Respirator use is encouraged, even when exposures are below the exposure limit, to provide an additional level of comfort and protection for workers. However, if a respirator is used improperly or not kept clean, the respirator itself can become a hazard to the worker. Sometimes, workers may wear respirators to avoid exposures to hazards, even if the amount of hazardous substance does not exceed the limits set by OSHA standards. If your employer provides respirators for your voluntary use, or if you provide your own respirator, you need to take certain precautions to be sure that the respirator itself does not present a hazard.

You should do the following:

1. Read and heed all instructions provided by the manufacturer on use, maintenance, cleaning and care, and warnings regarding the respirators limitations.

2. Choose respirators certified for use to protect against the contaminant of concern. NIOSH, the National Institute for Occupational Safety and Health of the U.S. Department of Health and Human Services, certifies respirators. A label or statement of certification should appear on the respirator or respirator packaging. It will tell you what the respirator is designed for and how much it will protect you.

3. Do not wear your respirator into atmospheres containing contaminants for which your respirator is not designed to protect against. For example, a respirator designed to filter dust particles will not protect you against gases, vapors, or very small solid particles of fumes or smoke.

4. Keep track of your respirator so that you do not mistakenly use someone else's respirator.

Employee Signature:_____

Date:_____

# Appendix D: Hazard Assessment 1 (Police Department)

### Respiratory Hazard Assessment for Employee Exposure to

### 2-Chlorobenzylidene Malononitrile (CS)

**Background:** 2-Chlorobenzylidene Malononitrile or CS is a white crystalline solid with a pepper like odor at room temperature. It is a cyanocarbon that is commonly used as a riot control agent by military and law enforcement agencies. When aerosolized, CS becomes a lachrymator causing eye irritation, conjunctivitis/erythema (skin redness), blepharospasms, throat irritation, cough, chest tightness, headache and vesiculation. The IDLH (immediately dangerous to life and health) level for CS has been set at 2 $mg/m^3$. IDLH is defined as "likely to cause death or immediate or delayed permanent adverse health effects or prevent escape from such an environment." According to the National Institute of Occupational Safety & Health: "The chosen IDLH is based on the Army [1961] report that a 2-minute exposure to concentrations between 2 and 10 $mg/m^3$ was considered "intolerable" by 6 of 15 persons. Grant [1974] reported that human volunteers have found concentrations greater than 10 $mg/m^3$ to be extremely irritating, intolerable for more than 30 seconds because of burning and pain in the eyes and chest [Punte et al. 1963]."

**Anticipating Exposure:** Employees are likely to be exposed to CS in controlled scenarios when the substance is intentionally introduced for the dual purpose of gaining a tactical advantage over non-compliant subjects and incentivizing compliance with officer's directives. Since incidental sampling is not practical or feasible, exposure will be anticipated using peer reviewed industrial hygiene research as a benchmark. In a study performed by Navy Industrial Hygienist Lt. Maccon A. Buchanan, Army recruits undergoing mask confidence training in an enclosed space were exposed to levels of CS measured at between .960-2.463 $mg/m^3$. These levels represent what kind of exposure an individual would face in an otherwise clean, enclosed space in close proximity to a central generator continuously aerosolizing CS. Considering these conditions, it is appropriate to assume that any exposure that SERT Officers will face will likely be well below the IDLH threshold of 2 $mg/m^3$.

**Conclusion:** Since the anticipated employee exposure is less than both the IDLH value, and the APF 50 threshold assigned to full face respirators, full face respirators will be selected. Employees will utilize MSA Millennium Full Face Air Purifying Respirators equipped with MSA CBRN canisters to mitigate exposure during the deployment of CS. Fit testing will be conducted using Stannic Chloride testing procedures.

# Appendix E: Hazard Assessment 2 (Public Works)

**Respiratory Hazard Assessment for Employee Exposure to**

**Sodium Silicofluoride (NA2SIF6)**

**Background:** Sodium Silicofluoride is a yellowish-white, or Nile blue, odorless powder with an acidic taste, and hygroscopic properties. It is frequently used as a source of fluoride in water treatment operations but is also commonly used as a raw material for ore refinement. Sodium Silicofluoride Inhalation will result in nose and throat irritation, spasmodic cough and difficulty breathing. At high concentrations/acute exposures, inhalation will result in hypocalcemia and cardiac arrhythmia. Chronic inhalation can result in nose bleeds, sore throat and chronic bronchitis. Eye contact can result in severe irritation, watering and redness. Skin contact can result in redness and in severe cases can result in burns. Ingestion can result in severe burns, irritation, shock, hypocalcemia, nausea, vomiting, convulsions, and loss of consciousness. PEL is 2.5 mg/m3 over an 8 hour shift period. IDLH is 250 mg/m3.

**Anticipating Exposure:** Employees are likely to be exposed to sodium silicofluoride while dumping bags of the substance into hoppers at the surface water treatment plant or at well sites. Given the short duration, limited source, infrequent task assignment and engineering controls in place, it is not believed that employees would be exposed to levels at or above the set PEL for Sodium Fluorosilicate. An outside OROSHA consultant agreed with this assessment.

**Conclusion:** Since the anticipated employee exposure is less than both the IDLH value, the PEL, and the APF 50 threshold assigned to full face respirators, full face respirators will be selected. Employees will utilize Honeywell/North RU6500 respirators with minimum of P100 cartridges. Fit testing will be conducted using Stannic Chloride testing procedures.

# Appendix F: Hazard Assessment 3 (Public Works)

### Respiratory Hazard Assessment for Employee Exposure to

### Hydrogen Sulfide (H2S)

**Background:** Hydrogen Sulfide is a chalcogen hydride gas that is colorless, acutely toxic, corrosive, flammable and has a characteristic foul rotten egg odor. It is commonly found in sewerage systems and is also sometimes used as a raw material in metal sulfide refinement. Hydrogen sulfide inhalation exposure can result in severe irriation, nervous/respiratory system damage, and death. It also acts as a simple asphyxiant which can rapidly displace oxygen in a confined space. Extreme care and continuous monitoring/ventilation must be utilized when working around H2S

**Anticipating Exposure:** Employees are most likely to be exposed to Hydrogen Sulfide while working in or near sewer infrastructure. All confined space entries require pre-entry air monitoring, and continuous air monitoring ventilation. It is City Policy that no entry is made into a space containing more than or equal to 5PPM H2S. Typical entries only last about 30 minutes. H2S ceiling PEL is 20PPM and IDLH is 100PPM.

**Conclusion:** Since H2S exposure is controlled through engineering/administrative controls, respirators are not required to control H2S exposure. However, for nuisance levels, employees may utilize full face Honeywell/North RU6500 with OV/Acid Gas/P100 cartridges. Fit test method will utilize stannic chloride.

# Appendix G: Hazard Assessment 4 (Public Works)

### Respiratory Hazard Assessment for Employee Exposure to

### Silica (Si)

**Background:** Silica is a common mineral often found in concrete, certain rocks, and is otherwise naturally occurring. When ground, or cut, certain respirable particles may become aerosolized and present a respiratory hazard to employees. Chronic silica inhalation exposure can result in Silicosis, Lung cancer, chronic obstructive pulmonary disease (COPD) and kidney disease.

**Anticipating Exposure:** Employees are most likely to be exposed to silica while cutting grinding rock. During cutting/grinding operations, employees are almost always able to follow the precautions laid out in table 1 of the 1910.134 standard set by OSHA, and adopted by OROSHA. This, combined with an outdoor, well ventilated setting, should reduce silica exposure to well below the PEL.

**Conclusion:** Although silica exposure should remain below the PEL during all identified tasks, employees engaged in cutting/grinding activities will be issued half face respirators with P100 cartridges and will have access to N95 respirators in case table 1 precautions cannot be followed. Fit testing method will be stannic chloride for half face, and bitrex for N95.

# Appendix H: Hazard Assessment 5 (All Employees)

### Respiratory Hazard Assessment for Employee Exposure to

### PM 2.5

**Background:** PM 2.5 refers to respirable particulate matter approximately 2.5 microns in diameter. High PM 2.5 levels are commonly associated with air pollution, or forest fires. Employees maybe subject to hazardous levels of wildfire smoke while performing their normal work tasks. PM 2.5 exposure can result in eye, nose, throat and lung irritation, shortness of breath, and the exacerbation of underlying medical conditions.

**Anticipating Exposure:** Employees are most likely to be exposed to PM2.5 during severe fire events which may occur for about one week out of the year. Employees may be exposed to air quality levels in excess of 400AQI. These levels of exposure are hazardous and require intervention.

**Conclusion:** Employees who have been medically cleared to wear a respirator will be required to do so when working outside. Employees who otherwise are not enrolled in the respiratory protection program will be strongly encouraged to wear an elastic N95 respirator and will be provided with information on non-mandatory respirator use. N95 fit tests will be conducted using Bitrex.

# Appendix I: Hazard Assessment 6 (Public Works)

### Respiratory Hazard Assessment for Employee Exposure to

### Sulfur Dioxide (SO2)

**Background:** Sulfur Dioxide is a toxic gas commonly found in sewerage systems but is also a volcanic byproduct, and has uses in various industries. Sulfur Dioxide is acutely toxic when inhaled and can result in skin/eye corrosion/damage. Extreme care must be taken including continuous ventilation/air monitoring when employees are expected to work around SO2.

**Anticipating Exposure:** Employees are most likely to be exposed to Sulfur Dioxide while working in or around sewer infrastructure. All confined space entries require pre-entry air monitoring, and continuous air monitoring ventilation. It is City Policy that no entry is made into a space containing more than or equal to 5PPM SO2. Typical entries only last about 30 minutes. SO2 PEL is 5PPM and IDLH is 100PPM.

**Conclusion:** Since SO2 exposure is controlled through engineering/administrative controls, respirators are not required to control SO2 exposure. However, for nuisance levels, employees may utilize full face Honeywell/North RU6500 with OV/Acid Gas/P100 cartridges. Fit test method will utilize stannic chloride.

# Appendix J: Hazard Assessment 7 (Public Works, City Hall, Library)

**Respiratory Hazard Assessment for Employee Exposure to**

**Asbestos Fibers**

**Background:** Asbestos is a fibrous mineral commonly used in consumer products for its flame resistant and insulating properties. When inhaled, asbestos causes lung damage that can result in severe and often fatal conditions such as mesothelioma and asbestosis. While acute damage from exposure is often limited, the severe potential for chronic conditions warrants extremely careful handling.

**Anticipating Exposure:** Employees are most likely to encounter asbestos when cutting older water pipes that were partially made with asbestos, or when construction occurs in any of the older city buildings like City Hall. Since the presence of any asbestos fibers basically exceeds the PEL, employees shall wear a fit tested respirator with a minimum of P100 level protection whenever exposure can be anticipated.

Additionally, certain renovation activities within City Hall, and The Dalles Library may disturb older building materials containing asbestos.

**Conclusion:** Any activity involving potential exposure to asbestos requires strict controls including a fit tested respirator with P100 filters/cartridges. Employees are required to consult with the safety officer prior to beginning work on any project where asbestos exposure can be anticipated.

**CITY OF THE DALLES**
**POLICY MANUAL**

**SECTION V – PUBLIC WORKS**

**ADMINISTRATIVE DIRECTIVE**

NUMBER: _____
DATE: _____
EFFECTIVE DATE: _____

## SITE REVIEW TEAM

1.0 PURPOSE:

1.1 Compliance with Land Use and Development Ordinance 98-1222, Section 3.010.030, Pre-Application Conference.

1.2 To establish a staff Site Review Team for land use applications submitted to the Community Development Department and clarify the team role and responsibility.

2.0 SCOPE:

2.1 In order that all development proposals are given prompt attention by the appropriate departments and to assure that all City ordinances and policies are met, the Site Review Team will evaluate development applications on a set schedule. Department and Agency comments may be incorporated into staff reports prepared by the Community Development Department.

3.0 POLICY:

3.1 The Site Review Team will consist of officially designated representatives from Utility, Transportation and Engineering and Community Development Departments. Other Agencies invited to attend are: Wasco County Road Department, Northern Wasco PUD, Chenowith Water PUD, Mid-Col Fire and Rescue, Port of The Dalles. Additional agencies may be invited as per the discretion of the Community Development Department.

3.2 Alternates must be available when the officially designated representative is unable to attend.

3.3 The Site Review Team will meet every other Thursday at 1:30 p.m. in the Public Works conference room.

3.4 The first three applications received on or before the cut-off date will be scheduled for the next available review date. The cut-off date is 5:00 p.m. Tuesday, 10 days before the scheduled Thursday meeting.

3.5 Meeting agendas and information packets will be sent out one week before the Thursday meeting by the Community Development Dept.

3.6 Notes from the meeting are the responsibility of the applicant as well as each department.

3.7 The team will assist the Community Development Department with activities related to streamlining of the development review process; e.g. applicant checklists and City standards/procedures manual.

4.0 RESPONSIBILITY:

4.1 Department Heads are responsible for ensuring compliance with this directive.

5.0 DISTRIBUTION

5.1 All Department Heads.

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Nolan K Young

Nolan Young, City Manager

11/10/08

Date

## BORROWING CITY MATERIALS/SUPPLIES
## CITY OF THE DALLES PUBLIC WORKS DEPARTMENT

### APPLICATION

This policy applies to the borrowing and replacement of supplies and materials from the City of The Dalles Public Works Department.

### POLICY

The City of The Dalles Public Works Department will not loan materials and/or supplies to private individuals, companies or contractors except on an emergency basis, as defined below. An emergency shall be determined by an appropriate city public works supervisor according to the criteria listed herein:

**An emergency exists if:**

1. Work being performed through a contract with the city will be unreasonably delayed unless the item(s) is obtained.

2. Damage is caused due to the fault of the city i.e., mis-identified locate of underground utilities.

    A. If the utility is mis-marked or not marked, there will be no charge to the contractor.
    B. If the utility was marked with *"reasonable accuracy", the contractor will pay for material and labor to restore service, clean-up and equipment.

3. Local utilities, i.e., power, gas, phone, experience an outage and citizens would be without service.

4. Water is running from broken or damaged pipes and materials are needed to reduce the effects of the break.

### EXCEPTIONS

1. Exception to this policy is made for barricades and cones. Civic, and non profit organizations may borrow barricades and cones for community events following procedures as listed below:

## PROCEDURE

1. No unauthorized persons will be allowed in the City yard area unless accompanied by a city employee.

2. A request to borrow will be completed in person at the front office of the Public Works Department at 1900 W 6th St.

3. Authorization by the appropriate supervisor will be obtained prior to release of any item(s).

3. A city employee will accompany the individual to pick up the item.

4. Returned items will first be recorded in the front office after which a city employee will accompany the individual making the return so that it can be checked for damage and put back in the appropriate place.

5. Borrowers are responsible for damage to such items and will be billed accordingly.

6. All items not returned by the date specified will be billed to the borrowing party.

*OAR 952-001-0010 (12) "reasonable accuracy" means within twenty four inches of outside dimensions of the facility.

# GRAVEL STREET RENOVATION POLICY
## City of The Dalles

## I Introduction

The Dalles maintains a number of rights-of-way within the community that are currently gravel surfaces. These areas typically also lack curb or sidewalks. While multi-frontage relief may be available for some, full right-of-way reconstruction can present a significant financial burden for adjacent property owners who wish to improve their neighborhoods. For some rights-of-way, a minimum to moderate amount of effort by the City and a small to moderate investment by adjacent property owners can result in a right-of-way improvement which enhances the community.

It is the City's desire that, whenever possible, full reconstruction of rights-of-way should occur. This desire is consistent with past practice and recognizes the contribution to the community past reconstruction projects have provided. The City also recognizes the need to begin the process of improvements to neighborhoods which is both reasonable and affordable. In order to accommodate a request to pave an existing gravel-surface right-of-way, the following policy has been developed which will define conditions under which improvements can be conducted.

## II Process

The Gravel Street Renovation Policy has been developed as an expeditious and cost effective alternative to the process of forming a Local Improvement District (LID). The improvement of a street or alley under the Gravel Street Renovation Policy requires consent of all property owners who would be financially contributing to the project. The Policy can be used for both citizen-initiated and City-initiated projects. To initiate the process, citizens need only to submit a written request to the City Public Works Department showing the support of all residents along the street proposed to be paved who would be financially contributing to the project (multi-frontage relief may provide a project to some residents without a financial contribution).

For the City to initiate a project under this Policy, it would first complete a design and cost estimate for the proposed improvements. Meetings with affected property owners would then be held to review the project and estimated costs. If the project receives consent from all property owners who would be financially contributing to the project, the project can proceed.

All projects proposed under this Policy will be handled through a site team approach. This process allows multiple agencies to review and comment on the proposal. Thus, the requirements and needs of all affected agencies and utilities can be identified and addressed rather than accidentally missed as could occur without a defined process. The site team process will also provide the opportunity to be consistent in our review process for any improvement being considered.

The criteria to be considered regarding a proposed improvement will include: 1) the length and width of the area to be improved, 2) the number and types of existing structures (curb and sidewalk) within the area, 3) the condition of underground utilities and the resources of the City to upgrade those systems prior to paving, 4) the minimum work to be considered which will improve the area but not result in negative impacts in other locations or unsafe conditions, and 5) a methodology for local residents to either pay for an improvement in its entirety or contribute a reasonable share towards the improvement with allowance for multi-frontage relief for same-kind improvements. The criteria will anticipate that any street improvements to be constructed will be installed consistent with current City development standards to the extent possible with minimal disturbance to existing public and private improvements. At a minimum, improvements will be designed to produce a safe and functional street width depending on the location of the request, the current use or potential use of the street, the right-of-way width available for the improvement to be placed, and topography.

The Department has completed the identification of streets and rights-of-way (ROW) that would fall under this program. The list was gleaned from the work of the RARE planner, Darren Wyss, and information from the 1999 Draft Transportation System Master Plan right-of-way inventory. The list will provide a good starting place for the program but will need to be reviewed to verify the structures in place including underground utilities and to identify any gaps in the information. The following plan outlines the process for identifying locations falling under the program, categorizing each location as to the type of surface treatment to be required, identifying any underground considerations prior to any surface improvements, estimating the time and material costs for the work, and finally, outlining a prioritized list of improvements for consideration.

## III Alleys

By and large, alleys within the community are unimproved gravel surfaces. These corridors provide local access to the backs of adjacent properties as well as secondary corridors for foot, bicycle, and vehicular traffic. The City has the following program for the paving of alley ROWs within the community.

In areas where the City can remove an annual grading responsibility, where existing and future drainage problems will not be created or where existing problems can be resolved, where underground utilities are in an acceptable condition, and where the amount of effort to rebuild the existing base surface is minor (2-3 days labor), the City has allowed neighbors adjacent to the alley to set up an account through one of the two asphalt suppliers to pay for the cost of the asphalt and the City then places the material. These alleys are typically one panel of asphalt in width (approximately 12 feet) and are paved in a single pass. This type of program has allowed the City to grade and pave an alley within a two to three day period, from start to finish. No underground work is required. No additional drainage is needed.

## IV Unimproved or Gravel Rights-of-way

The majority of gravel surfaces within the community are local street networks. A total of 16,336 feet of gravel streets (approximately 3.1 miles) was identified in the 1999 report. Additional footage has been added through the efforts of Darren Wyss. The locations are attached and show the unimproved or gravel rights-of-way to be considered under the program. These rights-of-way include undeveloped gravel streets with no improvements, gravel streets with partial improvements, and gravel or failed surfaces with little to no improvements. As additional items are identified in the community, they can be categorized and added to the list. Likewise, as surfaces are improved, they can be removed.

Gravel streets typically serve as neighborhood connections. The evaluations which are to be conducted related to these types of streets involve the following types of questions:

1. Are other street-associated improvements (curbs/sidewalks) in place? If not, is the use of the road heavy enough to warrant their placement?
2. Is the road base adequate to prepare the surface for final paving?
3. What is the effective ROW in the area and what will be the ultimate use of the street?
4. Are there any encroachments which will affect the operation of the street?
5. Are there access issues which need to be addressed?
6. With curbs installed, is an underground storm water collection system needed?
7. What is the location of nearest storm line and do catch basins need to be installed?
8. What is the prioritization method if multiple requests are received or a list developed? How does this low use gravel road compare with a failed or poor, higher level of surface chip sealed road?
9. What is the condition of existing underground utilities and do they need to be upgraded prior to paving?
10. Are the existing underground utilities sized to handle the development potential of the area?
11. How does the replacement of these utilities in the area of a request compare with other potentially higher priorities?
12. Are the topographical issues or challenges related to the potential improvement of a gravel street?

Within the context of the overarching concepts outlined above, the following specific issues are to be considered related to the potential paving of an alley or gravel street.

Alleys:

- Is the condition of underground utilities such as to allow for asphalt surfaces to remain uncut for a period of 10 years?
- Will stormwater drainage be adversely impacted by improving the alley surface?
- Can alley accesses and grades be maintained so as not to create an unacceptable ingress/egress condition?
- Does the alley in question present a maintenance challenge annually?

- Can the work be readily accommodated within a 2 - 3 day window by City forces?

Gravel streets:

- Is the condition of underground utilities such as to allow for asphalt surfaces to remain uncut for a period of 10 years?
- Is an underground storm system available or can surface flow be directed reasonably into collection systems downstream? Will stormwater drainage be adversely significantly affected to alter historic flow patterns in the area?
- Can street accesses and grades be maintained so as not to create an unacceptable ingress/egress condition?
- At a minimum, curbs on both sides of the street shall be installed for any gravel road improvements. Are any curbs existing?
- Does the street function as a corridor for pedestrians traveling to or from schools or commercial centers?
- Are sidewalks present and does pedestrian traffic warrant their consideration?

## V Cost Estimates for Projects

Based upon the results of the evaluations completed for each proposed project, City engineering staff will develop a design for the project that outlines the improvements that are proposed to be constructed. That design will then serve as the basis for development of an Engineer's Estimated Cost of Construction. The best information available will be used in the development of the cost estimate for the project and may include:

- Quotes from suppliers and contractors for materials and services
- City experience related to the costs of similar projects that were recently completed
- Cost adjustments for inflation

## VI Decision criteria

The following decision paths are presented for consideration when responding to community requests for improvements. The decision path is presented for two areas: alleys and gravel roads. As requests are received and evaluated, there may be a need to blend the two sets of criteria to suit the proposed improvement.

**For Alleys**: If an asphalt surface can be readily installed (within a 2-3 day window) and will not alter historic storm water flows which will result in a drainage issue, neighbors can set up an account with the local asphalt supplier to pay for the material. The work by City crews will then be scheduled into existing Department priorities and needs. No drainage additions are required. Underground piping is considered to be in good enough condition to last for a period of ten years or greater and is adequate to handle near term development requirements.

**For gravel streets**: A minimum of curb line placement will be required for all gravel street improvements. Existing sidewalks will be upgraded to provide ADA (wheelchair) ramps. An

evaluation will be completed to determine whether sidewalks and drive approaches should also be installed for pedestrian access and to prevent gravel from driveways spilling out onto the new asphalt surfaces. If sidewalks are not required to be installed, an asphalt pad behind the depressed curb line at the drive approach may be installed until such time as the sidewalk is installed. Storm drainage will need to be accommodated so as not to create flow or drainage problems downstream of the improvement.

## VII Project Funding

Projects completed under this Policy will be funded by a partnership between the City and adjacent property owners. The City will provide:

- Engineering services for the design of the improvement and inspections during construction.
- All costs associated with the upgrade of any City-owned underground utilities necessary for the project.
- The labor, equipment, and tools to haul and place asphalt for paving within the ROW.
- Project costs associated with multi-frontage relief.

Property owners adjacent to the street to be paved are responsible to pay the cost of the following project elements, assessed on a frontage foot basis and subject to multi-frontage relief for in-kind improvements:

- All costs associated with concrete or block work including curbs, sidewalks, retaining walls, etc. For each project, the decision will be made whether the property owners or the City hires the contractors.
- Costs associated with the purchase of asphalt for the project.
- The costs of any out-sourced surveying necessary for the project.

The City will offer a payment plan option for property owners who have a financial responsibility under this policy. That plan allows property owners to pay their share of the project over a period of up to 10 years, with an interest rate of 10% per year, and payments due every six months.

CITY OF THE DALLES

STREET BANNER PERMIT POLICY
7/07/2010

The following policies detail the rights and responsibilities of those who wish to display banners within the City limits of The Dalles. Any interpretation of these policies or resolution of any disputes between users rests with the City Manager or the Manager's designee. It is a privilege, not a right, for users to display banners within the City limits. Non-compliance with these policies could result in the loss of that privilege.

1. Definitions:

   a. "Banners" will include decorations or message signs generally associated with an activity. Banners covered under this policy are only allowed on support poles designated by the City.

   b. "Activity" will include the celebration of a legal holiday, fair, rodeo, roundup, exposition and/or other civic events.

2. Permits:
   Permits will be issued through the office of the City Manager or designee, City of The Dalles, for the placement of banners where the following criteria are met:

   a. The activity is sponsored by a user who may be any civic, charitable, non-profit, government, school, social, or other group promoting community events, activities, or items of special interest and not for commercial gain.

   b. Banners must be delivered to the Public Works Department, during normal business hours, a minimum of three (3) days before they are to be displayed. Banners may be displayed no sooner than two (2) weeks in advance and no later than two (2) days after the activity, subject to availability. The activity must be open to the general public. The scheduling of the display periods will be determined by the City Manager or designee. Any changes to the display schedule shall be done through direct contact with all affected parties.

   c. The banners are located within a fifteen mile radius of the event.

   d. The banners may contain the name and/or logo, date and time, and general location of the event. Banners may not include any advertising, commercial message, brand or product name, or other information about the event, such as cost, directions, etc., provided, however, that the logo of one commercial sponsor of the event or activity may be displayed upon a banner, provided the commercial sponsor's logo is secondary in size to the logo associated with the event or activity, and is restricted in size to no greater than one-third of the width of the banner.

e. The banner(s) must have a vertical clearance of at least 20 feet above the roadway unless otherwise approved by the City.

f. The banner(s) may not be erected or maintained if they:

- interfere with, imitate, or resemble any official traffic control device or attempt to direct the movement of traffic; prevent the driver of a motor vehicle from having a clear and unobstructed view of official traffic control devices and approaching or merging traffic;

- have any lighting, unless such lighting is shielded to prevent light from being directed at the roadway or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of a motor vehicle; or

- are otherwise a traffic hazard.

g. Banners shall be made of (at minimum) 18 oz. vinyl material. Banners shall be a minimum of 18 feet in length and 2 to 4 feet in width. Banners that are 2 feet in width should have can cuts every 2½ linear feet. Banners that are 3 to 4 feet in width, can cuts should be every 2 linear feet and zigzagged across the top and bottom of the banner.

Webbed strapping, minimum 1 inch wide, shall be sewn into the seams of the banner. On the top and bottom seams, the webbed strapping shall be looped back and sewn into the seam of the banner for a minimum of 18 inches; a “D” ring shall be provided in the looped strapping at each corner.

Corners of the banners are to be reinforced through the incorporation of a reinforcement panel, minimum 18 oz. vinyl, sewn on the back side of the banner over the folded seams, that covers the corner and extends a minimum of 6 inches along the sides from the corners. Each corner of the banner should be triple sewn for maximum reinforcement.

Grommets, minimum 3/8-inch diameter, are to be provided along the top and bottom seams with the end grommets located 2 to 4 inches from the end of the banner and a maximum spacing of 2 feet between grommets. If larger grommets are utilized, the width of the webbed strapping in the seam must be enlarged accordingly so that the grommet is fully supported by the strapping.

h. Applicant must provide spring snaps and wire cables to secure the banner. A minimum 7/16" x 3 1/4" stainless steel spring clip (carabiner-style snap clip) shall be provided for <u>each</u> grommet in the top and bottom seams of the banner. Four wire cables, 3/16-inch diameter, with 5/8" x 4" stainless steel spring snaps on each end, will attach to the “D” ring on the corners of the banner and to the support poles. Cables are to be

connected to the spring snaps using cable clamps. Total length of banner, cable and hardware must be 44' 4" from end of hook to end of hook.

3. Permits issued shall include the following:

   a. Date(s) of the activity.

   b. Date the banner(s) can be installed.

   c. Date for the removal of the banner(s).

   d. Any special provisions for the installation or removal of the banner(s).

   e. Payment of $25 fee for each time a banner is to be displayed.

4. The number and type of banner(s) allowed will be at the discretion of the City Manager or designee.

5. The City reserves the right to limit the number of activities signed per year for each location within the City.

6. Banners to be installed must be approved by the City. All signing for temporary events must conform to the general requirements of the Manual of Uniform Traffic Control Devices, as to location and sign design.

7. The applicant shall be responsible for all costs incurred by the City for banner supports, labor, and equipment to install and/or remove signs. Only the City of The Dalles Public Works Department is authorized to install the banner after approval of the permit. The applicant is responsible to provide the banner and any other item deemed to be required in order to erect the banner.

8. Prior to authorization of the permit, the applicant shall provide a signed 'Liability Release for Street Banner Placement' form and proof of insurance naming the City as an additional insured. The minimum amount of insurance coverage required for bodily injury and property damage shall be $500,000 per occurrence and $1,000,000 in the aggregate.

9. The intent of this policy is to cover most incidents and situations arising from the display of banners within City owned and operated rights-of-way. The City Manager or designee shall make decisions based on the spirit of this policy for any circumstance not clearly addressed within this policy.

10. Banners should not be used for more than 5 years as vinyl becomes too brittle. Rage Graphics has agreed to inspect (at no charge) banners to make sure they are of sound quality. Rage Graphics also encourages proper storage, as this will maximize the life expectancy of the banner.

Banner Policies for The Dalles Period Light Poles

January 1997

The following policies detail the rights and responsibilities of those who use the period light poles for banner display. Any interpretation of these policies or resolution of any disputes between users rests with the City Manager or the Manager's designee. It is a privilege, not a right, for users to display banners on the light poles. Noncompliance with these policies could result in the loss of that privilege.

1. Allowed users. A user may be any civic, charitable, non-profit, government, school, social, or other group promoting community events, activities, or items of special interest. Such promotions must be for the benefit of the community and not for commercial gain, religious or ideological promotion, or personal or corporate attention.

2. Banner construction and condition. Banners must be constructed to fit the brackets that are permanently installed on the light poles. They must be made with a material that will withstand the wind, rain, sun, and temperature extremes for the period of time they are displayed. Each banner must display information on both sides. Banners that are not in good condition, or with an unacceptable appearance, will not be permitted. Banners that become worn or damaged during use must be replaced immediately.

3. Banner design approval. Each banner design must be approved before it can be displayed. Approval will be based upon the construction quality of the banner, the colors used, and the appearance of the displayed information. The banner colors must be compatible with any existing or permanent banners.

4. Banner locations. Banners may be located on any period light pole in the downtown area. Most light poles have a double banner bracket system with two permanent banners attached. For ease of attachment and removal, and for the continued display of some number of permanent banners, it is recommended that only the street side banner position be used for the special display banners. However, any pole location, banner number, and combination of permanent/special display banners may be acceptable so long as an orderly and neat appearance is maintained overall.

5. Display periods. Banners may be displayed no sooner than one (1) month before, and no later than one (1) week after, the event or activity. Special interest banners may be displayed for longer periods. The scheduling of banner display periods will be determined by the City Manager or the Manager's designee. Any changes to the display schedule will be done through direct communication with all effected users.

6. Handling. It is the responsibility of each user to remove, replace, care for, and store banners in the following manner:

## REMOVE AND REPLACE

a. Remove bottom rod with banner attached by cutting the plastic tie and removing the metal pin.

b. Remove the bottom rod from the banner and carefully roll the banner, not too tightly, to the top rod. Cut the top plastic tie and remove the rolled banner from the rod. Do not fold, crumple or mash the banners, the ink will crack.

c. Replace the new banner by sliding the top sleeve over the rod and fastening the plastic tie through the grommet and the metal pin.

d. Slide the bottom rod through the bottom sleeve and push the rod into the bracket hole lining up the small holes for the metal pin. Replace the metal pin with the clip above the rod and fasten the plastic tie through the grommet and the metal pin.

## CARE AND STORAGE

a. Before storing banners, unroll and brush away grit with a soft broom or brush.

b. On more difficult stains, gently hose off banners or use a damp sponge. DRY COMPLETELY before storing.

c. Never fold banners. Store in a dry area. Temperature in the storage area should not exceed 100 degrees.

d. To store, lay banners on a flat surface (not on the ground), or drape over a large tube. Suspend above the ground and cover with plastic.

**CITY of THE DALLES PUBLIC WORKS**
1215 WEST FIRST STREET
THE DALLES, OREGON 97058

(541) 296-5401

# STREET BANNER PERMIT

**This application must be approved minimum of three (3) business days before the banner is to be displayed. The banner must meet all criteria in the Street Banner Permit Policy.**

**Please complete the entire form**

Applicant Name: _____ Date: _____

Address: _____ Phone: _____

Contact Person _____ Phone: _____

Email Address: _____ Cell: _____

Type of Event promoted on the Banner: ☐ Education ☐ Youth Event ☐ Fair

☐ Community Market ☐ Other Civic Event_____

Event Title: _____ Date of Event: _____

Date of Placement: From (Date/Time) _____ to (Date/Time) _____

Location of Banner: Second & Jefferson Street

**Office Use – Receipt of Required Items:**
☐Liability Release for Street Banner Placement (Page 2)
☐Proof of Insurance (per Street Banner Permit Policy requirements)
$25 Banner Permit Fee ☐ Cash ☐Check (Check # _____)
**Checks will not be accepted more than 6 months in advance of the date of placement**

**ACKNOWLEDGEMENT OF APPLICANT RESPONSIBILITY**

**Failure of the applicant to meet the requirements of this permit will result in a Stop Work Order and possible revocation of the permit.**

**I certify that the event promoted is an activity sponsored by a user who may be any civic, charitable non-profit, government, school, social or other group promoting community events, activities, or items of special interest and not for commercial gain.**

Applicant Signature_____Date_____

Director Approval _____Date_____

**This permit will be considered a public document. All information submitted will be accessible to the public, in its entirety, on the City's website.**

# Liability Release for Street Banner Placement

☐ PRIVATE ORGANIZATION ☐ PUBLIC AGENCY ☐ INDIVIDUAL

Release between _____ ,

hereinafter known as "the Permittee" and the City of The Dalles.

The Permitee shall hold harmless and release the City of The Dalles, its employees, agents and representatives, against any and all damages, claims, demands, action, causes of action, cost, and expenses of whatsoever nature arising from the condition of the street banner which is provided to the City for placement.

For public agencies this release applies only to the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act.

APPLICANT

_____
Signature

_____
Title

_____
Date

_____
Address

_____
Phone

If a minor, signature of parent or guardian is required. Otherwise one signature is sufficient.

_____
Signature

_____
Title

_____
Date

_____
Address

_____
Phone

CITY OF THE DALLES

_____
Signature

_____
Title

_____
Date

# PUBLIC WORKS POLICY

## City of The Dalles Policy for Assessment and Management of Roadway Sign Reflectivity

The following policy is to comply with FHWA requirements thru the MUTCD standards section 2A.08 to be in place by June 13, 2014.

The purpose of this requirement is to ensure the critical information presented by both regulatory and warning signs are legible day or night to all motorists.

The City of The Dalles will utilize a procedure of visual comparison between a new sign and currently in service placements to ensure proper retro-reflectivity to motorists.

This will be conducted at night with vehicle head lights on low beam.

Before leaving the public works yard a new sign shall be observed by crewmen utilizing the low beam lights of the vehicle to be used at a distance from 100 to 350 feet away.

Using the observed reflection of the new sign as a base line, the vehicle will drive by each sign in the street inventory to assess the retro-reflectivity of each.

This will be documented as a pass or fail grading.

Based upon the pass or fail rating of each, the failed will be budgeted for and replaced. Replacement signs will be documented by date and location.

Signed: Julie Krueger
Interim City Manager

Date: 09/17/15

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481

# CITY COUNCIL POLICY

**NUMBER:** Industrial Development #1 **DATE:** February 14, 1989

**EFFECTIVE DATE:** March 20, 1989 **AMENDED:** July 7, 1998

## THE DALLES INDUSTRIAL AREA DEVELOPMENT STANDARDS

### 1.0 PURPOSE

1.1 This policy is to establish and clarify development standards and requirements for the Port of The Dalles Industrial Center.

### 2.0 SCOPE

2.1 In recognition of the Port of The Dalles as a public sector developer supported, in part, by tax dollars and of the importance of the industrial center to the area's economic improvement, the City will entertain modification of development standards and procedures when justification is clearly demonstrated as outlined below.

### 3.0 POLICY

3.1 Street Construction Standard (Cross-Section): Allow City standard of 12 inches crushed rock (with asphaltic concrete paving) to be modified if reduction of the base course is supported by an engineering consultant report provided by the Port and approved by the Project Engineering Manager. A third party recommendation from an independent engineering firm will be provided in the event of a disagreement between the City and the Port.

3.2 Width of Local Streets: Adjustments of standard street width for industrial area local streets (50 foot right-of-way and 36 foot pavement) may be considered by the Planning Commission based on the variance criteria in the Subdivision Ordinance. Section 4, item 10, and Section 11, item 14, of the Subdivision Ordinance states:

(10) Street widths. Minimum right-of-way standards. These standards may be varied by the commission if the developer presents an adequate traffic control plan and sufficient off-street parking area to justify the reduction.

(14) Commission decision. Variances may be granted only by the affirmative vote of at least four members of the commission, finding that the following conditions exist:

a) That there are special circumstances or conditions peculiar to the property;
b) That the variance is necessary for the proper development of the subdivision and the preservation of property rights and values;
c) That the granting of the variance will not at present or hereafter be detrimental to the public welfare or injurious to other properties adjacent to or in the vicinity of the proposed subdivision, and
d) Where the commission finds that extra-ordinary hardship may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done; provided that such variation shall not have the effect of nullifying the intent and purpose of the comprehensive plan or of this ordinance.

3.3 Timing of Street, Sidewalk and Curb Improvements:

A) When the Port is the subdivider/partitioner: Execution of a City-Port intergovernmental agreement with a procedure for guaranteeing completion of improvements. The Port will continue to require nonremonstrance agreements in leases and sales. The Subdivision Ordinance requirement for bonding shall be addressed through the variance procedure (unique circumstance exists when subdivider is a public entity) or other means stated in the intergovernmental agreement.

B) For private developer: Agreement with surety bond, personal bond, or cash at 110% of improvement cost and 18 month term for completion of public improvements.

C) Section 9, item (12) of the Subdivision Ordinance allows for agreements to provide for an extension of time under specified conditions.

3.4 Curb and Gutter Standards:

"Rolled curbs" will be allowed on local streets in new undeveloped subdivisions in The Dalles Industrial Center.

# CITY COUNCIL POLICY

**NUMBER:** Industrial Development #2 **DATE:**

**EFFECTIVE DATE:** **AMENDED:**

## CHENOWETH CREEK INDUSTRIAL SUBDIVISION DEVELOPMENT STANDARD

## 1.0 PURPOSE

1.1 This policy is to establish and clarify development standards and requirements for the Port of The Dalles Industrial Center.

## 2.0 SCOPE

2.1 Whereas, The City of The Dalles recognizes that the Port of The Dalles:
a. is a public sector developer, supported in part by tax dollars;
b. provides economic development benefits to the City;
c. must be competitive to attract tenants; and,
d. should be given flexibility with regards to certain development standards in order to remain competitive;
the City may grant modifications to street design requirements and pedestrian design requirements within the Chenoweth Creek Industrial Subdivision, when findings are presented and accepted as detailed below.

## 3.0 POLICY

3.1 The Port of The Dalles may propose alternate designs for streets and pedestrian accessways for improvements within the Chenoweth Creek Industrial Subdivision area. Such modifications include, but are not limited to: street widths, curb design, cross-section design, location and width of sidewalks, location and width of planter strips, block length, and pedestrian connectivity design and location.

3.2 The City may grant modifications to any and all design standards for streets and pedestrian accessways for improvements within the Chenoweth Creek Industrial Subdivision area, if it finds that:

A. The proposed modification will not be contrary to the purposes of the Land Use and Development Ordinance (LUDO), policies of the Comprehensive Plan, or any other applicable policies and standards adopted by the City; and

B. Modifications to structural standards are supported by findings of fact, detailed in a report created by a licensed professional engineer, and submitted with the modification request. Additional engineering certifications may be required for specific analysis related to structural and/or geotechnical issues; and

C. Modifications to street design and/or pedestrian design standards are supported by findings of fact, detailed in a report created by a licensed professional engineer, and submitted with the modification request. Additional engineering certifications may be required for specific analysis related to pedestrian/bicycle/vehicle facilities design and

management.

D. The authority to grant any modifications to structural standards pursuant to Section 3.2 shall rest with the Director of Public Works. The Director of Public Works shall retain the right to define "structural standards" for the purposes of this Policy. The authority to grant any other modifications pursuant to Section 3.2 shall rest with the Planning Commission, and shall be processed as a Quasi-Judicial Action, as noted in Section 3.020.050 of the Land Use and Development Ordinance of the City of The Dalles.

3.3 When the Port of The Dalles is the landowner and the applicant for a land division action, the Port may request modifications to the bonding requirements for street and/or pedestrian improvements through the variance procedure or other means stated in an intergovernmental agreement. The authority to grant any modifications pursuant to this Section 3.3 shall rest with the Planning Commission.

3.4 The Port shall continue to require nonremonstrance agreements in leases and sales.

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

# Safety Policy for Welding/Hot Work

1. Purpose
    a. To ensure that welding tasks are carried out in a safe manner by qualified individuals.
2. Scope
    a. This policy covers all City Employees who engage in welding or welding related activities such as cutting/brazing.
3. Definitions
    a. Qualified Person
        i. A person deemed by his/her respective division manager (or designee), to be proficient in Welding.
    b. Fume Extractor
        i. Mechanical ventilation device that removes contaminants from a worker's breathing zone. The contaminants are caught by a cleanable filter inside of the unit.
    c. Ventilation
        i. The removal of contaminated air. This can be accomplished by natural means, or by mechanical means.
    d. Welding
        i. The joining of two materials by heating the materials to the point where they fuse.
    e. Cutting
        i. The separation of a material by heating a seam.
    f. Brazing
        i. Brazing is the joining of two materials by heating up a filler material.
4. Hazards
    a. Welding Fumes (Composition varies by process)
        i. Welding Fumes may contain metals including but not limited to the following:
            1. Aluminum, Antimony, Arsenic, Beryllium, Cadmium, Chromium, Cobalt, Copper, Iron, Lead, Manganese, Molybdenum, Nickel, Silver, Tin, Titanium, Vanadium and Zinc.
        ii. Welding Fumes may contain gases including but not limited to the following:
            1. Argon, Helium, Nitrogen, Nitric Oxide, Nitrogen Dioxide, Carbon Monoxide, Ozone, Phosgene, Hydrogen Fluoride and Carbon Dioxide.
    b. Electricity
        i. Arc welding utilizes electrical currents to generate heat in order to fuse materials together. The electricity poses a significant hazard to employees when adequate precautions are not taken.
    c. Heat
        i. Depending on the specific process, welding usually heats up base materials to their melting point. The temperatures at which metals melt are well above the flashpoints for things we consider to be flammable. Without adequate PPE, burns are likely.

d. Non-Ionizing Radiation
    i. Radiation that can cause burns, eye damage. There are other potentially serious health effects that are not well understood. Non ionizing radiation is emitted from arc welding processes.

5. Controls
    a. Ventilation
        i. Fume Extractor
            1. The main Public Works facility has a portable fume extractor that will collect welding fumes prior to the fumes reaching the welder's breathing area.
        ii. Natural Ventilation
            1. Natural ventilation may be utilized when welding is being performed either outdoors, or when air movement otherwise sufficiently reduces the potential for exposure.
        iii. PPE
            1. Required PPE for welding and welding related activities includes ALL of the following:
                a. Welding Helmet with a tinted lens.
                    i. Goggles may be substituted when using oxyacetylene torch.
                b. Flame resistant gloves.
                c. Flame resistant long sleeve shirt.
                d. Flame resistant long pants.
                e. Rubber soled boots.
                f. Respirator with appropriate filters/cartridges when ventilation is not adequate. Contact Safety Officer for more information.
        iv. Curtains
            1. Welding curtains shall be utilized whenever there are others working in the vicinity of the welding process.

6. Classifications
    a. Structural Welding
        i. Any weld that must support any internal or external load-bearing component that is essential to the stability of a building, vehicle or platform, including (but not limited to), foundations, floors, walls, roofs, columns and beams.
    b. Non-Structural Welding
        i. All welds that do not support any internal or external load bearing component that is essential to the stability of a building, vehicle or platform.
    c. Hot Work
        i. Work tasks that produce, or are likely to produce sparks, open flames, or other ignition sources.

7. Procedure
    a. Authorization
        i. No individuals, unless certified to do so by the appropriate accrediting agency, may engage in structural welding.
            1. Structural welding is defined as:
                a. Any weld that must support any internal or external load-bearing component that is essential to the stability of a building,

vehicle or platform, including (but not limited to), foundations, floors, walls, roofs, columns and beams.

ii. Only individuals authorized and trained by Division Managers or their designees may engage in welding/welding related activities.
    1. Training shall consist of, at a minimum:
        a. Overview and instruction on the use of the welding equipment that is to be used.
        b. Overview of the materials being welded and the potential hazards associated with them.
        c. A Department certified welding test completed with a satisfactory outcome.
            i. This test shall evaluate the welders ability to:
                1. Use equipment safely and in a manner that maintains good condition.
                2. Properly use all required personal protective equipment.
                3. Operate ventilation/fume extractor when the task necessitates it.
                4. Create a satisfactory weld using all equipment/materials the welder would like to be authorized to use.
        d. Overview of the scope of what welding activities are, and are not permitted.
        e. Overview and certification of understanding of this policy.

b. General Requirements
    i. All welding cables, wirings and electrode holders must be visually inspected prior to use.
        1. If any part of the welding equipment is noticed to be deficient in any way, the task will be postponed until the equipment can be fixed or replaced.
    ii. All welding terminals and joints must be visually inspected prior to use to ensure they are in good working condition.
        1. If any part of the welding equipment is noticed to be deficient in any way, the task will be postponed until the equipment can be fixed or
    iii. The work area must be clear of all flammables/combustibles, and pressurized aerosols.
        1. If any flammable or combustible materials cannot be removed from the area they should be covered with a flame resistant barrier.
    iv. Ventilation must be used during welding or welding related activities.
    v. Flashback arrestors shall be used whenever applicable. (oxyacetylene)
    vi. A class ABC fire extinguisher must be located in close vicinity to the work area.
    vii. Warning signs must be displayed in areas dedicated to welding, or welding related operations.
    viii. Welding curtains will be utilized when necessary.
    ix. All welders will maintain insulation from work and ground.
    x. Welders must avoid coiling of the electrode cable around their body.
    xi. When being stored, cylinders must be chained up.

xii. When not in use, cylinder must be capped.
xiii. Oxygen and Acetylene cylinders must be stored in separate areas.
xiv. The materials being welded on must be cleaned of any residual coating prior to any welding being performed.
    1. When aerosolized, coatings may be acutely toxic when inhaled.
xv. Individuals who have implanted electronic medical devices should consult with their physicians prior to operating or working in the vicinity of welding equipment.
    1. Welding equipment can cause the medical devices to fail, and or operate in a manner other than prescribed potentially leading to serious health consequences.

Approved by: Julie Kreeger Date: 12-3-19

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

# Safety Policy for Welding/Hot Work Appendix A

The following individuals are exempted from training requirements due to a demonstrated competency. These individuals have been designated as able to administer tests to other employees seeking to become authorized welders within their respective divisions.

General Services:

Jerry Johnson

Wastewater Division:

Rocky Pence

Bodie Rose

Mike Blair

Adam Gardipee

Water Distribution:

Vince Cobb

Rick Prentice

Transportation:

David Mills

John Baker

Chris Kochis

WICKS:

Tyler Mitchell

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
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# Welding Training Test Form Appendix B

(To be completed by division manager or designee)

1. Employee has reviewed and confirmed his/her understanding of the Welding/Hot Work policy.
   PASS FAIL Tester's initials: _____

2. Employee properly identifies and uses all required PPE.
   PASS FAIL Tester's initials: _____

3. Employee inspects work area and removes any potential hazards prior to work beginning.
   PASS FAIL Tester's initials: _____

4. Employee has been instructed on the use and function of all applicable welding processes.
   PASS FAIL Tester's initials: _____

5. Employee properly inspects equipment prior to beginning work.
   PASS FAIL Tester's initials: _____

6. Employee uses equipment effectively and in a manner consistent with the manufacturer's recommendations.
   PASS FAIL Tester's initials: _____

7. Employee utilizes local ventilation when appropriate.
   PASS FAIL Tester's initials: _____

8. Employee's finished product is of satisfactory quality.
   PASS FAIL Tester's initials: _____

9. Employee properly shuts down and stores equipment and PPE once the work has been completed.
   PASS FAIL Tester's initials: _____

I certify that _____ (employee's name) has completed all of the above tasks in a satisfactory manner.

X _____

Tester Signature

**CITY OF THE DALLES**
**POLICY MANUAL**

**SECTION VI – FINANCE**

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

# City of The Dalles
# Internal Control - Policy

## Purpose

The City of The Dalles uses a system of internal controls to protect City assets, ensure the integrity and reliability of its information, secure compliance with laws, polices and procedures, and to ensure the Internal Controls are processes that are established, reviewed, and continually monitored by the Finance Department, Department Managers, City Manager, and the City Council. It is the responsibility of the Finance Department to ensure an adequate internal control system is actually implemented and used. It is management's responsibility to establish and maintain adequate internal control over financial reporting. It is the responsibility of all employees to understand the internal controls and ensure they are effective. This Policy includes the signed policy and accompanying Internal Control Subsections I through XIII.

## Definitions

**Assessable Unit** - a unit is a division, department, or operation that is to be the subject of measurement and risk assessment.

**Control Objectives** - an objective is a goal or target to be achieved for each internal control. Objectives are tailored to fit the specific operations in each assessable unit.

**Cycle** - processes used to initiate and perform related activities in order to create the necessary documentation, and to gather and report related data (e.g., revenue cycle, accounts payable cycle).

**General Control Environment** - concepts of integrity, ethical values, competence, philosophy and operating style, organizational structure, delegation of authority, and written policies and procedures.

**Inherent Risk** - the degree to which activities are exposed to the potential for loss, inappropriate disclosure, or other negative conditions.

**Internal Control Review** - this is a periodic review of internal methods and systems to determine whether adequate measures exist and are actually implemented to prevent or detect the occurrence of potential risks or incorrect financial reporting.

**Project/Program Controls** - controls that cover the planning, executing, and accomplishment of specific goals and objectives.

**Risk Assessment Process** - the process of determining the relative potential for negative impact of an assessable unit's resources due to inadequate control techniques and/or other factors. The results of the assessment are used to mitigate inherent risks.

**Internal Control Activities**

- Policies
- Procedures
- Sequences or combination of procedures

- Assignments of duties, responsibilities, and authorities
- Physical arrangements or processes
- Combinations of the above

## Control Framework

Internal control system is continually evaluated to ensure it provides for strong corporate governance.

The City's internal control system is a relevant evaluation tool for internal control over financial reporting. The internal control framework and review evaluations are used to ensure the system:

- Is free from bias
- Permits reasonably consistent qualitative and quantitative measurements of the City's internal control system
- Is sufficiently complete so that those relevant factors that would alter a conclusion about the effectiveness of the City's internal controls are not omitted

### Control Environment

The core values of the City of The Dalles promote high standards of integrity, ethics, and competence.

### Risk Assessment

The City of The Dalles has developed this internal control risk management policy and is aware of and deals with the risks it faces. It also has established mechanisms and checklists to identify, analyze, and manage the related risks.

### Control Activities

Control policies and procedures are established and executed to help ensure that actions necessary to achieve objectives are effectively carried out. These activities include an integrated system of policies, procedures, internal controls, and evaluation tools.

### Information and Communication

Communication systems enable employees to capture and exchange the information needed to conduct, manage, and control operations. They also provide mechanisms to relate information within the City of The Dalles and to external parties.

### Monitoring

The control process is monitored, evaluated, and modified as necessary to react to changing conditions. Control evaluations are continuous and are reported as required by certain regulations and City policy.

# Internal Control Policy Statements:

The City of The Dalles shall use both management and accounting control measures. The internal control measures are designed to be detective, preventative, physical, technological, and corrective. The controls consist of hard controls, such as testing, validating, reconciling, and measuring, and soft controls, such as training, tone and attitude.

### Management Controls

Management controls maximize efficiency and force compliance with City policy, procedure, and government regulation.

### Accounting Controls

Accounting controls relate to protecting City assets and ensuring the accuracy of financial reports.

The City of The Dalles uses policies and procedures associated with the activities concerned with authorizing, processing, recording, and reporting financial transactions. The accounting controls shall ensure that information resulting from these activities is accurate, reliable, and useful.

**Polices and Procedures**
The City of The Dalles maintains policies, procedures, and internal controls.

**Communication**
The City of The Dalles communicates its policies, procedures, and internal controls through various handbooks, programs, training, and computer network. Management shall also communicate by example.

**Internal Control Checklists**
The City of The Dalles is developing a series of Internal Control Checklists. These checklists are to be used as an evaluation tool of the internal control system and should be reviewed on an annual basis.

**Employee Rotation**
Where practicable, administrative employees shall be rotated to different assignments, so that "irregular activities" can be more easily identified. This is not feasible at this time due to position classifications. However, continual cross training so that employees are capable of performing the duties of other positions when staff members are absent due to vacation or illness provides opportunities to identify "irregular activities" in those positions.

**Vacations**
Employees are encouraged to take their vacations so that "irregular activities" are more likely to come to the attention of management.

**Financial Forecasting**
The City of The Dalles will prepare financial forecasts for utility and fee billing/sales, net income, collections, and cash requirements. These forecasts also aid the annual operating budget process as well as the five-year capital improvement program.

**External and Internal Auditing**
The City of The Dalles contracts with certified public accountant (CPA) firms that are familiar with governmental accounting practices to perform external independent audits on an annual basis.

**Risk Assessment and Mitigation**
The City of The Dalles continually seeks to identify, assess, and mitigate business risks and has developed these defined internal control risk management policies and procedures.

**Company Mail**
The person who opens the mail generates a calculator tape of all checks received in the mail each day. The tape of checks is then reconciled with the batch report for the mail that is generated after those receipts have been posted. The tape is then attached to the deposit slip, along with tapes of check totals for each of the other batches generated during the day. The daily deposits are reconciled to the online daily bank statement the next day by the Accountant.

**Cash and Cash Equivalents**
The City of The Dalles maintains strict control over cash. All cash received by the City is recorded and a receipt is generated. Cash is received from other City Departments, with the exception of the Library, by the Finance Department. Cash and checks received by other Departments, excluding the

Library, shall be submitted **to the Finance Department by BEFORE 3:00 PM the day of receipt, or 9:00 AM the following morning if received after 3:00 PM.**

All cash is submitted by other departments, with the exception of the Library, to the Finance Department, is counted by a Finance Department staff member and reconciled with documentation provided by the submitting department, in the presence of the employee delivering the cash to the Finance Department. When the amount being submitted to the Finance Department has been reconciled and verified, both the Finance employee and the employee delivering the turnover shall sign the reconciliation sheet to show they both agree with the amount of the turnover. The Finance Department verifies and delivers all deposits to the bank, with the exception of deposits made by the Library.

A staff person other than the cashier counts the cash from the front desk till and reconciles that amount to the cash receipts report for the day. Two hundred dollars is placed in the till for the next day and the remainder is placed in the bank deposit.

A list of the origin (Finance, Planning, Court, etc.) and the amount of each deposit is included in the bag to be taken to the bank. The person delivering the deposits to the bank will match each receipt received with the deposits on the list to verify the correct receipts have been received before leaving the bank. Any change requests in the bag will also be listed and reconciled with the change received.

Check payments in the Finance Department are processed like cash, but the payments are designated as checks when input into the system. Periodically during the day, bundles of checks are run through a reader that generates a report that is reconciled with the check batches on the system. When the reconciliation is complete, the report is sent electronically to the bank, making the deposit of those checks. The actual checks are kept locked in our safe for 90 days so that if there are any issues with the deposits, they can be verified by reviewing the actual check. After 90 days the checks are shredded. Checks in deposits from other departments are sent to the bank in the regular deposit for that department.

Credit card payments are accepted over the counter, online and via an automated 24/7 phone line. Over the counter credit card payments are entered into the system as soon as they are received. Reports of online and the automated phone line payments are pulled each morning for the previous day and entered into a separate batch in the system so that batch can be easily reconciled by the Accountant with the bank deposits that come in three (3) working days later.

**Library Cash & Bank Deposits**

A Library employee, designated by the Library Director, will reconcile the cash against the Library's receipts/register and prepare the bank deposit. A second employee will verify the reconciliation and count the deposit. Both employees will sign a form showing the amount of money and the denomination of those funds and email or fax that signed form to the designated employee in the Finance Department BEFORE the deposit is taken to the bank. The employee who verified the bank deposit will take the deposit to the bank and then immediately deliver the yellow copy of the deposit slip and the original receipt for the deposit to the Finance Department.

Library deposits will be completed at a minimum of two (2) times per month, with the yellow copy of the deposit slip and the original receipt for the deposit being delivered to **the Finance Department BEFORE 3:00 PM on that same day.**

A Library deposit will be completed on the last working day of each month, with the yellow copy of the deposit slip and the original receipt for the deposit being delivered to **the Finance Department BEFORE 3:00 PM on that same day.**

**Check Stock**
The blank check stock shall be managed and safeguarded according to the Internal Control – Checks policy and procedures.

**Blank Checks**
The City does not sign blank checks.

**Bank Signatories**
The accountants are not bank signatories.

**Spoiled Checks**
Spoiled checks are stamped VOID and signature lines are removed (cut or torn off).

**Monthly Bank Statements**
Initial monthly bank statements are printed from the online bank. The bank statements are reconciled to the City's books and the reconciliations are reviewed by a second person. When the official bank statements are received in the mail, they are opened by the Finance Director and forwarded to the Accountant, who compares them to the reconciled statements and attaches them to the related documents.

**Fidelity Bonds**
The City of The Dalles maintains fidelity bonds on the City Manager, City Attorney, City Clerk, and all other employees controlling vulnerable assets. In addition the City maintains excess crime coverage through its liability carrier.

**Company Transactions**
All transactions of the City of The Dalles must be authorized, approved, executed and recorded.

**Asset Accounting and Custody**
Any employee that has custody of an asset shall not perform the accounting for that asset. For example, employees in charge of cash receipts or accounts payable do not reconcile the bank accounts.

**Related Transactions**
No one person or department handles any transaction from start to finish.

**Documentary Evidence**
All transactions require documentary evidence to verify the transaction.

**Serially Numbered Documents**
All documents like checks, purchase orders, and invoices will be serially numbered.

**Employee, Vendor, Customer Setup**
All new set ups or changes for employees, vendors and utility customers are entered into the system and then verified by a cross-trained employee to minimize the opportunity for errors or introduction of fictitious employees, vendors or customers. All new setups should have a physical master file paper signed by a Department Manager to authorize the setup in the computer system, i.e, Personnel Action Forms, Purchase Orders or Invoices signed by Department Managers, and Applications for Utility Services.

**Control Modification**

Policies, procedures, division of duties, forms, and other internal controls shall only be modified as authorized by the City Manager of the City of The Dalles.

**Finance Review**

The City of The Dalles will review its control framework including, policies, procedures, division of duties, forms, systems, programs and training on an annual basis. This review is performed at the direction of the City Manager. All employees are encouraged to provide input regarding controls and suggest measures that may help the City be more effective in reaching its objectives.

Specifically, the City's management, with the participation of the principal executive and financial officers, will evaluate any change in the City's internal control over financial reporting that occurred that has materially affected, or is reasonably likely to materially affect, the City's internal control over financial reporting.

Inquiry alone generally will not provide an adequate basis for management's assessment. The assessment of the City's internal control over financial reporting is to be based on procedures sufficient both to evaluate its design and to test its operating effectiveness. Controls subject to such assessment include, but are not limited to: controls over initiating, recording, processing and reconciling account balances, classes of transactions and disclosure and related assertions included in the financial statements; controls related to the initiation and processing of non-routine and nonsystematic transactions; controls related to the selection and application of appropriate accounting policies; and controls related to the prevention, identification, and detection of fraud.

An assessment of the effectiveness of internal control over financial reporting must be supported by evidential matter, including documentation, regarding both the design of internal controls and the testing processes. This evidential matter should provide reasonable support: for the evaluation of whether the control is designed to prevent or detect material misstatements or omissions; for the conclusion that the tests were appropriately planned and performed; and that the results of the tests were appropriately considered.

**Annual Review**

The City's public accounting firm is required to annually attest to and report on management's assessment of the effectiveness of the City's internal control over financial reporting. The City's public accounting firm is also required to develop and maintain evidential matter to support management's assessment. Under no circumstances shall the City's management delegate its responsibility to assess its internal controls over financial reporting to the auditor.

In the Annual Report, management's internal control report shall be placed to be in close proximity to the corresponding attestation report issued by the company's registered public accounting firm.

Julie Krueger

Julie Krueger, City Manager

3-23-18

Date

# City of The Dalles
# Internal Control - Activities

Internal control activities are the policies, procedures, and systems used to help ensure proper general management and strong corporate governance. This includes both the City's written documentation and the activities used to measure and evaluate performance and conduct. Specific control activities include internal and external reviews, authorizations and approvals, and the tools used to evaluate and measure performance and test the adequacy of the City's internal controls system.

- This document provides a tool to help evaluate the City's overall control activities.
- All relevant policies and procedures are in writing.
- Employees are educated on internal controls and participate in the process.
- Review of the specific internal control checklists indicates that the policies and procedures are actually employed, and indicates there are no "holes" or deficiencies.
- City objectives and related risks are identified and linked.
- Control activities are properly monitored.

**Assets**
The City has properly safeguarded its assets. Especially vulnerable assets are physically secured. All facilities meet or exceed current fire codes.

**Forecasts**
Strategic plans, forecasts, budgets, and actual performance are monitored against targets. Financial and trend analysis are employed to evaluate performance.

**Accounting Software**
The City utilizes a well respected and sophisticated computerized accounting system. If custom modifications are made to the computerized accounting system, they will be thoroughly tested.

**Human Resources**
The City understands its human assets, both existing and required. A proper compensation system is used to retain and attract human capital.

**Division of Duties**
The City has incorporated "Division of Duties" into all relevant policies and procedures. Duties are actually properly segregated.

**Records Management**
The City has records management and retention policies and procedures. Inspection of the records indicates they are properly current, classified, coded, and retained. Proprietary and restricted records are locked upon inspection. Management keeps records of management decisions.

**Internal Control Documentation**

- Internal control documentation exists and complies with government requirements.
- There is evidence of internal control review by employees. Internal control review will be properly reported in the City financial statements.
- There is evidence of external review such as audited financial statements.
- The audited financial statements will contain a review of the City's internal controls.

# City of The Dalles
# Internal Control – Review Procedure

The following approach for evaluating internal controls is used:

**Step 1 - Define the Team and Organize the Process**
Individual managers are responsible for monitoring the effectiveness of the internal control systems within an assessable unit.

**Step 2 - Define Assessable Units and Segment the Organization**
The most common methods for defining assessable units are the Transaction Cycle Approach and the Organizational Structure Approach. If other approaches are used, they should be both reasonable and documented.

A. **Transaction Cycle Approach** - the segmenting of the organization by transaction cycle results in assessable units or operations, such as the revenue cycle, disbursement cycle, reporting cycle and budget cycle.
B. **Organizational Structure Approach** - segmenting along organizational lines involves delegating internal control responsibilities to managers in accordance with the organization chart.

**Step 3 - Conduct Risk Assessments**
The next step in the internal control evaluation process is to assess the vulnerability of each assessable unit to key problem areas such as waste, loss, unauthorized use, or misappropriation of resources. The manager of an assessable unit is responsible for identifying the major risks associated with the unit's activities and assessing the techniques in place to mitigate identified risks. One purpose of the risk assessment is to identify assessable units which have the highest level of risk.

**Risk Assessment Frequency** - Risk assessments shall be performed at least annually. Other factors, such as material changes in the organizational structure, personnel, systems, or strategic or financial reporting indicators shall be cause for immediate risk assessment.

The frequency of the performance of risk assessments shall vary with the susceptibility of each activity to problems such as inaccuracy, waste, loss, unauthorized use, or misappropriation of resources.

**Risk Assessment - Results and Subsequent Actions**
The results of the risk assessment should be reviewed by the management and the respective assessable unit manager. The potential impact of the weaknesses and risks identified in the assessment should then be evaluated and subsequent actions (update policies and procedures, training, perform internal control review, etc.) developed, if necessary.

**Step 4 - Conduct Internal Control Reviews**
Internal controls for assessable units are reviewed to ensure that the defined control activities are functioning as intended and are meeting the established control objectives. An internal control review includes the following steps:

- Review the event cycles and identify the logical workflow pattern of each unit.
- Analyze the general control environment
- Review the documentation of each cycle and gain a clearer view of tasks in each cycle, using flowcharts, etc.

- Perform initial evaluation of the internal controls by assessing the adequacy of the control activities to satisfying the event cycle's control objectives
- Test the internal controls and determine if the control activities are:
  - ✓ Performed in accordance with documented policies and procedures
  - ✓ Performed by knowledgeable personnel in well-defined, segregated duties
  - ✓ Performed with proper approval and are coordinated with the City of The Dalles mission statement and goals
  - ✓ Accomplishing the stated control objectives, thereby reducing material risk of waste, loss, unauthorized use, or misappropriation of resources
  - ✓ Accomplishing control objectives in an efficient and effective manner
- Perform the specific tests and collect the evidence identified in the internal control checklists.

**Step 5 - Take Corrective Actions**

The reported findings and recommendations resulting from the internal control reviews are analyzed. Corrective actions for improving internal controls are scheduled for approval by the City Manager.

**Step 6 - Follow-Up**

The City Manager should perform a 30 or 60-day follow-up analysis to determine if the corrective action taken to address an internal control weakness is functioning properly.

# City of The Dalles
# Internal Control – Financial Reporting

The City's operations for financial reporting are as follows:

Financial reports for the monthly periods within each fiscal year shall be submitted to management before the end of the following month, except for the June reports, which require additional time due to year end adjustments.

Reporting periods July 1 - 31 (Period 1) through June 1 – 30 (Period 12) shall be closed as soon as possible following reconciliation of the bank statements. Any further adjustments necessary to a fiscal year made by City staff will be posted to Period 13. When records are submitted to the external auditors, Period 13 will be closed and no further entries will be made to that fiscal year by staff, except for Auditor Entries, which will be posted to Period 14.

The Comprehensive Annual Financial Reports (CAFR) shall be completed and submitted to the State and to GFOA prior to December 31 each year. Contracts with external auditors shall include timelines for the process and completion of the annual audit and production of the CAFR.

The City of The Dalles has a detailed chart of accounts with descriptions of each account contents. The City of The Dalles has a written records management policy and procedure. Informative disclosure is documented in the financial statements notes concerning the following:

- Commitments
- Contingencies
- Related party transactions
- Subsequent events
- Other disclosures
  - ✓ Subsidiary ledgers are reconciled to control accounts.
  - ✓ Accrual transactions are reviewed to determine that expenditure or revenue recognition is proper.
  - ✓ The mathematical accuracy of financial statements is periodically verified.
  - ✓ Journal entries are properly approved and documented according to City policy.
  - ✓ Accounts have been identified which are more at risk of misstatement.
  - ✓ Policies and procedures are in place to address those accounts at increased risk of misstatement.
  - ✓ Procedures are in place to identify and address changes in accounting and reporting pronouncements.
  - ✓ Financial statements are reconciled to the general ledger prior to publication.

# City of The Dalles
# Internal Control – Monitoring

Monitoring refers to the continuous assessment and implementation of the City's internal control system. Monitoring includes the normal day to day standard operating procedures used by the City to conduct business and the evaluation of employees understanding of those procedures. Monitoring also includes both internal and external quality assessments of the internal control system. The results of the quality assessments are used to produce a positive impact on the internal control system i.e., that recommendations are actually implemented.

Management ensures that employees understand the control system and standard operating procedures. They ensure that employees understand they are responsible for ensuring that the internal controls are effective. Employees' understanding of the internal controls system is evidenced by training and interview. They know they are expected to notify management of suspected internal control weaknesses. Failure to notify may indicate internal control weaknesses.

## Internal Audit

The City's internal control checklists will be reviewed on an annual basis. Periodic internal audits will actually be conducted.

## External Audit

External CPA audits are conducted annually and will include a review of the City's internal control system. Internal control weaknesses and deficiencies will be immediately corrected by management.

# City of The Dalles
# Internal Control – Risk Assessment

The City has established policies and procedures to identify, assess and manage both the internal and external risks it faces. The City deals with risks on both an entity-wide basis and activity level basis. This document provides an evaluation tool to assess the effectiveness of the City risk management practices.

**Establishment of Entity wide Objectives**

The City has a strategic plan which clearly identifies goals and objectives. The City updates its strategic plan on an annual basis. The strategic plans are clearly communicated to employees and the public.

**Establishment of Activity-Level Objectives**

Appropriate necessary resources have been identified, budgeted, and allocated, to successfully achieve the activity level objectives. The activity level objectives are measurable. The activity level objectives are actually measured and reported to management and responsible employees. Activity level objectives are supported by written polices and procedures which are linked to the strategic plan and support specific business processes.

**Risk Identification**

The City has developed this risk management policy and the accompanying procedures. The risk management policies and procedures are successfully integrated into business operations. Risk management occurs at both senior and mid-level management. Risk management occurs for both entity-wide and activity level objectives.

**Risk Analysis**

The City has developed these risk analysis procedures. These risk analysis procedures categorize risk by type, significance, and potential impact. The risk analysis procedure provides for mitigation measures, required management action, and necessary internal controls. This risk management procedure is actually used as evidenced by completed spreadsheets. There is evidence that risks are actually managed and continually monitored.

# City of The Dalles
# Internal Control – Cash

## Overview

This document provides a checklist to review the City of The Dalles' internal control over cash handling, cash disbursements, and cash receipts.

## Division of Duties

- The responsibility for collection and deposits is separate from the recording of cash receipts and general ledger entries.
- The responsibilities for cash receipts and cash disbursements are separate.
- The responsibilities for authorizing payment of invoices are separate from the recording or entering of invoices in accounts payable and the general ledger.
- The responsibility for verification of correct entry of invoices before checks are printed is separate from the recording and/or entering of invoices into accounts payable.
- The responsibility for disbursement approval is separate from the purchasing functions.
- The responsibility for making entries in the cash receipts and cash disbursement systems is separate from making general ledger entries.
- The collecting of cash and reconciliation of the bank account are separate functions.

## Documentation

- There is limited access to petty cash funds within each Department.
- Cash operations are subject to daily supervisory review.
- Cash is periodically counted by a person other than the custodian at unannounced times.
- General ledger control exists over all bank accounts.
- Bank signatories are periodically reviewed and formally re-authorized by the City Council. Bank signatories are limited to the following positions: City Manager and City Attorney.
- Accounts payable documentation is noted when payment is made to prevent duplicate payments.
- All vendor (A/P) invoices are double-checked for accuracy.
- Invoices and supporting documentation support all source documents.
- Reconciliation is performed on all accounts, using supporting documentation.
- Cash receipts are controlled at the earliest point of receipt.
- Cash receipts are reconciled to the deposit on a daily basis.
- Cash receipts are reconciled to supporting documentation on a daily basis.
- Cash receipts from the Finance Department, including turnovers from Court, Police, Planning, etc., are deposited on a daily basis.

- A list of the origin (Finance, Court, Planning, etc.) and the amounts of each deposit is included in the bag to be taken to the bank. The employee that takes the bag to the bank will verify each receipt received matches a deposit on their list before they leave the bank.
- Library deposits will be completed by Library staff at a minimum of two (2) times per month, with the yellow copy of the deposit slip and the original receipt for the deposit being delivered to the Finance department BEFORE 3:00 PM on that same day.
- A Library deposit will be completed by Library staff on the last working day of each month, with the yellow copy of the deposit slip and the original receipt for the deposit being delivered to the Finance department BEFORE 3:00 PM on that same day.
- Deposit slips are accompanied by calculator tapes listing the checks in each "batch", along with a tape totaling the batches to obtain a grand total. Batch tapes are reconciled with the posted batches prior to finalizing the deposits.
- Cash receipts awaiting deposit are stored in a secured area.
- Deposit slips are compared to the bank statement deposits monthly.
- Daily cash receipts are compared to the bank daily online reports to verify timeliness of deposits.
- During bank reconciliation procedures, deposit amounts are compared with the cash receipt entries.
- The City has procedures to follow-up on "non sufficient funds" (NSF) checks. NSF checks are delivered to the Accountant, who is independent of processing and recording cash receipts. A copy of the NSF checks are kept by the Accountant and the NSF checks are disbursed to the appropriate department for adjustment. When such adjustments have been made, documentation of the adjustment is provided to the Accountant, which is attached to the Daily Reconciliation Report.
- A cash receipt is issued for all cash received.
- Employees that handle cash are covered under the City' Excess Crime Policy provided by the City's insurance carrier.
- There is adequate physical security surrounding cashiering areas.
- Employees are prohibited from cashing personal checks at cashiering areas.
- Safes are kept locked when not in use and all safes are fire safe.

# City of The Dalles
# Internal Control – Check Controls

## Overview

This document describes the procedures required to maintain proper control of City of The Dalles checks. The following procedures are discussed:

- Procurement, Receipt and Storage
- Blank Check Control Log
- Check Signing
- Distribution of Signed Checks
- Voided or Cancelled Checks
- Stop Payment Orders
- Paid, Voided and Cancelled Check Storage

## Blank Check Procurement, Receipt, and Storage

All orders for blank checks should be made by the City Finance Director or their designee. The quantities ordered are to be based on estimates of check stock requirements. The order must specify the check number range and that the checks are to be delivered directly to the City of The Dalles mailing address.

Immediately when blank checks are delivered, the original order is compared to the received packages which list the box number and check number sequences. After verification of the numbers, the blank checks are logged as received and stored in a secured area. Access to this area must be limited to authorized personnel, be locked, and separate from other forms and supplies.

If any discrepancies are noted between the check sequence numbers ordered and the numbers received the City Finance Director shall notify the City Manager in writing. The City Manager, or their designee, is responsible to immediately solve the discrepancy.

## Blank Check Control Log

The City Finance Director shall establish and maintain a control log of the receipt and use of the blank check stock. As the blank checks are used, the City Finance Director or their designee, must make appropriate entries in the control log, including quantities, sequence numbers, dates of checks written and signed, and the sequence numbers of checks cancelled, voided, or for any other reason not issued.

The City Finance Director is responsible for checking the control log carefully and notifying the City Manager of any discrepancies. When blank checks are returned to the City Finance Director, verification of the last check written must be made to ensure that the sequence is maintained.

## Check Signing

Vendor checks and payroll checks are signed using check signing machine that uses facsimiles of the authorized signatures. The check signing machine is kept locked and access to the keys is restricted.

When checks are to be used a request must be given to the City Finance Director or their designee. The City Finance Director or their designee will log which checks were released and for what purpose they were released.

The difference between the beginning and ending numbers must equal the count of the checks released. Measures are taken to ensure that the actual check numbers used match the check numbers entered into the City's financial software.

Next, a check register report is prepared. This report includes the date, the types of checks signed (payroll, vendor, or "Hand"), the check sequence, and the signatures of the person responsible for the preparation of the checks. (This report may be prepared for use as the check transmittal.)

If there are any discrepancies between the count of the checks signed and the number recorded on the counter, a discrepancy report with a full explanation must sent to the City Finance Director.

**Distribution of Signed Checks**

The signed checks are turned over to the Accountant, who verifies the count of the checks and signs the blank check log and check register report. The checks are then returned to the A/P clerk who disburses them. If any discrepancies are discovered the Accountant must make immediate inquiry.

When a check is given to any person other than the payee outside of the normal check distribution procedures, a signed receipt, indicating the payee's name, number of checks, if applicable, must be obtained from the person receiving the check(s).

Signed checks awaiting distribution or pick-up must be kept in a locked storage place accessible only to authorized employees.

All A/P checks should be mailed by authorized employees.

Any person that picks up or accepts delivery of a vendor check must sign a receipt for the check.

Precautions shall be taken so that hand checks cannot be altered.

**Voided or Cancelled Checks**

A voided check is a check spoiled in the process of preparation, before it is recorded.

A cancelled check is a check that is not paid by the bank, but is recorded and reversed in the accounting records.

Voided and cancelled checks must be thoroughly defaced with a rubber stamp AND the signature lines must be cut or torn off. The words "VOID" or "CANCELLED" shall be prominently placed across the payee's name.

Both voided and cancelled checks shall be retained in accordance with the Records Schedule.

The check numbers of all voided or cancelled checks must be recorded in the check log and verified by the Accountant.

**Stop Payment Orders**

The Finance Director is responsible for approval of all orders to stop payment of a check after it has been issued. The bank's acknowledgment of the stop payment order should be filed with the bank reconciliation for that month and noted in the check log.

**Paid, Voided, and Cancelled Check Storage**

All checks shall be retained in accordance with the Records Retention Schedule.

# City of The Dalles
# Internal Control – Revenue Cycle

## Overview

The revenue cycle includes accounting transactions resulting from events that produce revenue for the City of The Dalles. These include:

- Utility Billing
- Licenses and Permits
- Fines and Fees
- Grants
- Cash Receipts

## Division of Duties

- Billing functions are separate from cash receipts.
- Accounts Receivable recordkeeping is separate from cash receipts.
- Accounts Receivable personnel do not make general ledger entries.
- Bank reconciliations are prepared by persons independent of cash receipt responsibilities.

## Cash Receipts and Collections

- The remittance advice is used as the basis for A/R collections input, when provided with the payment. If no remittance advice is available, best efforts will be made to apply the payment correctly and a receipt will be printed and retained to document application of payment.
- Cash and checks received in person are controlled by the use of financial software that includes customer balances owing, automatically numbered receipts, and locked cash drawers.
- Cash drawers are reconciled daily.
- There is a daily reconciliation of cash receipts.
- Cash over and short explanations are in writing and signed.
- Checks are restrictively endorsed.
- Cash is deposited daily.
- Personnel with access to cash and inventory are bonded.

## Related Documents

- Internal Control Cash
- Internal Control Accounts Receivable

# City of The Dalles
# Internal Control – Accounts Receivable (A/R)

## Overview

This document provides an Internal Control checklist for the Accounts Receivable functions.

## Division of Duties

- The maintenance of Accounts Receivable accounts and related subsidiary ledgers should be separated from the functions of:
  - ✓ Establishing charges to the receivables accounts
  - ✓ Recording cash receipts and preparing the deposits
  - ✓ Approval of any adjustments or write-off to any receivable accounts
- Persons other than those responsible for receivable record keeping should handle disputed billings.
- Non-cash credits, bad debt write-offs, credit memos, and allowances are approved independently of processing, recording and collection.

## Documentation

- Credit policies are in writing and are properly authorized.
- Individual receivable records are posted only from authorized source documents.
- Procedures exist to prepare and send billings as soon after the performance of service as possible and at least within the month. All invoices are prepared and mailed only by the Finance Department.
- Adequate control exists over the mailing of statements to prevent interception prior to the mailing.

## Transactions

- All billings are controlled and properly accounted for with numerical or batch-processing controls.
- All valid receivables are promptly recorded. Interest and penalties are promptly and properly charged on delinquent accounts.
- All adjustments to the accounts are recorded in the appropriate period.
- Credit balances are reviewed periodically.
- When transaction volume necessitates, subsidiary ledgers are established and a trial balance of the subsidiary ledgers is taken at the end of each period and reconciled with the related control account. Differences are investigated and adjusted promptly, with authorization from the Finance Director or designee.

- Billing and collection transactions are reviewed periodically to ensure compliance with Accounts Receivable procedures.
- Collections of accounts receivable are deposited daily.
- Past due accounts are reviewed monthly and follow-up collection efforts are made according to the Utility Billing procedures.
- Requirements for approval to write-off bad debt accounts and adjustments for disputed amounts or other items are established.

**Collections**

- A responsible manager reviews the accounts receivable aging at least monthly.
- All collections of accounts receivable are posted to individual receivable accounts.
- There are procedures in place to ensure that delinquent accounts are not receiving additional credit.

**Bad Debt Write-Off**

- A reserve for doubtful accounts is established to reflect the anticipated collectible value of the related receivable account.
- Review procedures are established to provide a realistic reserve based on past collection experience and anticipated losses on the receivables.
- Reasons for writing off an account are adequately documented.
- Write-offs and adjustments have proper authorizations.
- When a receivable is written off as a bad debt, an applicable procedure exists similar to the following example:

  If there is a reserve account for the receivable G/L account, credit the receivable G/L account and debit the reserve G/L account; subsequent collections of such items should be credited to G/L Bad Debt Expense – Contra.

# City of The Dalles
# Internal Control – Expenditure Cycle

## Overview

The expenditure cycle includes accounting transactions that result in the City incurring expenses and how such expenses are processed.

## Division of Duties

- Accounts Payable is separate from purchasing, receiving, and disbursement functions.
- Accounts payable and treasury functions are separate.

## General Expenditure controls

- An IRS Form W-9 is on file for all vendors
- Vendor history is maintained/verified and used for inclusion in authorized vendor list
- The receiving area is secure with limited access
- Accounts payable verifies the mathematical accuracy of vendor invoices
- The Payment Register is reconciled to control accounts monthly
- Supporting documents are attached to invoices submitted for payment approval

## Check Signatures

- Check controls are in place
- Check signers do not maintain cash accounting records
- The accounting staff are not check signers
- The City Manager and City Attorney are the primary check signers
- Blank checks are not signed
- All check amounts require two signatures

# City of The Dalles
# Internal Control – Accounts Payable (A/P)

## Overview
This document provides a checklist to review the internal controls of the City's accounts payable, purchasing and receiving functions.

## Division of Duties

- The recording of cash is separate from the recording of the debt.
- Reviewing and reconciling accounts payable control accounts are separate from the person who records the information.
- Card purchases and account reconciliation are separated.

## Purchasing

- All expenditures are approved in accordance with the City of The Dalles written Purchasing Administrative Polices.
- Sole Source purchasing is justified by notation on Purchase Orders, Contracts, and Requisitions, and follows the adopted City of The Dalles' purchasing policies and procedures and the Local Contracting Review Board Rules.
- Purchases are tested for reasonableness of derived benefit.
- A policy and procedure for competitive bidding is in place for purchases over a specified amount. See the City's adopted purchasing policies and procedures manual.

## Receiving

- If required, a receiver document is prepared upon receiving merchandise.
- Merchandise is inspected for quantity and condition when received.
- Vendor mathematics are checked for accuracy.
- All necessary data like vendor name, invoice number, account numbers, project numbers are on the documents.

## Payments to Individuals/Vendors

- A full name, phone number, home address, and mailing address (if different) must be on the invoice voucher. An IRS Form W-9 must be on file with the City of The Dalles before any payments are issued.
- Proper documentation is on file for all aliens. An alien is a person who is not a U.S citizen or U.S. national.

## Credit or Cards

- Card users are required to sign for the card.
- Card limits are verified and periodically checked.

- Signatures for card holders are verified.
- Original documentation or printed documentation from web sites is maintained supporting all card expenditures.
- Employee termination procedures ensure cards are returned.

**Accounts Payable**

- Original invoices are required to issue payment.
- Duplicate copies of invoices are clearly marked or destroyed to avoid duplicate payment.
- Invoices are reviewed for accuracy.
- Returned purchases are controlled to ensure that the refund or credit will be received.
- Vendor credit memos are resolved promptly by cash refund or proper credit to the account.
- Monthly statements from vendors are reconciled to open invoices. **Payments are only made from invoices, not statements.**
- Past due balances are reviewed and followed up on.
- Procedures exist for ensuring the accurate coding and account distribution for entries from invoices.
- Procedures exist for submission and approval of reimbursement to employees for travel or other expenses.
- Cash discounts are taken and any exemptions from sales, federal excise, and other taxes are claimed.

# City of The Dalles
# Internal Control – Payroll and Human Resources

## Overview
This document provides an Internal Control checklist for the Payroll and Human Resource Functions.

## Division of Duties

- The initiation, approval and authorization of Personnel Action Forms (PAF) and payroll processing are separate functions.
- Verification of accurate entry into the payroll software of set up or changes authorized by a PAF is separate from the payroll processing function.
- Payroll processing and general ledger functions are separate.
- Payroll clerks do not certify their own time.

## Payroll and Human Resource Internal Controls
The City of The Dalles has written personnel policies that are communicated to all employees. Some employees are covered by union contracts with specific wage and benefit requirements.

- The City of The Dalles has an employee handbook that is updated annually.
- Access to payroll files is secure and limited.
- Conflict of Interest Policies are enforced.
- Nepotism policies are enforced.
- Training is provided and documented for time recording procedures, including overtime.
- Time sheets are completed in ink or done electronically on a spreadsheet.
- Time is recorded to the nearest 1/4 hour.
- Overtime is properly authorized.
- Time cards are properly coded.
- Changes on time cards are always initialed.
- Time cards are always signed in ink by the employee and their supervisor.
- A procedure exists to verify reported time such as a supervisor signature.
- Excessive Overtime is investigated.
- Procedures exist to ensure the reasonableness of paychecks.
- The payroll roster is verified that all employees actually exist.
- Procedures exist to ensure that payroll reports are reviewed and preserved.
- Un-delivered paychecks are returned to the City Manager. Direct Deposit of payroll is encouraged.
- Performance reviews are actually performed periodically on all employees.

- Performance reviews are actually documented and on file in the employee file.
- All employees have proper and adequate training, including Safety Training and Material Safety Data Sheets.
- All employees are made aware of City Policies and Procedures including their responsibilities and expectations.
- Employment Applications are used for all applicants.
- References are checked on all potential new hires.
- Background checks are performed on all people hired for sensitive positions.
- Employees have adequate supervision. Employees with inadequate supervision are identified.
- Adequate staffing is maintained and the City regularly reviews staffing needs.
- Employee job descriptions are maintained.
- A Personnel Action Form (PAF) is used to document all New Hires, changes in employment salary, wage rates, and payroll deductions
- All Personnel Action Forms are properly authorized, approved, and documented.
- Procedures exist to record vacation, personal and sick time and to reconcile such leave to actual time sheets.
- All necessary payroll records are maintained, including vacation leave, sick leave, etc.
- Vacation, personal and sick accruals are updated at least monthly.
- Vacation, personal and sick accruals are periodically verified in writing with the employees.
- Year-end balances and carry forwards are verified and properly recorded.
- Records and procedures exist for timekeeping and attendance.
- Procedures exist to ensure City assets are returned by terminating employees.

# DEPARTMENTAL CONTROL REVIEW
# CASH RECEIPTS
# SEGREGATION OF DUTIES MATRIX

Department: **Finance**
Location: City Hall, 313 Court Street

| | Employee Codes | A | B | C | D | E |
|---|---|---|---|---|---|---|
| **Mail Receipting:** | | | | | | |
| 1 | Opens Mail | | | xx | xx | X |
| 2 | Restrictively endorses mail checks | | | xx | xx | X |
| 3 | Inputs mail receipts | | | xx | xx | X |
| **Over the Counter (OTC) Receipting** | | | | | | |
| 4 | Receives cash and checks OTC | | xx | xx | xx | X |
| 5 | Restrictively endorses OTC checks | | xx | xx | xx | X |
| **Posting Receipts** | | | | | | |
| 6 | Records/posts cash and checks receipts to General Ledger | | xx | xx | xx | X |
| **Depositing** | | | | | | |
| 7 | Reconciles cash receipts to records (register tapes, batch reports, etc.) | | | xx | X | X |
| 8 | Counts cash for reconciliation and preparation of cash drawer | | | xx | X | X |
| 9 | Prepares bank deposits | | | xx | | X |
| 10 | Takes deposits to the bank | | xx | xx | X | |
| **Reviewing** | | | | | | |
| 11 | Reviews batch reports and bank deposits | | X | xx | | |
| **Monitoring** | | | | | | |
| 12 | Compares deposit info to bank statement – bank reconciliation | X | xx | | | |

X = Primary
xx= Secondary (if Primary is unavailable)

**Legend for Segregation of Duties Matrix**

| | |
|---|---|
| A | Finance Director |
| B | Internal Control Specialist |
| C | Finance Specialist |
| D | Account Clerk I |
| E | Account Clerk |

**CITY OF THE DALLES**
**POLICY MANUAL**

**SECTION VII – SECURITY**

# City of The Dalles

# INFORMATION AND COMMUNICATION SYSTEMS AND GUIDELINES

## I. GENERAL POLICIES ON THE USE OF INFORMATION AND COMMUNICATIONS SYSTEMS

**A) <u>Purpose/Scope</u>.** The City of The Dalles ("City") owns and provides information and communications systems for the conduct of its official business. All information and communications systems tools purchased by the City are the property of the City. Employees should have no expectation of privacy in connection with the transmission, receipt or storage of information on any of these systems. Any personally owned electronic communication devices an employee uses for City business may under certain circumstances be governed by this policy.

This document was created to advise all users regarding the access to and the disclosure of information created, transmitted, received and stored via the use of the internet, City email, cell phones, any type of technology issued or maintained by the City, and other computer, communications and information systems (collectively referred to as the "City's information and communications systems" or "information systems"). For purposes of this policy, a personal computer or other device personally owned by an employee which is used to access the internet by a service provided by the City is considered to be part of the City's information and communications systems only to the extent that the device is being used for city business. The City Manager may, in some cases, authorize operations and practices that conflict with this document on a temporary basis as needed.

The City's policy regarding the use of the City's information systems is, among other things, intended to guide you in the performance of your duties as a City employee. It is also intended to place you on notice that you should not expect the internet, email, cell phone conversations and voicemail in your possession or those that you use from time to time, and their contents, to be confidential or private. All data, including any that is stored or printed in any form is subject to audit and review.

This policy applies regardless of the location or ownership of the equipment being used: e.g., if an employee uses a private PC and modem connection at home, but accesses the internet via a service provided by the City; or an employee accesses the internet via service provided by the employee, but through City equipment; or an employee uses a City provided cell phone at home. Therefore, information on personal equipment used for City business may be a public record and must not only be kept according to the City's retention schedule, but the employee's personal equipment may also be subpoenaed to verify all City information has been provided as requested.

In order to ensure this policy is complied with, the City reserves the right to monitor internet use, cell phone use, all email, and other computer transmissions, as well as any stored information, created or received by City employees with the City's information systems. All computer applications, programs, work-related information

created or stored by employees on computers, cell phones, or any other device or equipment furnished by the City are City property.

Unless otherwise provided in this policy governing use of City information systems, use of City information system for personal reasons which do not relate to personal financial gain may be allowed by a Department Head on an occasional or infrequent basis during off-hours only.

The Public Records Law (PRL), Oregon Revised Statutes Section 192.410, *et seq* requires the City to make all public records available for inspection and to provide copies upon request. A public record is any writing (which includes electronic documents) relating to the conduct of the public's business prepared, owned, used, or retained by the City. Although the PRL includes a number of exceptions from the disclosure requirement, any information on the City's information system may be subject to disclosure under the PRL. If there is some doubt, the employee should contact his or her Department Head or the City Attorney for advice as to whether the information is a public record.

The rest of this document addresses general City-wide internet guidelines, specific issues related to appropriate content and use of departmental pages, and employee use of the internet, email and cell phones. All departments and employees are required to follow these general guidelines. Specific departments may have unique requirements and are encouraged to develop guidelines to cover those issues. The law and associated policy regarding the use of internet, email, cell phones and voicemail are continually evolving. Accordingly, review of the policies and guidelines will occur with regularity, and changes shall be made as required.

Each Department Head is responsible for their respective employees' use of the City's information systems, and for the contents of their department's communications and information presented using these media.

Nothing in this policy is intended to abridge employee's rights under state or federal laws, nor to interfere with the employee's appropriate use of business-related social networking websites, blogs, interactive websites that are used by employees as part of their employment with the city or for professional development purposes.

**B) <u>System Security/Safety</u>.** All employees have a responsibility to take reasonable precautions to protect the security and integrity of the City's information systems. Reasonable precautions include updating anti-virus software when requested by the City's Information Technology Manager, not allowing unauthorized access to the computer system, and safeguarding the employee's password.

If an employee becomes aware of a virus or the threat of a virus, the employee should immediately contact the City's IT Manager with the information.

All employees have a responsibility to take reasonable precautions against theft or damage to the City's information systems. Data of a confidential nature must be protected and must not be disclosed without authorization. Unauthorized access, manipulation, disclosure, or secondary release of such data/information constitutes a security breach. Failure on the part of an employee to take reasonable care to prevent such access may be grounds for disciplinary action up to and including termination of employment.

Except with the prior written approval of an employee's Department Head, employees are prohibited from downloading and taking City files, programs, or anything else stored on the City's information system out of the workplace.

Software installations are to be performed by or under the direction of the City's IT Manager. Only software owned by the City and approved by the IT Manager shall be installed on City computers. Installation of personal software on any City-owned equipment is expressly prohibited.

Computer equipment may not be used to download, copy, or store any copyrighted software, publications, music, video, or other content without permission from the copyright holder.

Any theft or damage to any information systems equipment must be reported immediately to the IT Manager and your supervisor.

## II. DEPARTMENT INTERNET GUIDELINES

The City encourages its departments to use the City's web site, the department's web site, and other tools of the internet to disseminate information to the public and its employees (collectively called "users") to improve communications with the public, and to carry out official business when business can be accomplished consistent with the following internet policies and guidelines:

**A) Information Management.** Disseminate information that is current, accurate, complete, and consistent with City policy. Information released via the internet is subject to the same official City policies for the release of information via other media (such as printed documents), so that the information disclosed avoids potential problems with copyrights, trademarks, and trade secrets. Information accuracy is particularly important on the internet. Where paper-based information is often not current, information presented electronically is much easier to keep current. Constituents expect this information to be not only current but often to be the first available.

**B) Privacy and Security**. Protect confidential and proprietary information entrusted to the City. Questions regarding confidential or proprietary information should be directed to your Department Head. Confidential information should not be posted on the City's external web site.

**C) Professional Image**. Use the internet to promote a professional image for the City.

**D) Official Use.** Internet resources are made available to City employees to support and promote official City business. It is inappropriate for employees to use these resources for personal use, private gain, to state as "city positions" those which are not officially endorsed by the City, illegal purposes, or for inappropriate use as defined in these policies and guidelines.

## III. WEBSITE GUIDELINES

The City has a World Wide Web site: www.ci.the-dalles.or.us. The web site includes pages for each department. The web site is a communication tool for providing City information to The Dalles residents and the world. Hopefully, it encourages increased

participation in City government.

A) Employees are responsible for ensuring that they adhere to the Web Site Policies.

B) To preserve the public nature of the City's web site and to avoid any perception that the City endorses or provides favorable treatment to any private person or business enterprise (collectively referred to as "vendor"), no corporate or commercial logos or links to vendor sites are allowed on the City's external web site. When a service has been donated by a vendor that enables the development or maintenance of a City departmental web site, the name may appear once at the bottom of the City department's initial page and must include the following statement: "Acknowledgment of (xxxxx) on this page does not constitute the City's support or endorsement of it or its products or services."

C) Vendors that create or maintain a home page for any City department must follow all policies established for the City's web site.

D) It is the City's intent to provide electronic access to its information through a logical single point of entry. For the internet, this logical point of entry is the City's officially registered domain name and each City department or City organization will be defined as a sub area within the official domain.

E) Except as provided in Section IV(D)(f) of this policy, no City web site may be used for campaign-related purposes.

## IV. GUIDELINES CONCERNING SOFTWARE, INTERNET AND VOICEMAIL

### 1. City-Authorized Software and Hardware

A) It is the City's policy that no unauthorized software or hardware shall be installed on City computers. Only the Department Head, in consultation with the City Manager and City's IT Manager, may authorize hardware or software to be installed on City computers.

B) It is the City's policy that any commercial software installed on a City computer shall be purchased through an authorized vendor or otherwise lawfully obtained. The software license and transfer media (i.e., tape or disc) shall be stored in a secure location.

### 2. Copying City-Owned Software; Downloading Software; Tampering and Deletion of Information

A) Except as otherwise allowed under the software license, and except for backup or archival purposes as determined by the Department Head in consultation with the City Manager and the City's IT Manager, software owned by the City or installed on City computers is covered under copyright laws and shall not be copied, duplicated or installed on any other computer. This includes the software and manuals.

B) No software may be downloaded on a City computer without the approval of the Department Head in consultation with the City Manager and the City's IT Manager. Any software or files downloaded via the internet into the City's network become property of the City. Any such files or software may be used

only in ways that are consistent with their licenses or copyrights. No employee may use City facilities to knowingly download or distribute pirated software or data. Downloading a file from the internet can bring viruses with it. Make sure all downloaded files are scanned with City standard virus prevention software. Employees with internet access may not use City internet facilities to download entertainment software of games, or to play games against opponents over the internet. Employee with internet access may not use City internet facilities to download images or videos unless there is an explicit business-related use for the material.

C) Almost all data and software is subject to the Federal Copyright Laws. Care should be exercised whenever accessing or copying any information that does not belong to the City. Software which requires purchase or reimbursement for its use, such as shareware, requires strict adherence to the terms and conditions specified by the owner unless written permission for unrestricted use has been obtained. When in doubt consult your Department Head.

D) Employees are obligated to cooperate with any investigation regarding the use of the Employee's computer equipment, which the employee's Department Head has authorized.

E) No employee shall tamper with data, knowingly enter false information or commit sabotage on a City computer. Sabotage includes, but is not limited to, disabling virus software installed in a computer.

F) Any employee, whose employment with the City is terminated, for any reason, shall not delete any files or information stored in a computer, without prior authorization from their Department Head.

## 3. Internet Policy

### A) Internet as a Tool

a. The City encourages authorized employees to use internet technologies as communications, business and research tools. These tools will allow employees to communicate with the public and other audiences, provide information about City systems and programs, and conduct business with the public. The internet provides access to a wide range of valid and valuable research tools and information.

b. The purpose of the City's internet policy is to provide employees with guidelines for the appropriate use of internet tools and technology. The policy covers the use of internet technology for communications, as a tool for conducting the City's business, as a web page publisher, and as a research tool and information source.

### B) Internet Policy

a. City employees' use of City equipment and City-paid internet access must be consistent with City policies, including record retention and public record requirements. City employees' use must be consistent with all policies, standards, or work rules established by the department in which they are employed. City employees' use must comply with all service or contractual

agreements with commercial internet service providers.

b. City employees using the internet must also apply accepted standards and uses as established by other City policies relating to use of City resources and guidelines for acceptable practices. As explained below, under no circumstances may an employee use City equipment of a City internet account to access pornographic materials.

**C) Acceptable Use**

Acceptable uses include, but are not limited to, communication or internet activity that is in direct support of normal and accepted City programs. The following is a general list of City uses for the internet; it is not intended to be exhaustive:

a. Communication with other federal, state, or local government agencies, their committees, boards, and/or commissions;

b. Communication for professional development, to debate issues in a field or subfield of knowledge;

c. The use of gophers or World Wide Web sites to research work-related topics;

d. Any other administrative communications or activities that are in direct support of normal and accepted City programs.

e. The occasional, infrequent use of City-paid internet access for personal use is allowed provided such use does not impair or interfere with the effective functioning of any City department.

f. Only those employees or officials who are duly authorized to speak to the media, to analysts or in public gatherings on behalf of the City may speak or write in the name of the City to any newsgroup or chat room. Other employees may participate in newsgroups or chat rooms in the course of business when relevant to their duties, but they do so as individuals speaking only for themselves. Where an individual participant is identified as an employee or agent of the City, the employee must refrain from any unauthorized political advocacy and must refrain from the unauthorized endorsement or appearance of endorsement by the City of any commercial product or service. Only those managers and City officials who are authorized to speak to the media, to analysts or in public gatherings on behalf of the City may grant such authority to newsgroup or chat room participants.

g. Employees are reminded that chat rooms and newsgroups are public forums where it is inappropriate to reveal confidential City information, citizen data, and any other material covered by existing City policies and procedure or other public law.

**D) Unacceptable Use of the Internet**

a. No City employee shall use City-paid internet access to conduct personal business for private financial gain at any time. However, employees will be allowed to access information and engage in transactions through the City's information system concerning the City's retirement plans, deferred compensation plans, medical insurance, plans, or other plan providing employee benefits.

b. No City employee shall take any action to attempt to circumvent or reduce the security of the City's computer and network resources. The City has installed firewalls to assure the safety and security of the City's networks. Any employee who attempts to disable, defeat or circumvent any City security facility will be subject to immediate dismissal.

c. No City employee shall take any action that renders the user's computer equipment unusable, or that interferes with another City employee's use of computer equipment and internet access.

d. No City employee shall use City equipment or City-paid internet access in the commission of an illegal act.

e. Unless specifically authorized by a Department Head or the City Manager, no City employee shall use City equipment or City-paid internet access in a manner that would constitute an endorsement of a specific commercial entity.

f. Unless otherwise allowed under ORS 260.432 for elected officials, no City employee shall use City-paid internet access to directly assist a campaign for election of any person to any office, or for the promotion of or opposition to any ballot measure. This prohibition shall not apply to the use of a City computer or City network resources for the development of delivery of an objective and fair presentation of facts relevant to a ballot measure as allowed by State law, provided that such use must be a part of the normal and regular conduct of the employee's developing or delivering the presentation of facts.

g. No City employee shall visit or view pornographic internet sites, download pornographic material from the web, send or retrieve sexually explicit or offensive messages or cartoons; or download any ethnic slurs, racial epithets or any other statement or image that might be construed as harassment, disparagement, libelous, or discriminatory based upon sex, race, sexual orientation, national origin, or religious or political beliefs. The only exception to this portion of the policy is for police investigative work.

h. Personal, confidential or protected information whose release is unauthorized should not be transmitted via or exposed to internet access.

i. Users of the internet must not attempt to obscure the origin of any message or download material under an assumed internet address.

j. Hacking is the unauthorized attempt or entry into any other computer. Never make an unauthorized attempt to enter any computer. Such an action is a violation of the Federal Electronic Communications Privacy Act (ECPA) 18 U.S.C. § 2510.

## 4. City Email and Voicemail Policy

### A) General

Electronic mail (email) messages are within the scope of the Public Records Law and Records Retention Law. Because of this, the City has developed the following policy for use of the City's email system by City employees and the retention of email messages.

### B) Status of Email Messages

a. All email messages are considered City records. The City reserves the right to access and disclose all messages sent over the email system for any purpose, including the right to disclose email messages to law enforcement officials without prior notice. There shall be no expectation of privacy in the use of email on the City system.

b. Email messages may be accessed and reviewed at any time by the Department Head or the Department Head's designee, the City Manager, or the City Attorney.

c. The City retains the discretion to assert any applicable privileges and objections if a public records request or discovery request is made for any City email. An employee desiring that the City assert a privilege or objection under the public records law with respect to City email shall notify the Department Head (or City Manager in the case of the Department Head's absence) who shall make a final determination.

### C) Use of Email

a. City Business. Email is to be used for matters that pertain directly to the business of the City. Email communications must be professional in content and appropriate to a governmental agency.

b. General Guidelines. Electronic messages are legally discoverable and permissible as evidence in a court of law. The remote possibility of discovery always exists. Employees should use caution and judgment in determining whether a message should be delivered electronically instead of in person. Employees should be suspicious of messages sent by persons not known by the employee. Employees should not open an attachment in an electronic message unless the attachment was expected to be sent. Employees shall delete and not forward any "chain letters". Employees should not read an email message containing an attachment from an unknown source. Such messages should be immediately deleted. Email messages, which have been identified as "spam" messages, should be immediately deleted.

c. Personal Use. With the permission of a Department Head and subject to any additional limitations imposed by a Department Head, email may be used for personal communication on occasional, infrequent basis. Significant personal use is prohibited. Misuse or overuse may be the basis for disciplinary action. To the extent possible, personal use of email shall be conducted on breaks or off hours. For purposes of disclosure and access, personal email messages are

subject to the same rules established by this policy for another email message.

d. Use for Community Service or Charitable or Non-Profit Purposes. If authorized by a Department Head or the City Manager, employees may use email for community service, non-profit or charitable activity not sponsored by the City.

e. Prohibited Use. Use of email for non-City business activities, outside business activities or activities for personal gain is prohibited. Employees are strongly cautioned that such use likely constitutes a violation of the Oregon Ethics Code and may result in civil liability for the employee. The City prohibits discrimination based on age, race, gender, sexual orientation or preference, physical or mental disability, sources of income, or religious or political beliefs. Use of the City's electronic messaging resources to harass or discriminate for any or all of the aforementioned reasons is prohibited.

f. Reading Email of Other Employees. An employee shall not read, forward, delete or in any way access email repositories or the email of another employee, without that employee's permission; however, email messages may be accessed and read at any time by a Department Head, the Department Head's designee, the City Manager, or the City Attorney.

g. Identification of Email. All email messages shall be clearly identified as to the author of the message. Anonymous messages are prohibited.

**D) Retention of Email**

a. Because email messages sent or received by City employees in connection with City business are public records, they are subject to the same retention requirements as hard copy documents. In the email context, "retention" means, "do not delete". Email messages must be retained even if they are confidential, privileged, or otherwise exempt from disclosure under Oregon Public Records Law. The retention and disposition of public records is authorized by retention schedules issued by the Secretary of State Archives Division. Records may be retained in hard copy or electronic format. If a hard copy of the email message is printed, then the electronic version may be deleted. The hard copy must then be kept as long as required by the applicable retention schedule. An email message retained in electronic format shall be retained for the applicable period set forth in the retention schedule adopted by the City.

b. An email box should not be used for storage. Generally, if an email has value, it should be printed and put in the appropriate file. However, it is also appropriate to retain an email on the system until a project is completed, at which time it should be printed out and placed in the appropriate file.

c. Employees have a responsibility to be familiar with the retention schedules applicable to City records, and to ensure that the email messages they send or receive are retained in accordance with the appropriate records retention schedules. Employees shall not delete any email message unless its retention period has expired or it has been printed out as a hard copy.

d. Personal email messages are defined as a personal exchange not covered by the State of Oregon Records Retention Schedule, and they should be deleted

after they have been read. Examples of personal email messages include:

·Lunch plans
·Jokes
·Chain letters
·Messages to family and friends
·Attached files such as photographs

e. Temporary or transitory email messages are any exchange of communication that is fulfilled almost immediately upon request. These messages should be kept until the task is completed or the value of the message has passed. Examples of these types of messages include:

·Charity campaigns
·Listserv messages
·City-wide communications
·Meeting reminders
·Deadline reminders
·Routing slips
·Fax confirmation
·Reading materials
·Reference materials
·FYI (for your information) email information that does not elicit a response

f. Email messages soliciting a response are any exchange of communication that requires the recipient to respond or perform an action on the message received. These messages may include attachments that the recipient will also need to respond to. The retention of these emails and any accompanying attachments will depend upon the content of the message. Examples of these types of messages include:

·Contract negotiations
·Administration of fiscal communications
·Policy drafts
·Reports
·Requests for information

g. Email messages, which document communications, created or received by the City, and which directly related to a City program or City administration, and which are not otherwise specified in the City Records Retention Schedule, or in any applicable state rule or statute, will be classified as correspondence. Such email could include messages, which communicate formal approvals, direction for action, and information about contracts, purchases, grants, personnel and particular projects or programs. A copy of the email message should be filed with the associated program or administrative records, and retained in accordance with the retention schedule specified for the program or administrative records.

h. Questions about retention of email messages should be directed to either the City Clerk or the City Attorney.

## V. VOICEMAIL USAGE

Voicemail, like email, is provided as a communication tool for the City. The City recognizes that voicemail may be used for some minimal personal use, and like the telephone, such personal use of voicemail will be allowed provided such use does not interfere with the business of the City or otherwise violate the use provisions set forth in Section IV of this policy. There shall be no expectation of privacy in the use of voicemail on the City system. Voicemail messages are subject to review and inspection by a Department Head, the Department Head's designee, the City Manager, or the City Attorney.

## VI. VIOLATION OF POLICY

All City employees are responsible for reading the City's Communication Systems Policies and Guidelines and signing a statement to the effect that they have read the policy, agree to comply with all conditions of the policy, and understand and accepts the rights and responsibilities set forth in the policy. A City employee's failure to comply with the City's Communication Systems Policies and Guidelines can subject the employee to discipline, up to and including termination, subject to the provisions of the City's exempt employee handbook or to any applicable collective bargaining agreement.

Dated this 15 day of November, 2012

Nolan K. Young

Nolan K. Young, City Manager

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481 x4448
FAX (541) 296-6906

# BACKRGROUND INVESTIGATION PROCEDURES

The following procedures will be used when hiring new employees to the City of The Dalles. Section references are those on the attached Background Investigation form. All information gained though the background checks are to be retained by Human Resources in accordance with Oregon Records Retention requirements (ORS 181 and OAR 166-200).

In Section III below, Library Staff includes employees and volunteers. In Section IV below, Financial Staff includes all position that perform Accounts Receivable, Accounts Payable as a function of the position and is not limited to the Finance Department.

| | | |
|---|---|---|
| **I.** | **POLICE OFFICER:** | All, I(A) and all I(B). |
| **II.** | **DEPARTMENT HEADS:** | All, I(A) and I(B)(1), except I(A)(7) and I(A)(10). Library Director follows procedures in Section III below. |
| **III.** | **LIBRARY POSITIONS:** | I(A)(1) thru I(A)(9) and I(A)(11) thru (12), and I(B)(1). |
| **IV.** | **FINANCIAL POSITIONS:** | I(A)(1) thru I(A)(6) and I(A)(9), I(A)(11) and I(A)(12). |
| **V.** | **ALL OTHER POSITIONS:** | I(A)(1) thru I(A)(6). |

Existing employees under consideration for another position shall have a background check conducted appropriate to the position they are being considered for.

Unsatisfactory results from the Background Investigation will result in removal of consideration of that candidate. No person shall be hired who has not received a satisfactory background investigation. Candidates under consideration may be extended a "tentative offer" pending the outcome of a background investigation.

Julie Krueger

Julie Krueger, City Manager

3-5-18

Date

## BACKGROUND INVESTIGATION

**I.** A background investigation must he conducted by a public or private safety agency on each individual being considered for employment as a public safety professional to determine if applicant is of good character. Background investigations on applicants for other positions will be conducted in accordance with City procedure.

**A.** The background investigation must include, but is not limited to, investigation into the following:

1. Criminal history and arrests:
2. Department of Motor Vehicles (DMV) records:
3. Drug and alcohol use:
4. Education verification:
5. Employment history:
6. Military history verification:
7. Personal and professional references. Personal and professional references may include, but are not limited to, friends, associates, family members, and neighbors:
8. Personal Interview: The personal interview may occur before or after the investigation and may be used to clarify discrepancies in the investigation:
9. Records checks, which may include, but is not limited to:
    a) Police records, district attorney, court and Oregon Judicial Information Network (OJIN) records:
    b) Open sources or social media as permitted by law:
    c) Financial information as permitted by law: and
10. Department of Public Safety Standards and Training Professional Standards records.
11. Residential history: and
12. Work eligibility.

**B.** Each individual being considered for employment must provide a notarized personal history statement. The statement must include, but is not limited to:

1. Verification of the background information referenced to in section I(A):
2. A complete list of all public safety agencies the applicant has applied with; and
3. A signed release allowing background investigation information to be shared with other potential employers.

**II.** Results of the background investigation on all applicants must be retained by the public or private agency in accordance with the Secretary of State's Record Retention Schedule and must be available for review at any reasonable time by the Department.

Ref: ORS 181 & OAR 166-200

# IDENTITY THEFT PROTECTION POLICY

## Oregon Consumer Identity Theft Protection Act

**PURPOSE:** The purpose of this policy is to protect personal information the City receives, handles, and stores, and to comply with the provisions of the Oregon Consumer Identity Theft Protection Act (hereinafter referred to as "OCITPA"). The City is entrusted with many varieties of sensitive and confidential information. This includes the personal information of a variety of consumers including clients, customers, licensees, and employees. As owners and custodians of that information, the City is responsible for protecting those assets from loss or misuse. The loss of personal information can result in substantial harm to individuals, including identity theft or other fraudulent use of the information.

**DEFINITION OF PERSONAL INFORMATION:**

Personal information is defined as the following:

A consumer's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or data elements are not encrypted or when the data elements are encrypted and the encryption key also has been acquired, or when either the name or the data elements are not redacted:

* Social Security number
* Driver's license number or state identification card number
* Identification number issued by a foreign nation
* Passport number or other United States issued identification number
* Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to a consumer's financial account.

**GENERAL POLICY:**

Employees are responsible for protecting personal information from unauthorized access. Access to personal information shall be restricted to a "need-to-know" basis and available only to those individuals authorized to use such information as part of their duties and with the requirement that they keep the information confidential and use it only for authorized business purposes.

**GUIDELINES FOR IMPLEMENTATION OF POLICY:**

1. Employees shall be knowledgeable of safeguards established by the City and follow all procedures and processes established to protect information assets and personal information.

2. The following actions, with the exceptions listed in subsection (a) below, concerning the printing, displaying, or posting of Social Security numbers is prohibited:

   * Printing of a consumer's Social Security number on any materials not requested by the consumer or part of the documentation of a transaction or service requested by the consumer that are mailed to the consumer, unless information concerning the Social Security number is redacted.

   * Printing a consumer's Social Security number on any card required for the consumer to access products and services provided by the City.

   * Publicly posting or publicly displaying a consumer's Social Security number, unless that number is redacted. "Publicly posting" or "publicly displaying" means to communicate or otherwise make available to the public.

   (a) **Exceptions**

      1. The collection, use or release of a Social Security number as required by state or federal law, including state statutes and court rules of procedure as identified in the OCITPA: including but not limited to W2, W4, and 1099 tax forms.

      2. Records that are required by law to be made available to the public, as identified in the OCITPA.

      3. The use or printing of a Social Security number for internal verification or administrative purposes or for enforcement of a judgment or court order.

3. Protect personal information from unauthorized viewing.

4. Properly secure personal information both when in use and when stored or filed electronically or in a portable format (such as paper, discs, removable storage devices). For example, personal information kept in a notary

public log should be stored in a secure facility when the log is not in use, and personal information retained in a personnel file should be stored in a secure filing cabinet with access restricted to authorized personnel only.

5. Have a valid business purpose to send personal information over the City's computer network and a secure way to transmit such information.

6. Have prior written approval to download personal information to any portable or removable device.

7. Immediately report any suspected unauthorized or improper disclosure of personal information to a supervisor or department manager. In the event that personal identifying information has been subject to a security breach, the City will provide notification of the breach to the customer or the employee as soon as possible in writing, electronically if that is the primary manner of communication with the customer or employee, or by telephone if the person is contacted directly, and the City will comply with to the applicable procedures related to a security breach as outlined in the OCITPA.

**COMPLIANCE WITH POLICY:**

All City employees are responsible for compliance with this policy. Employees who have questions about compliance with this policy should contact their supervisor or department manager. Noncompliance with this policy may result in formal disciplinary action up to and including termination of employment.

Nolan K Young

Nolan K. Young, City Manager

1-26-09

Date

# City of The Dalles

## Cybersecurity Policy

## Table of Contents

## Objective

The focus of this policy is to help the City of The Dalles meet its objectives. We recognize that information and the protection of information is required to serve our citizens. We seek to to ensure that appropriate measures are implemented to protect our citizen's information. This Cybersecurity Policy is designed to establish a foundation for an organizational culture of security. This policy will be reviewed annually and approved by the City Council.

The purpose of this policy is to clearly communicate the City of The Dalles security objectives and guidelines to minimize the risk of internal and external threats while taking advantage of opportunities that promote our objectives.

This policy applies, to all City of The Dalles elected officials, employees, contractors, consultants, and others specifically authorized to access information and associated assets owned, operated, controlled, or managed by the City of The Dalles. Additionally, leadership must ensure that all contracts and similar agreements with business partners and service providers incorporate appropriate elements of this policy.

Compliance

Oregon public entities must comply with the Oregon Identity Theft Protection Act, ORS 646A.600 – 628. ORS 646A.622 (d) requires the implementation of a Cybersecurity program. Non-compliance with this policy may pose risks to the organization; accordingly, compliance with this program is mandatory. Failure to comply may result in failure to obtain organizational objectives, legal action, fines and penalties. Breaches with the potential to impact more than 250 individuals must be reported to the Oregon Department of Justice.

https://www.doj.state.or.us/consumer-protection/id-theft-data-breaches/data-breaches/

## *Roles and Responsibilities*

The City of The Dalles has appointed the following roles and responsibilities to execute and monitor the policies described in this document.

City Clerk

- Ensure that a written Cybersecurity Policy is developed and implemented.
- Confirm identification, acquisition, and implementation of information system software and hardware.
- Identify all Personally Identifiable Information.
- Ensure implementation, enforcement, and effectiveness of IT Security policies and procedures.
- Facilitate an understanding and awareness that security requires participation and support at all organizational levels.

- Oversee daily activities and use of information systems to ensure employees, business partners, and contractors adhere to these policies and procedures.

Employees and Contractors

- See Appendix A - Acceptable Use Policy

### *Identify, Protect, Detect, Respond, and Recover*

The following sections outline the City of The Dalles requirements and minimum standards to facilitate the secure use of organizational information systems. The information presented in this policy follows the format of the control families outlined in the National Institute of Standards and Technology (NIST) Cybersecurity Framework (NIST CSF): ***Identify, Protect, Detect, Respond, and Recover***.

The scope of security controls addressed in this policy focus on the activities most relevant to City of The Dalles as defined by the Center for Internet Security (CIS) and industry best practices. Questions related to the interpretation and implementation of the requirements outlined in this policy should be directed to the City Clerk.

## IDENTIFY (ID)

Objective: To develop the organization's understanding that's necessary to manage cybersecurity risk to systems, people, assets, data, and capabilities.

### *Asset Management*

An inventory of all approved hardware and software on City of The Dalles network and systems will be maintained in a computer program or spreadsheet that documents the following:

- The employee in possession of the hardware or software.
- Date of purchase.
- Amount of purchase.
- Serial number.
- Type of device and description.
- A listing of software or devices that have been restricted.

### *Personally Identifiable Information (PII)*

An inventory of all PII information by type and location will be taken. The following table may be useful to inventory PPI.

| Location | PII by type | Essential | Location | Owner |
|---|---|---|---|---|
| Website | | | | |
| Contractors | | | | |
| File in staff office | | | | |
| File in building | | | | |

| | | | | |
|---|---|---|---|---|
| File offsite | | | | |
| Desk top | | | | |
| HR System | | | | |
| Financial System | | | | |
| Laptop | | | | |
| Flash drive | | | | |
| Cell phones | | | | |
| Tablets | | | | |
| Other | | | | |

Each manager will determine if PII is *essential*. If PII is not essential, it will either not be collected, or (if collected) will be destroyed. Do not collect sensitive information, such as a Social Security numbers, if there is no legitimate business need. If this information does serve a need, apply your entity's record retention plan that outlines what information must be kept, and dispose of it securely once it is no longer required to maintain.

All PII no longer needed shall be shredded if in paper form or destroyed by IT if in electronic form.

The Oregon Identity Theft Protection Act prohibits anyone (individual, private or public corporation, or business) who maintains Social Security numbers from:

- Printing a consumer's SSN on any mailed materials not requested by the consumer unless redacted
- Printing a consumer's SSN on a card used by the consumer that is required to access products or services
- Publicly posting or displaying a consumer's SSN, such as on a website

Exceptions include requirements by state or federal laws, including statute records (such as W2s, W4s, 1099s, etc.) that are required by law to be made available to the public, for use for internal verification or administrative processes, or for enforcing a judgment or court order.

## PROTECT (PR)

Objective: To develop and implement appropriate safeguards to ensure the delivery of critical services.

### *Identity Management, Authentication and Access Control*

IT Manager is responsible for ensuring that access to the organization's systems and data is appropriately controlled. All systems housing City of The Dalles data (including laptops, desktops, tablets, and cell phones) are required to be protected with a password or other form of authentication. Except for the instances noted in this policy, users with access to City of The Dalles systems and data are not to share passwords with anyone.

City of The Dalles has established following password configuration requirements for all systems and applications (where applicable):

- Minimum password length: 8 characters
- Password complexity: requires alphanumeric and special characters
- Prohibited reuse for four (4) iterations
- Changed periodically every 90 days
- Invalid login attempts set to three
- Automatic logout due to inactivity = 30 minutes

Other potential safeguards include:

- Not allowing PII on mobile storage media
- Locking file cabinets
- Not allowing PII left on desktops
- Encrypting sensitive files on computers
- Requiring password protection
- Implementing the record retention plan and destroying records no longer required

Where possible, multi-factor authentication will be used when users authenticate to the organization's systems.

- Users are granted access only to the system data and functionality necessary for their job responsibilities.
- Privileged and administrative access is limited to authorized users who require escalated access for their job responsibilities and where possible will have two accounts: one for administrator functions and a standard account for day to day activities.
- All user access requests must be approved by IT Manager.
- It is the responsibility of IT Manager to ensure that all employees and contractors who separate from the organization have all system access removed within [FREQUENCY] hours.

On an annual basis, a review of user access will be conducted under the direction of IT Manager to confirm compliance with the access control policies outlined above.

***Awareness and Training***

City of The Dalles personnel are required to participate in security training in the following instances:

1. All new hires are required to complete security awareness training before receiving login credentials.
2. Formal security awareness refresher training is conducted on an annual basis. All employees are required to participate in and complete this training.

Upon completion of training, participants will review and sign the ***Acceptable Use Policy*** included in Appendix A.

Two online classes are available through the CIS Learning Center at learn.cisoregon.org: "*Cyber Threats and Best Practices to Confront Them*" and "*Cyber Security Basics*."

On an annual basis, City of The Dalles will conduct email phishing exercises of its users. The purpose of these tests is to help educate users on common phishing scenarios. It will assess their level of awareness and comprehension of phishing, understanding and compliance with policy around safe handling of e-mails containing links and/or attachments, and their ability to recognize a questionable or fraudulent message.

### *Data Security*

Data Classification

You must adhere to your Records Retention Policy regarding the storage and destruction of data. Data residing on corporate systems must be continually evaluated and classified into the following categories:

- **Employees Personal Use**: Includes individual user's personal data, emails, documents, etc. This policy excludes an employee's personal information, so no further guidelines apply.
- **Marketing or Informational Material**: Includes already-released marketing material, commonly known information, data freely available to the public, etc. There are no requirements for public information.
- **Operational**: Includes data for basic organizational operations, communications with vendors, employees, etc. (non-confidential). The majority of data will fall into this category.
- **Confidential:** Any information deemed confidential. The following list provides guidelines on what type of information is typically considered confidential. Confidential data may include:

    - Employee or customer Social Security numbers or personally identifiable information (PII)
    - Personnel files
    - Medical and healthcare information
    - Protected Health Information (PHI)
    - Network diagrams and security configurations
    - Communications regarding legal matters
    - Passwords/passphrases
    - Bank account information and routing numbers
    - Payroll information
    - Credit card information
    - Any confidential data held for a third party (be sure to adhere to any confidential data agreement covering such information)

Data Storage

The following guidelines apply to storage of the different types of organizational data.

- **Operational:** Operational data should be stored on a server that gets the most frequent backups (refer to the Backup Policy for additional information). Some type of system- or disk-level redundancy is encouraged.
- **Confidential**: Confidential information must be removed from desks, computer screens, and common areas unless it is currently in use. Confidential information should be stored under lock and key (or keycard/keypad), with the key, keycard or code secured.

Data Transmission

The following guidelines apply to the transmission of the different types of organizational data.

- **Confidential**: Confidential data must not be 1) transmitted outside the organization's network without the use of strong encryption, 2) left on voicemail systems, either inside or outside the organization's network.

Data Destruction

You must follow your records retention policy before destroying data.

- **Confidential:** Confidential data must be destroyed in a manner that makes recovery of the information impossible. The following guidelines apply:
    - Paper/documents: Cross-cut shredding is required.
    - Storage media (CD's, DVD's): Physical destruction is required.
    - Hard drives/systems/mobile storage media: At a minimum, data wiping must be used. Simply reformatting a drive does not make the data unrecoverable. If wiping is used, the organization must use the most secure commercially-available methods for data wiping. Alternatively, the organization has the option of physically destroying the storage media.

Data Storage

Stored Data includes any data located on organization-owned or organization-provided systems, devices, media, etc. Examples of encryption options for stored data include:

- Whole disk encryption
- Encryption of partitions/files
- Encryption of disk drives
- Encryption of personal storage media/USB drives
- Encryption of backups
- Encryption of data generated by applications

Data while transmitted includes any data sent across the organization network or any data sent to or from an organization-owned or organization-provided system. Types of transmitted data that shall be encrypted include:

- VPN tunnels

- Remote access sessions
- Web applications
- Email and email attachments
- Remote desktop access
- Communications with applications/databases

### *Information Protection Processes and Procedures*

Secure Software Development

Where applicable, all software development activities performed by City of The Dalles or by vendors on behalf of the organization shall employ secure coding practices including those outlined below.

A minimum of three software environments for the development of software systems should be available – development, quality assurance, and a production environment. Software developers or programmers are required to develop in the development environment and promote objects into the quality assurance and production environments. The quality assurance environment is used for assurance testing by the end user and the developer. The production environment should be used solely by the end user for production data and applications. Compiling objects and the source code is not allowed in the production environment. The information technology manager or an independent peer review will be required for promotion objects into the production environment.

- All production changes must be approved before being promoted to production.
- Developers should not have the ability to move their own code.
- All production changes must have a corresponding help desk change request number.
- All production changes must be developed in the development environment and tested in the quality assurance environment.
- All emergency changes must be adequately documented and approved.

Software code approved for promotion will be uploaded by IT Manager to the production environment from the quality assurance environment once the change request is approved. The IT Manager may work with the developer to ensure proper placement of objects into production.

Contingency Planning

The organization's business contingency capability is based upon [CLOUD or LOCAL] backups of all critical business data. This critical data is defined as [CRITICAL DATA DEFINITION]. Full data backups will be performed on a [FREQUENCY] basis. Confirmation that backups were performed successfully will be conducted [FREQENCY]. Testing of cloud backups and restoration capability will be performed on a [FREQENCY] basis.

During a contingency event, all IT decisions and activities will be coordinated through and under the direction of the IT Manager.

The following business contingency scenarios have been identified along with the intended responses:

- In the event that one or more of City of The Dalles's systems or applications are deemed corrupted or inaccessible, the IT Manager will work with the respective vendor(s) to restore data from the most recent [CLOUD or LOCAL] backup and, if necessary, acquire replacement hardware.

- In the event that the location housing the City of The Dalles systems are no longer accessible, the IT Manager will work with the respective vendor(s) to acquire any necessary replacement hardware and software, implement these at one of the organization's other sites, and restore data from the most recent [CLOUD or LOCAL] backup.

*As an important reminder, CIS covers data reproduction (subject to a deductible) for only one week.*

Network Infrastructure

The organization will protect the corporate electronic communications network from the Internet by utilizing a firewall. For maximum protection, the corporate network devices shall meet the following configuration standards:

- Vendor recommended, and industry standard configurations will be used.
- Changes to firewall and router configuration will be approved by IT Manager.
- Both router and firewall passwords must be secured and difficult to guess.
- The default policy for the firewall for handling inbound traffic should be to block all packets and connections unless the traffic type and connections have been specifically permitted.
- Inbound traffic containing ICMP (Internet Control Message Protocol) traffic should not be passed in from the Internet, or from any un-trusted external network.
- All web services running on routers must be disabled.
- Simple Network Management Protocol (SNMP) Community Strings must be changed from the default "public" and "private".

Network Servers

Servers typically accept connections from several sources, both internal and external. As a general rule, the more sources that connect to a system, the more risk associated with that system, so it is particularly important to secure network servers. The following statements apply to the organization's use of network servers:

- Unnecessary files, services, and ports should be removed or blocked. If possible, follow a server-hardening guide, which is available from the leading operating system manufacturers.
- Network servers, even those meant to accept public connections, must be protected by a firewall or access control list.

- If possible, a standard installation process should be developed for the organization's network servers. A standard process will provide consistency across servers no matter what employee or contractor handles the installation.
- Clocks on network servers should be synchronized with the organization's other networking hardware using NTP or another means. Among other benefits, this will aid in problem resolution and security incident investigation.

Network Segmentation

Network segmentation is used to limit access to data within the City of The Dalles network based upon data sensitivity. City of The Dalles maintains two wireless networks. The *guest* wireless network is password protected, and proper authentication will grant the user internet access only. Access to the *secure* wireless network is limited to [ORGANZIATION] personnel and provides the user access to the intranet.

*The following paragraph can be included if a third-party vendor is used for network administration:*

Under the direction of the IT Manager, the third-party network administrator manages the network user accounts, monitors firewall logs, and operating system event logs. The IT Manager authorizes vendor access to the system components as required for maintenance.

**Additional Considerations**

Does the organization employ industry-accepted configurations/standards for mobile devices, laptops, workstations, and other hardware and software?

### *Protective Technology*

Email Filtering

A good way to mitigate email related risk is to filter it before it reaches the user so that the user receives only safe, business-related messages. City of The Dalles will filter email at the Internet gateway and/or the mail server. This filtering will help reduce spam, viruses, or other messages that may be deemed either contrary to this policy or a potential risk to the organization's IT security.

Additionally, [EMAIL OR ANTI-MALWARE PROGRAMS] may have been implemented to identify and quarantine emails that are deemed suspicious. This functionality may or may not be used at the discretion of the IT Manager.

Network Vulnerability Assessments

On a [FREQUENCY] basis, City of The Dalles will perform both internal and external network vulnerability assessments. The purpose of these assessments is to establish a comprehensive view of the organization’s network as it appears internally and externally. These evaluations will be conducted under the direction of IT Manager to identify weaknesses with the network

configuration that could allow unauthorized and/or unsuspected access to the organization's data and systems.

As a rule, "penetration testing," which is the active exploitation of organization vulnerabilities, is discouraged. If penetration testing is performed, it must not negatively impact organization systems or data.

**Additional Considerations**

Does the organization have technologies (e.g., web proxies/web filtering) in place that limit a user's access to dangerous or malicious sites?

Does the organization monitor the flow of data across the network?

Does the organization employ web application firewalls on web servers, if you host your own website?

## DETECT (DE)

Definition: Develop and implement appropriate activities to identify the occurrence of a cybersecurity event.

### *Anomalies and Events*

The following logging activities are conducted by [POSITION] under the direction of IT Manager:

- Domain Controllers - Active Directory event logs will be configured to log the following security events: account creation, escalation of privileges, and login failures.
- Application Servers - Logs from application servers (e.g., web, email, database servers) will be configured to log the following events: errors, faults, and login failures.
- Network Devices - Logs from network devices (e.g., firewalls, network switches, routers) will be configured to log the following events: errors, faults, and login failures.

Passwords should not be contained in logs.

Logs of the above events will be reviewed by the [POSITION] at least once per month. Event logs will be configured to maintain record of the above events for three months.

### *Security Continuous Monitoring*

Anti-Malware Tools

All organization servers and workstations will utilize [TOOL] to protect systems from malware and viruses. Real-time scanning will be enabled on all systems and weekly malware scans will be performed. A monthly review of the [TOOL] dashboard will be conducted by IT Manager to confirm the status of virus definition updates and scans.

City of The Dalles utilizes [TOOL] to protect mobile devices from malware and viruses.

Patch management

All software updates and patches will be distributed to all City of The Dalles system as follows:

- Workstations will be configured to install software updates every week automatically.
- Server software updates will be manually installed at least monthly.
- Any exceptions shall be documented.

**Additional Considerations**
Does the organization manage the ongoing use of ports, protocols, and services on networked devices to minimize vulnerabilities?

## RESPOND (RS)

Definition: Develop and implement appropriate activities to take action regarding a detected cybersecurity incident.

### *Response Planning*

The organization's annual security awareness training shall include direction and guidance for the types of security incidents users could encounter, what actions to take when an incident is suspected, and who is responsible for responding to an incident. A security incident, as it relates to the City of The Dalles's information assets, can be defined as either an Electronic or Physical Incident.

IT Manager is responsible for coordinating all activities during a significant incident, including notification and communication activities. They are also responsible for the chain of escalation and deciding if/when outside agencies, such as law enforcement, need to be contacted.

Electronic Incidents

This type of incident can range from an attacker or user accessing the network for unauthorized/malicious purposes to a virus outbreak or a suspected Trojan or malware infection. When an electronic incident is suspected, the steps below should be taken in order.

1. Remove the compromised device from the network by unplugging or disabling network connection. Do not power down the machine.
2. Report the incident to the City Clerk and IT Manager.
3. Contact the third-party service provider (and/or computer forensic specialist) as needed.

**The remaining steps should be conducted with the assistance of the third-party IT service provider and/or computer forensics specialist.**

4. Disable the compromised account(s) as appropriate.
5. Backup all data and logs on the machine, or copy/image the machine to another system.
6. Determine exactly what happened and the scope of the incident.
7. Determine how the attacker gained access and disable it.

8. Rebuild the system, including a complete operating system reinstall.
9. Restore any needed data from the last known good backup and put the system back online.
10. Take actions, as possible, to ensure that the vulnerability will not reappear.
11. Conduct a post-incident evaluation. What can be learned? What could be done differently?

Physical Incidents

A physical IT security incident involves the loss or theft of a laptop, mobile device, PDA/Smartphone, portable storage device, or other digital apparatus that may contain organization information. All instances of a suspected physical security incident should be reported immediately to the City Clerk and IT Manager.

Notification

If an electronic or physical security incident is suspected of having resulted in the loss of third-party/customer data, notification of the public or affected entities should occur.

1. Contact CIS Claims at claims@cisoregon.org.
2. Inform your attorney
3. Complete this form if the breach involves more than 250 records. https://justice.oregon.gov/consumer/DataBreach/Home/Submit

**RECOVER (RC)**

Recovery processes and procedures are executed and maintained to ensure timely restoration of systems and/or assets affected by cybersecurity events.

CIS will help with the recovery process. CIS may provide forensics services, breach coaching services, legal services, media services and assist in paying for notification expenses. The CIS claims adjuster will discuss with you the coverages and services offered by CIS.

IT Manager is responsible for managing and directing activities during an incident, including the recovery steps.

Recovery planning and processes are improved by incorporating lessons learned into future activities.

Restoration activities are coordinated with internal and external parties, such as coordinating centers, Internet service providers, owners of the affected systems, victims, and vendors.

External communications should only be handled by designated individuals at the direction of IT Manager. Recovery activities are communicated to internal stakeholders, executives, and management teams.

## Appendix A – Acceptable Use Policy

The intention of this Acceptable Use Policy is not to impose restrictions that are contrary to City of The Dalles established culture of openness, trustworthiness, and uprightness. Understanding and adhering the organization's IT security policies is necessary to protect our employees and organization from illegal or damaging actions by individuals, either knowingly or unknowingly. Effective security is a team effort involving the participation and support of every employee. It is the responsibility of every computer user to know these guidelines and to conduct their activities accordingly.

### *Purpose*

The purpose of this policy is to outline the acceptable use of computer equipment, email, and internet access at all locations. These rules are in place to protect the employee and the organization. Inappropriate use exposes the organization to risks including virus attacks, compromises of network systems and services, and legal liability.

### *Scope*

This policy applies to both permanent and temporary employees of the organization. This policy applies to all equipment that is owned or leased by the organization. This policy is a supplement to the *City of The Dalles Cybersecurity Policy*.

### *1.0 Policy*

The following actions shall constitute unacceptable use of the corporate network. The list also provides a frame of reference for types of activities that are deemed unacceptable. The user may not use the corporate network and/or systems to:

1. Engage in an activity that is illegal under local, state, federal, or international law.
2. Engage in any activities that may cause embarrassment, loss of reputation, or other harm to the organization.
3. Disseminate defamatory, discriminatory, vilifying, sexist, racist, abusive, threatening, obscene or otherwise inappropriate messages or media.
4. Engage in activities that cause an invasion of privacy.
5. Engage in activities that cause disruption to the workplace environment or create a hostile workplace based on a legally protected class.
6. Make fraudulent offers for products or services.
7. Install, download or distribute unlicensed or "pirated" software.
8. Reveal personal or network passwords to others, including family, friends, or other members of the household when working from home or remote locations.

*Email*

The following activities are strictly prohibited:

1. Using the email system to send or forward pornographic material.

2. Using the email system for any form of harassment whether through language, content, frequency or size of the message.
3. Sending unsolicited bulk email messages, including the sending of “junk mail” or other advertising materials to individuals who did not specifically request such material (email spam).
4. Sending or forwarding emails of a non-business nature to the “All Employee” list.
5. Sending or forwarding emails of a non-business nature with either an excessive number of attachments or attachments of excessive size (examples would be emails with numerous photos, video clips, or large PowerPoint presentations).
6. Creating or forwarding “chain letters,” “Ponzi” schemes or other get rich quick “pyramid” schemes of any type.
7. Using the email system in a manner that would violate the City of The Dalles Cybersecurity Policy.
8. Opening file attachments with file extensions such as .vbs, .exe, .com, or .sys.

*Social Networking/Blogging*

The following applies to social networking/blogging:

1. Employees are discouraged from using employer-owned equipment, including computers, organizationally licensed software or other electronic equipment, or organization time to conduct personal blogging. Social networking activities are discouraged.
2. Employees are expected to protect the privacy of the organization and its employees and are prohibited for disclosing personal employee and nonemployee information and any other proprietary and nonpublic information to which the employees have access.
3. Management strongly urges employees to report any violations or possible violations or perceived violations to supervisors or managers. Management investigates and responds to all reports of violations of the social networking policy and other related policies.
4. Only executive management are authorized to remove any content that does not meet the rules and guidelines of the policy or that may be illegal or offensive.
5. Views of the individual employee are not ever attributed to the City of The Dalles .
6. Posts must comply with existing policies re harassment and discrimination.
7. Posts must comply with existing policies re confidentiality and improper disclosures.
8. Online activities must not interfere or negatively affect work tasks or City of The Dalles, except for “Concerted Activities.”
9. Employees must not reference City of The Dalles or its services in the employee’s social medial posts, except for “Concerted Activities.”
10. City of The Dalles logos should not be used in the employee’s social media posts, except for “Concerted Activities.”
11. Posts must not violate copyright laws.
12. Consult the Employee Personnel Handbook for further clarification.

*Clean Desk*

A significant amount of confidential customer information is maintained in paper-based form. All staff members are responsible for ensuring that this information is properly safeguarded and is not improperly disclosed to unapproved third parties. In order to accomplish this, all employees are responsible for:

1. Ensuring that paper-based information is appropriately monitored and protected.
2. Ensuring that all confidential documents are properly locked-up at the end of each business day. Appropriate methods to secure documents include utilizing locking filing cabinets or desk drawers, etc.
3. Maintaining a "clean desk" or working area throughout the day and ensure there are no confidential documents in open view if absent from their desk for an extended period. This will help to ensure that confidential customer information is not inadvertently disclosed.

*Computer Usage (Password)*

The following password criteria will be used to access Windows workstations:

1. Minimum password length: 8 characters
2. Password complexity: requires alphanumeric and special characters
3. Prohibited reuse for four (4) iterations
4. Changed periodically every 90 days
5. Invalid login attempts set to three
6. Automatic logout due to inactivity = 30 minutes

*Portable Devices*

The following Portable Devices are allowed for organization use only:

1. Cell phones
2. Laptops
3. Digital cameras
4. Any type of USB memory device or USB mass storage device

## *2.0 Monitoring*

Employees should have no expectation of privacy for any information they store, send, receive, or access via the organization's network. Content monitoring of email by management may occur without prior notice. All other monitoring, including but not limited to, internet activity, email volume or size, and other forms of electronic data exchange may occur without prior notice by management.

Monitoring may occur without prior notice of a suspected violation, either in part or in whole, of the Acceptable Use Policy or the *City of The Dalles Cybersecurity Policy* is detected or reported.

### *3.0 Reporting*

Employees must report to IT Manager when they learn of a suspected breach of information or have lost a laptop, telephone, or USB memory with City of The Dalles information.

### *4.0 Enforcement*

Any employee found to have violated this policy may be subject to disciplinary action, up to and including termination of employment.

### Signature

I have received a copy of the organization's Acceptable Use Policy as revised and approved by the management. I have read and understood the policy.

_____
(Print your name)

_____ _____
(Signature) (Date)

## Appendix B – Confidentiality and Non-Disclosure Agreement

This Confidentiality and Nondisclosure Agreement (the "Agreement") is entered into by and between **City of The Dalles** ("Disclosing Party") and _____ ("Receiving Party") for the purpose of preventing the unauthorized disclosure of Confidential Information as defined below. The parties agree to enter into a confidential relationship with respect to the disclosure of certain proprietary and confidential information ("Confidential Information").

1. Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged. Examples of Confidential Information include the following:

    - Employee or customer Social Security numbers or personal information
    - Customer data
    - Entity financial data
    - Product and/or service plans, details, and schematics,
    - Network diagrams and security configurations
    - Communications about entity legal matters
    - Passwords
    - Bank account information and routing numbers
    - Payroll information
    - Credit card information
    - Any confidential data held for a third party

2. Exclusions from Confidential Information. Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (d) is disclosed by Receiving Party with Disclosing Party's prior written approval.

3. Obligations of Receiving Party. Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party. Receiving Party shall carefully restrict access to Confidential Information to employees, contractors, and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions that are at least as protective as those in this Agreement. Receiving Party shall not, without the prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information. Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if Disclosing Party requests it in writing.

4. Time Periods. The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret

or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.

5. Relationships. Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint venturer or employee of the other party for any purpose.

6. Severability. If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to affect the intent of the parties.

7. Integration. This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations, and understandings. This Agreement may not be amended except in a writing signed by both parties.

8. Waiver. The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

This Agreement and each party's obligations shall be binding on the representatives, assigns, and successors of such party. Each party has signed this Agreement through its authorized representative.

**Disclosing Party**

By: _____

Printed Name: _____

Title: _____

Dated: _____

**Receiving Party**

By: _____

Printed Name: _____

Title: _____

Dated: _____

**CITY OF THE DALLES**
**POLICY MANUAL**

**APPENDIX OF RESOLUTIONS**

# APPENDIX

(Chronological Order)

**RESOLUTION 93-047** REIMBURSEMENT COSTS FOR TRAVEL, TRAINING, CONFERENCES, FOOD AND LODGING BY AUTHORIZED CITY PERSONNEL (AMENDED BY 97-038)

**RESOLUTION 95-073** RETURN TO WORK POLICY FOR WORKERS WITH TEMPORARY OR PERMANENT DISABILITY

**RESOLUTION 97-004** GUIDELINES FOR APPROPRIATE CONDUCT FOR CITY EMPLOYEES

**RESOLUTION 97-038** TRAVEL MILEAGE REIMBERSEMENT FOR USE OF PRIVATE VEHICLES (AMENDS 93-047)

**RESOLUTION 98-009** INDUSTRIAL PRETREATMENT PROGRAM FEES

**RESOLUTION 00-002** EMPLOYMENT RELATIONSHIP TERMINATION AS A RESULT OF LAYOFF OR ELLIMINATION OF POSITION

**RESOLUTION 00-014** NEGATIATIONS WITH LOWEST RESPONSIBLE AND RESPONSIVE BIDDER WHEN BIDS EXCEED THE CITY'S COST ESTIMATE

**RESOLUTION 01-030** CITY FEE SCHEDULE

**RESOLUTION 03-016** CHENOWETH CREEK INDUSTRIAL SUBDIVISION DEVELOPMENT STANDARDS

**RESOLUTION 04-016** POLICIES AND PROCEDURES FOR COMPLIANCE WITH HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

**RESOLUTION 04-020** SAFETY COMMITTEE

**RESOLUTION 09-026** COBRA POLICY

**RESOLUTION 09-036** ELECTRONIC MESSAGE POLICY

**RESOLUTION 10-023** UTILITY BILLING INDENTITY THEFT PREVENTION

**RESOLUTION 11-018** FISCAL MANAGEMENT POLICY

**RESOLUTION 15-046** LOCAL GRANTS POLICY

**RESOLUTION 16-028** SALE OF CERTAIN CLASSES OF CITY OWNED REAL PROPERTY

**RESOLUTION 17-001** NO RETALIATION FOR REPORTING IMPROPER OR UNLAWFUL CONDUCT

**RESOLUTION 18-028** A RESOLUTION UPDATING THE EMPLOYEE RECOGNITION PROGRAM

RESOLUTION NO. 93-047

A RESOLUTION IDENTIFYING REIMBURSABLE COSTS FOR TRAVEL, TRAINING, CONFERENCES, FOOD AND LODGING BY AUTHORIZED CITY PERSONNEL, AND ESTABLISHING PROCEDURES FOR REIMBURSEMENT

WHEREAS, the need has arisen to establish a uniform and consistent policy concerning reimbursement for costs incurred by City personnel for travel, training, conferences, and food and lodging; and

WHEREAS, City staff and the City Manager have prepared a draft policy concerning reimbursement costs, which policy has been reviewed and approved by the City Council; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:

**Section 1. ALLOWABLE EXPENSES.** Allowable expenses include expenditures which are necessary and reasonable, and incurred while on required business approved by the City.

A) Expenditures may include meals, lodging, registration fees, mileage or gas, parking fees, toll bridge fees, taxi, bus or air fare and other business related costs.

B) City required business may include seminars, conferences, workshops, training sessions, meetings or other assigned tasks.

C) The City will only pay the necessary and reasonable expenses incurred by authorized personnel. Authorized personnel may include an employee, Council

member, or commission member. No expenditures for a spouse or family members will be paid by the City.

**Section 2. TRAVEL EXPENSES.**

A) Use of City Vehicles. Subject to vehicle availability and dependability, authorized personnel should travel in City vehicles. Scheduling arrangements should be made in advance. All reasonable and necessary expenses for gas, oil, and repairs are reimbursable.

B) Use of Personal Vehicle. Authorized persons may be reimbursed for mileage under the following conditions:

1. Accurate record of business mileage is documented.

2. Proof of insurance has been provided. Personal insurance is primary, and the City will not reimburse for damages or costs to any personal vehicles while being used for City business.

3. Mileage expenses shall be reimbursed at the rate of $.22 per mile. No additional expenses for gas, oil, or repairs will be paid by City.

C) Ride-Share Costs. No reimbursement will be allowed unless the cost-share agreement is approved in advance.

D) Commercial Carrier. Any commercial fare by bus, rail, or air will be paid at actual cost. Any commercial carrier costs must be approved in advance of travel by a department head or the City Manager.

E) Fines. Traffic citations, parking tickets, or other fines or penalties will not be reimbursed by the City. This includes equipment violations while using City vehicles. Authorized personnel shall check out the vehicle before driving.

**Section 3. LODGING EXPENSES.**

A) Hotel/Motel. Necessary and reasonable charges for rooms including taxes will be paid by the City at the single room rate. If single/double rate is used, no reimbursement to the City for a spouse is required.

B) Friends/Relatives. If arrangements are made to stay with friends or relatives while on City business, no expense will be paid for lodging by the City.

C) Recreational Vehicles. Necessary and reasonable charges for parking and hook-up fees will be paid by the City if use of the vehicle is approved in advance. Mileage reimbursement will be per Section 2(B).

D) Other Charges. Other charges, which are necessary and incurred while on City required business, will be paid as follows:

1. Telephone Charges. All required calls pertaining to City business and to the office. One call per night to home will be allowed when required to be away over night.

2. Entry Fees. When a sports tournament or game, such as golf, tennis, or a 10 K run, is

associated with a business trip, the City will not pay for the costs of participation.

3. Amenities. The City will not pay expenses associated with fitness center charges, beauty/barber shop charges, valet services, movie charges or video rentals, gift shop items, child care, entertainment or other personal expenses incurred by authorized persons.

**Section 4. MEALS.** Actual costs for necessary and reasonable meals, including tips, incurred by authorized personnel and authorized guests at City business functions, or when the authorized person is required to be out of town, shall be paid by the City.

A) A non-alcoholic beverage with the meal will be paid for by the City for authorized persons only.

B) When meals are charged to the room at hotels/motels, City will pay actual costs of meals for authorized person only at restaurant rate. No extra "room service" or other valet charges will be paid by City.

C) All persons authorized to charge meals reimbursable by the City are expected to use discretion. Excessive or unreasonable charges will not be reimbursed by the City.

D) When staying with friends or relatives, no food reimbursement will be made by the City for meals taken at their home. Any "in-lieu" payment of meals or lodging to cover inconvenience and save the City money, which the

authorized person desires to make, must be approved in advance.

**Section 5.** **CONFERENCE/MEETING EXPENSES.** Necessary and reasonable registration fees will be paid by the City for required conferences, seminars or meetings which have been approved and for which budget authority exists.

A) Once fees are advanced, the authorized person is obligated to attend the program or secure a refund to the City if he/she later decides not to go. Unless City requirements prevent the authorized person from attending, the authorized person will reimburse the City for registration fees not used as requested. Other extenuating circumstances that prevent the authorized person from attending will be dealt with on a case by case basis.

B) The City will not pay for registrations for a spouse and will not pay for social events associated with conferences such as golf tournaments, sightseeing trips, etc.

**Section 6.** **REIMBURSEMENT PROCEDURES.** All requests for advanced registration fees, lodging guarantees and/or travel advances must be approved by an authorized City official.

A) Budget authority must exist before any expenses are incurred or advanced.

B) Advances may be requested for the following expenses:

1. Registration fees

2. Hotel/Motel rooms

3. Estimated travel and meal expenses

C) Reimbursement for expenses and final accounting must be documented on the proper forms within ten (10) days of returning from a program. The Finance Department will provide forms and outline procedures for all City authorized persons who travel at the expense of the City.

PASSED AND ADOPTED THIS 7TH DAY OF JULY, 1993.

Voting Yes, Councilmembers: Wood, Koch, Davis, Holt
Voting No, Councilmembers: None
Absent, Councilmembers: Bailey
Abstaining, Councilmembers: None

AND APPROVED BY THE MAYOR THIS 7TH DAY OF JULY, 1993.

L. D. (Les) Cochenour, Mayor

Attest:

Julie Krueger, City Clerk

# Request for Travel Advance

Purpose: _____

_____

_____

Amount requested: $_____

To cover anticipated:

| | |
|---|---|
| Food | $_____ |
| Lodging | $_____ |
| Mileage | $_____ |
| Other | $_____ |

I understand that this advance is charged to me personally, and I agree that I will provide all receipts and information to satisfy settlement of this advance within 10 days of completion of this trip. I have read and understand the City's travel policy and agree to its terms and obligations.

Signed: _____

Approved: _____

Check No. _____

**RESOLUTION NO. 95-073**

**A RESOLUTION ESTABLISHING A RETURN TO WORK POLICY FOR WORKERS WITH TEMPORARY OR PERMANENT DISABILITY**

**WHEREAS,** the City wishes to seek the benefits for the employees and itself by participating in the "Return to Work Program" as established by ORS 656; and

**WHEREAS,** a policy must be adopted by the Council for the City to participate in the "Return to Work Program" before the City or it's employees may receive the benefits of the program; and

**WHEREAS,** the "Return to Work Program" should be an essential part of the City's Loss Control efforts; **NOW, THEREFORE,**

**BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:**

The City Council hereby establishes and adopts a Return to Work Policy for workers with temporary or permanent disability as defined in the attached Exhibit "A".

**PASSED AND ADOPTED THIS 13TH DAY OF NOVEMBER, 1995**

Voting Yes, Councilors: Van Cleave, Briggs, Davis, Hill, Koch
Voting No, Councilors: None
Absent, Councilors: None
Abstaining Councilors: None

**AND APPROVED BY THE MAYOR THIS 13TH DAY OF NOVEMBER, 1995**

SIGNED: _____
David R. Beckley, Mayor

ATTEST: _____
Julie Krueger, CMC, City Clerk

INDEXED 11/16/95

## RETURN TO WORK POLICY FOR WORKERS WITH TEMPORARY OR PERMANENT DISABILITIES

The objective of The City of The Dalles is to return disabled workers to employment at the earliest reasonable and possible date after an injury. It is the City's desire to minimize serious disability and reduce insurance costs. This policy applies to all workers and will be followed whenever possible.

The return to work program will consist of a team effort by supervisors, disabled workers, the worker's attending physician, City of The Dalles management and the city's Workers Compensation carrier. All team members will take an active role in returning disabled workers to productive work status.

The City defines "light duty" work as a temporary work assignment within the disabled worker's physical abilities, knowledge and skills. "Light duty" positions are developed following disability utilizing the known physical abilities/restrictions obtained from the worker's attending physician. The physical requirements of light-duty work are shared with the worker's attending physician to obtain concurrence that the proposed light-duty is within the physical capacity of the disabled worker. Light-duty positions are developed in consideration of the workers' physical capacities, the business needs of the City and our ability to offer light-duty work.

Attached are procedures the team will follow in our Return-to-Work Program. Signature sheets will be obtained and maintained by personnel indicating an understanding of the policy/procedures.

### A. TREATMENT OF INJURY OR ILLNESS

All disabled workers who need immediate medical treatment during their work shift will be transported to a medical facility by ambulance or by their supervisor/designee.

### B. OBTAINING "LIGHT-DUTY" PHYSICAL CAPACITIES

If possible, before the worker leaves the company for medical treatment, the worker will be given a Physical Status Update (Form F3306) to take to the attending physician for completion. If not feasible, the supervisor/designee will obtain the name of the attending physician from the disabled worker and forward a Physical Status Update form to the attending physician within one working day of the worker leaving work due to disability.

Disabled workers will also inform the attending physician that "light duty" is available. A regular job analysis form should be sent to the attending physical when the disabled employee is deemed to be eligible for light duty work. The supervisor/designee should include a "light-duty" job analysis of proposed modified work, if available. Once a request for light duty is received, one to two weeks should be allowed for preparation and submission to the attending physician. Should the attending physician have questions concerning the "light duty" the attending physician should contact the supervisor/designee to discuss.

**C. DISABLED WORKERS RELEASE AND REPORTING**

Workers treated within their work shift and released to work should report immediately to their supervisors/designee with the full release from the attending physician.

If released after the end of the shift, the worker should report to their supervisor/designee at the beginning of the next shift with release.

In all cases, where the attending physician releases the worker to return to work, workers are required to contact the supervisor/designee within 24 hours of disability with a medical release from the attending physician.

Failure to report to work or to contract the worker's supervisor/designee following disability and medical treatment within 24 hours may result in disciplinary action.

**D. DISABLED WORKERS UNABLE TO RETURN TO WORK AND REPORTING**

If a worker cannot report to the next shift, the disabled worker will contact the supervisor/designee and agree upon a "regular" time and day of the week to maintain regular contact.

The disabled worker will be informed to notify the supervisor/designee within 24 hours of all changes in medical condition.

All workers must provide current and changes of address/phone numbers to the supervisor/designee.

Failure to provide changes in medical condition or address/phone numbers could lead to disciplinary action.

**E. SUPERVISOR/DESIGNEE COORDINATION WITH PERSONNEL DEPARTMENT AND CLAIM REPORTING**

If possible the supervisor/designee will contact the Personnel Department within 24 hours of disability with:

1) Name of worker's attending physician

2) Completed Physical Status Update form from the attending physician or any other medical documentation.

3) Completed "Light-duty" job analysis of proposed work assignment.

The Supervisor/designee will notify the Personnel Department of any and all changes in the worker's medical status on the same day such information is received.

**F. COORDINATION BETWEEN PERSONNEL DEPARTMENT AND SAIF CORPORATION**

The Personnel Department will forward a completed form 801, Worker's and Employer's Report of Occupational Injury or Disease, to the worker's compensation carrier within five calendar days of disability when the disability is on-the-job related.

The Worker's Compensation carrier risk management consultants may be contacted to advise about alternatives to or assistance with proposed "light-duty" job analyses for early return-to-work assignments or job site modification recommendations.

**G. JOB ANALYSIS PREPARATION FOR DISABLED WORKERS**

The supervisor/designee will prepare possible "light-duty" job analyses of proposed work assignments prior to disability for all positions, whenever possible. Upon disability, the Supervisor will review these job analyses for necessary modification. The Worker's Compensation carrier consultants may assist with job analysis or job site modification analysis. A regular job analysis shall be prepared for all positions within the department.

A "light duty" job analysis will be forwarded to the attending physician upon request for possible work release by attending physician signature.

**H. RELEASE TO "LIGHT DUTY" AND JOB OFFER LETTER**

Upon receipt of a signed and approved "light duty" or regular Job Analysis from the attending physician, a written job offer letter will be prepared and mailed by both regular and certified mail to disabled worker's last known address to assign the light-duty position.

The letter will include a copy of the signed "light duty" Job Analysis/work release from the attending physician and include the following information: report date; wage; hours; report time; duration of light duty work assignment; supervisor to report to and phone; and location of the light duty assignment.

The worker will be asked to sign the bottom of the job offer letter indication acceptance or refusal of the work assignment offered.

Copies of all job analysis, releases and job offer letters will

also be forwarded to the Worker's Compensation carrier.

## I. ON-THE-JOB DISABILITIES/TEMPORARY TOTAL DISABILITY PAYMENT/LIGHT DUTY WAGE PAYMENT

While off due to on-the-job disability, a worker will receive payment from the Worker's Compensation carrier as specified (ORS 656). Any questions concerning wage replacement payment should be directed to the claims adjuster at the Worker's Compensation carrier.

Disabled workers who are given "light-duty" work releases and offered temporary work assignments will be offered wages determined by the City. If there is a difference between the worker's regular rate of pay and the temporary work assignment pay, the Worker's Compensation carrier MAY make temporary partial disability payments to the worker (ORS 656).

A worker's refusal of an attending physician approved "light-duty" job offer, by either verbal refusal or failure to report for work, will result in the Worker's Compensation carrier's reduction or termination of total or partial wage replacement (ORS 656).

Refusal may also result in loss of re-employment and reinstatement rights and could affect possible vocational eligibility (ORS 656).

## J. WORK HOURS/SHIFTS/LOCATIONS

The City of The Dalles will determine appropriate work hours, shifts, and locations of all light-duty work assignments upon review of attending physical recommendations. The City reserves the right to determine the availability and appropriateness of all temporary "light-duty" work assignments and job offers.

## K. DURATION OF LIGHT-DUTY WORK ASSIGNMENTS

Continuation of temporary "light-duty" work assignments for disabled workers will be reviewed regularly.

It is the responsibility of all team members to immediately notify other team members if there is a problem with a "light-duty" work assignment. The supervisor will monitor the worker's recovery progress through regular contact or meetings to reassess when and how often duties may be changed. Upon receipt of increases in physical capacities, the supervisor will assess the ability to adjust to work assignments. All changes in work assignment will be made after receiving concurrence from the worker's attending physician in writing. Notification of changes will be in writing with copies provided to the worker, attending physician, personnel department, and the insurer from the supervisor.

If a worker has a permanent disability which restricts the worker's ability to return to regular work, the "light-duty" program may

end.

The City will determine whether a continuing modified position exists and whether the worker will or will not be offered this or any other position as their new regular work assignment.

The City will determine whether the worker's physical restrictions require substantial modification to the work site and whether such modifications are possible.

To the extent possible the City will consider work site modification to allow the worker to continue in employment.

L. **WORKER ACKNOWLEDGEMENT**

_____**The return-to-work policy/procedure has been explained to me.**

_____**I have read and fully understand all the procedures and responsibilities.**

_____**I agree to observe and follow these procedures.**

_____**I understand my failure to complete my responsibilities may result in disciplinary action up to and including termination.**

_____**I have received a copy of this policy and procedure.**

**Failure to follow these procedures may also affect my right to re-employment, reinstatement or possible future vocational assistance following disability.**

_____

Worker's Signature Date

_____

Personnel Department Date

RESOLUTION NO. 97-004

A RESOLUTION ADOPTING A POLICY ESTABLISHING GUIDELINES FOR APPROPRIATE CONDUCT FOR CITY EMPLOYEES

WHEREAS, experts in personnel law are recommending employers establish a broad "workplace conduct" policy to provide employers maximum flexibility to set behavioral, as well as, other performance standards for employees and to apply corrective action as it sees fit, in an effort to mitigate the potential for incidents of violence in the workplace, and minimize the risk of claims against the City for inappropriate behavior by City employees; and

WHEREAS, City staff has prepared a proposed "workplace conduct" policy, a copy of which is attached to this Resolution as Exhibit "A; and

WHEREAS, the City Council has reviewed the proposed policy and believes adoption of such a policy is in the best interests of the citizens of The Dalles; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:

Section 1. Policy Adopted. The policy establishing guidelines for appropriate conduct for City employees, as set forth in Exhibit "A", is hereby approved and adopted.

PASSED AND ADOPTED THIS 27TH DAY OF JANUARY, 1997.

Voting Yes, Councilmembers: Van Cleave, McFadden, Davis, Gosiak
Voting No, Councilmembers: None
Absent, Councilmembers: Hill
Abstaining, Councilmembers: None

AND APPROVED BY THE MAYOR THIS 27TH DAY OF JANUARY, 1997.

Attest:

INDEXED 1-29-97

David R. Beckley, Mayor

Julie Krueger, CMC, City Clerk



(122697 97-004.res)

# GUIDELINES FOR APPROPRIATE CONDUCT

All employees, including employees under contract to provide services on behalf of the City, are expected to follow acceptable business and professional principles in the way they work, to accept responsibility for the appropriateness of their own conduct, and to show personal and professional integrity at all times. It is impossible to list all forms of conduct that might be considered inappropriate. Certain behaviors (such as theft, fighting, insubordination, falsification of records, bribery, or threats of violence) are clearly unacceptable at any time in any business. Other conduct (such as failure to cooperate with other employees, harassing or intimidating others, or rudeness to co-workers, customers, suppliers, or vendors), while often more subtle, is equally inappropriate.

The City expects all employees to observe high standards of professionalism at all times, to comply with all laws applicable to City business, and to treat others (customers, suppliers, vendors, co-workers, and others with whom we do business) with dignity and respect. City employees are not required to submit to verbal abuse/cursing or any threatening behavior. If the behavior of a customer, vendor, or other person approaches an intolerable or unacceptable level, the employee should withdraw from the situation and report the incident to a supervisor, department head, or the City Manager. Employees shall not respond in kind to such behavior.

Upon receiving a complaint, the City will promptly investigate the matter to determine relevant facts and circumstances. Information about any complaint will be treated as confidentially as possible, consistent with proper investigation and responsive action. Generally, this means information will be shared only on a need-to-know basis.

Based upon the investigation, the City will take immediate and appropriate corrective action. In determining the appropriate corrective action, the City will consider all of the circumstances, including the nature of the complaint and the context in which the events occurred. In the case where an employee is the accused offender, and there is insufficient evidence to support the allegations, no record will be made of the allegations in the employee's personnel records. If evidence exists to support the allegations, appropriate disciplinary action will be taken against the employee and be included in the employee's personnel record. If the offender is not an employee, disciplinary action is not possible; however, appropriate remedial action will be taken as practicable given the offender's relationship to the City. Additionally, appropriate relief and follow-up will be provided for the complaining employee.

The complainant, alleged offender, and any directly involved persons will be informed when a final decision is made on a complaint. The information will include whether the City found substantial evidence to support or not support the complaint, and if the former, that some remedial action has been taken. The exact nature of the remedial action taken will generally not be disclosed to the complainant or the alleged victim(s) if other than the complainant. Persons who lodge good faith complaints or who participate in a City investigation will not be retaliated against or otherwise treated adversely relating to the reporting of the situation or participation in an investigation.

Unsatisfactory performance, work habits, attitude, conduct, or demeanor; violation of City policies, practices, procedures, or guidelines; or other behavior or conduct considered inappropriate by the City may result in performance management or disciplinary measures up to and including termination of employment with the City.

**RESOLUTION NO. 97-038**

**A RESOLUTION AMENDING RESOLUTION NO. 93-047, CITY OF THE DALLES TRAVEL POLICY, SPECIFICALLY RELATED TO MILEAGE REIMBURSEMENT FOR USE OF PRIVATE VEHICLES**

**WHEREAS**, the City Council adopted a formal policy identifying reimbursable costs for travel, training, conferences, food and lodging, in 1993; and

**WHEREAS**, City staff has reviewed the current policy and determined one section has become outdated; and

**WHEREAS**, Section 2,B,3, setting out mileage expense reimbursement states a specific amount of $.22 per mile as reimbursement; **NOW, THEREFORE,**

**BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:**

Section 1. Policy Amended. The City Council amends the City of The Dalles Policy adopted by Resolution No. 93-047 as follows:

> Section 2, B), 3 is revised to state: "Mileage expenses shall be reimbursed at the current IRS rate. No additional expenses for gas, oil or repairs will be paid by the City."

**PASSED AND ADOPTED THIS 28TH DAY OF JULY, 1997**

| | |
|---|---|
| Voting Yes, Councilors: | Davis, Barrett, Gosiak, Van Cleave |
| Voting No, Councilors: | None |
| Absent, Councilors: | McFadden |
| Abstaining, Councilors: | None |

**AND APPROVED BY THE MAYOR THIS 28TH DAY OF JULY, 1997**

SIGNED: _____
David R. Beckley, Mayor

ATTEST: _____
Julie Krueger, CMC, City Clerk

INDEXED 7-29-97

**RESOLUTION NO. 98-009**

**A RESOLUTION ADOPTING INDUSTRIAL PRETREATMENT PROGRAM FEES.**

**WHEREAS**, the Oregon Department of Environmental Quality required the City to develop an Industrial Pretreatment Program to comply with federal regulations; and

**WHEREAS**, the Oregon Department of Environmental Quality formally approved the City's program effective September 29, 1996; and

**WHEREAS**, the City Council has adopted General Ordinance No. 96-1205, establishing a Pretreatment Program; and

**WHEREAS**, the City is incurring costs related to implementing the Industrial Pretreatment Program on an ongoing basis;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THE DALLES AS FOLLOWS:**

Section 1. That the following Industrial Pretreatment Program fees be adopted to recover a portion of the program costs directly from the industrial dischargers for whom the program was developed.

**CITY OF THE DALLES**
**INDUSTRIAL PRETREATMENT FEES**

**Permit Issuance and Review fees:**

| | |
|---|---|
| Initial Pretreatment Permit application fee | $1,000 |
| Renewal of permit (5 year) | 500 |
| Annual permit fee | 335 |
| Annual monitoring fee | 600 |

**Monthly fees for Significant Industrial User (SIU) under Pretreatment Program:**

Volume charge: One sewer unit per 10,000 gallons of discharge
Strength surcharges:

| | |
|---|---|
| *BOD Greater than 200 mg/L | $0.50 per pound BOD |
| **TSS Greater than 200 mg/L | $0.25 per pound TSS |

* BOD: Biochemical Oxygen Demand
** TSS: Total Suspended Solids

**Discharge fees for batch discharges by permit under Pretreatment Program:**

| | |
|---|---|
| One time discharger | $0.05 per gallon (Minimum of $250) |
| Batch basis discharger | $0.05 per gallon |

**PASSED AND ADOPTED THIS 26th DAY OF JANUARY, 1998.**

Voting Yes, Councilmembers: McFadden, Davis, Gosiak
Voting No, Councilmembers: Van Cleave
Absent, Councilmembers: Barrett
Abstaining, Councilmembers: None

**AND APPROVED BY THE MAYOR THIS 26th DAY OF JANUARY, 1998.**

David R. Beckley, Mayor

ATTEST:
Julie Krueger, CMC, City Clerk

RESOLUTION NO. 00-002

A RESOLUTION ADOPTING A POLICY OUTLINING BENEFITS AVAILABLE TO EMPLOYEES WHOSE EMPLOYMENT RELATIONSHIP IS TERMINATED AS A RESULT OF A LAYOFF OR ELIMINATION OF POSITION

WHEREAS, the City Council requested the City Attorney to prepare a written policy which would outline the benefits which would be available to City employees whose employment relationship with the City is terminated as a result of a layoff or elimination of a position; and

WHEREAS, the City Attorney, with the assistance of the Wasco County Human Resources Department, has prepared a proposed policy for the City Council's review, a copy of which policy is attached to this Resolution as Exhibit "A"; and

WHEREAS, the City Council has reviewed the provisions of the proposed policy set forth in Exhibit "A", and has determined it is in the best interests of the City to adopt the proposed policy; NOW, THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:

Section 1. Policy Adopted. The policy set forth in Exhibit "A", outlining benefits available to employees whose employment relationship is terminated as a result of a layoff or elimination of a position, is hereby adopted.

PASSED AND ADOPTED THIS 14TH DAY OF FEBRUARY, 2000.

Voting Yes, Councilor: Davison, Broehl, Davis, Gosiak, Wasser
Voting No, Councilor: None
Absent, Councilor: None
Abstaining, Councilor: None

AND APPROVED BY THE MAYOR THIS 14TH DAY OF FEBRUARY, 2000.

Robb Van Cleave, Mayor

Attest:

Julie Krueger, CMC/AAE, City Clerk

INDEXED 2-17-00



012800 (00-002.res)

# CITY OF THE DALLES POLICY

# OUTLINING BENEFITS FOR EMPLOYEES SUBJECT TO LAYOFF

Adopted February 14, 2000

Exhibit "A"

TABLE OF CONTENTS

## LAYOFF & RECALL RIGHTS

### Accrued Vacation, Sick Leave & Holiday Pay

- As a general rule, accrued vacation leave and compensatory time will be paid to you in your final paycheck, at your current wage rate.

- For employees subject to the collective bargaining agreement between the City and OPEU and The Dalles Police Officers Association, upon the termination of an employee for any reason, or in the event of his or her death, the employee shall be paid a lump sum for all earned but unused postponed holiday time for which the employee is entitled to be paid.

- For the employees subject to the collective bargaining agreement between the City and OPEU and The Dalles Employees Association, in lieu of cash for overtime worked, an employee may, with the approval of the City, elect to accrue up to eighty (80) hours of compensatory time off. Accrued compensatory time may be taken off only with the approval of the employee's supervisor and department head. An employee electing to receive compensatory time in lieu of cash will not be allowed to cash out such overtime without the approval of the City Manager, or his/her authorized designee. The City reserves the right to cash out all but twenty (20) hours of an employee's accrued compensatory time on June 30 of each year. Employees returning from layoff shall have previously accrued sick leave and seniority reinstated, but shall not receive such benefits for the period of the layoff.

- Sick leave is never paid off to any terminating employee.

## LAYOFF - IN GENERAL

- Employees subject to the collective bargaining agreement between the City and The Dalles Employees Association and OPEU should refer to Article 13 of the agreement, a copy of which is included.

- Employees subject to the collective bargaining agreement between the City and The Dalles Police Officers Association and OPEU should refer to Article 8 of the agreement, a copy of which is included.

- Non-represented employees should refer to Section 51.1 of the Exempt/Management Employee Handbook, revised August 1996, a copy of which is included.

## ARTICLE 13 - SENIORITY RIGHTS

### A. SENIORITY:

Seniority shall be defined as the employee's total length of unbroken service with the City, except as otherwise required by law, e.g., military leave.

### B. LOSS OF SENIORITY:

Seniority shall be lost for the following reasons:

1. If the employee quits.

2. If the employee is discharged.

3. If the employee retires.

4. If the employee is laid off because of a reduction in force or lack of work for a period in excess of twelve (12) months.

5. If the employee is absent from work for seventeen (17) consecutive work hours from the start of the shift missed (i.e., one hour into the shift of the third consecutive work day missed) without notifying his/her supervisor or without being excused in advance by his/her supervisor, unless it can be affirmatively shown that it was impossible for the employee to give such notice.

6. If the employee fails to respond within forty-eight (48) hours after receipt of a notice of recall from a layoff. Such notice shall be personally delivered or sent by certified mail, return receipt requested, to the employee's last-known address on file with the City.

7. If the employee secures other employment, unless agreed to in advance by the supervisor, during a leave of absence.

8. If the employee, while on layoff, fails to register in person or by mail with the supervisor or designee upon change of address, change of telephone number, at least once every six (6) months during the period of layoff signifying his/her availability for recall or if a certified mailing, as specified in #6 above, is returned to the City as not delivered.

## C. LAYOFF AND RECALL:

If a layoff is to occur, it shall be done in the inverse order of seniority, as herein defined, within the affected job classification(s). Only in the event of a layoff shall employees have bumping rights. An employee displaced from his/her job by reason of a layoff shall be entitled to bump or displace an employee in an equal or lower job classification within the bargaining unit, provided the displacing employee has greater seniority and possesses all the qualifications, as specified in the most recent job recruitment announcement, for the position to which he/she proposed to bump. The bumping employee shall serve a ninety (90) day probationary period.

If the employee fails to successfully complete the probationary period, he/she shall be subject to layoff and the most senior employee, if any, who: (1) is on layoff status, (2) is qualified for the position and (3) previously held a position of at least equal pay, shall be recalled from layoff to fill the position. When available openings occur that are: (1) within the bargaining unit and (2) at the same or lower paying classification from which the layoff occurred, qualified employees shall be recalled from layoff in the reverse order of layoff. If the employee is to be recalled to a classification which is different than the classification in which he/she was employed at the time of layoff, he/she must meet the minimal qualification for the position and shall be subject to the probationary period as delineated for bumping employees.

An employee will remain on the layoff list and be eligible for recall for twelve (12) months. The City shall notify a laid off employee of a position opening by certified letter, return receipt requested, to his/her address of record as maintained in the employee's personnel file. It shall be the employee's responsibility to insure that his/her current address is on file at the time the recall occurs. The employee shall have three (3) days from the receipt, or return by the post office, of such notice to notify the City in writing of his/her intent to return. The employee must be able to return to work within fourteen (14) calendar days of the date of receipt of such notice. If the employee fails to so respond to a recall notice within the time herein specified, or if he/she refuses an offered position, all rights to recall shall be terminated.

Employees returning from layoff shall have previously accrued sick leave and seniority reinstated, but shall not receive such benefits for the period of the layoff.

## ARTICLE 8 - SENIORITY

Section A. General Provisions.

1. The principles of seniority as provided in this Agreement shall be observed. City seniority is the continuous length of any employee's service with the City. Except as specified below, City seniority shall be used for all purposes where an employee's seniority is used to determine rights or benefits under this Agreement. Class seniority, for purposes of layoff and shift bidding, shall be determined by the total length of service with the City since the most recent date of hire in the class where the layoff is to occur (or within the class into which the employee is bumping, if applicable), plus the total length of service since the most recent date of hire in any higher-paying position or positions within the department.

2. The City will provide the Union with a copy of the seniority list on July 1 of each year.

3. An employee shall lose all seniority in the event of voluntary quitting or discharge.

4. "Continuous Service" is defined as that service from last day of hire unbroken by separation from City service other than by military, Peace Corps, vacation, sick or family care leave. Time spent on other types of authorized leave will not count as time of continuous service, except that employees returning from such leave, or employees who were laid off, shall be entitled to credit for service prior to the leave or layoff.

5. Probationary Period. The probationary period for a new police officer who is hired without an Oregon BPSST basic certificate shall be eighteen (18) months. The probationary period for all other employees, including any who are eligible for BPSST certification without completing the BPSST basic police course, shall be twelve (12) months.

6. Just Cause. Any employee who has completed a probationary period shall be disciplined only for just cause. Forms of discipline shall include the following: written reprimand, suspension without pay, demotion to a lower-paying classification and discharge. At the time such disciplinary action is taken the employee shall be provided with a written statement of the cause. The Union shall also be forwarded a copy of such statement. The provisions of this Section shall be subject to the provisions of the grievance procedure.

7. Job Openings. In the event the City determines that two (2) or more employees are equally qualified for a job opening within the bargaining unit for which current employees are being considered, the most senior employee shall be given the job.

Section B. Layoff and Recall.

1. Layoff. In the event the City determines a layoff to be appropriate, employees shall be laid off in the inverse order of their seniority in their classification. Any employee to be laid off who had advanced to the present classification from a lower regular appointment classification shall be given a position in a lower classification in the same department. Seniority in the lower classification shall be established according to the date of appointment to a regular position in that classification,

2. Recall. Employees shall be recalled from layoff to any position openings that occur within the classification from which the layoff occurred during the first twenty-four (24) months following the date of the layoff. No new employees shall be hired in a particular classification until all employees in that classification who are on layoff status and have expressed a desire to return to work have had an opportunity to do so. To maintain eligibility for recall, an employee must maintain a current address where he or she can be reached. Upon notification regarding a vacant position, an employee shall have seventy-two (72) hours in which to notify the City of acceptance or rejection of a position offered and an additional eight (8) days therefrom in which to return to work. Non-compliance of these provisions by employees shall be deemed voluntary resignation.

## 50.0 VOLUNTARY TERMINATION

50.1 Resignation - An employee may resign for any reason at any time. Employees absent from work without reporting for a period of three days or longer or who fail to return to work following a leave of absence are considered to have resigned.

Resignations should be written and submitted to the Personnel Department at least two weeks in advance of the anticipated date of termination.

50.2 Retirement - An employee is considered to terminate as retired if they are eligible for and receive a monthly benefit from a qualified retirement plan offered by the City. (See Section 24.0 for more details.)

## 51.0 INVOLUNTARY TERMINATION

51.1 Layoff/Reduction in Workforce - Employees may be terminated by layoff due to lack of funds or a lack of work in the employee's area.

## RETIREMENT & DEFERRED COMPENSATION

- For retirement, the City currently has two retirement plans. Public Safety employees are covered under a plan with Standard Insurance Company, and non-public safety employees are covered under a plan with Nationwide. For the Standard Insurance plan, employees are referred to Article VII, Section 7.1 of the retirement plan, a copy of which is enclosed.

  For non-public safety employees covered under the Nationwide plan, the plan has a five year vesting schedule. For employees who are fully vested under the plan, they can withdraw the entire amount deposited in the plan, including the amount contributed by the City on their behalf. Employees who have not been employed by the City for five years, and who are not vested, can only withdraw their employee contributions to the plan, unless they choose to leave the entire amount deposited in the plan until they reach the age of 60, at which time they have the right to withdraw both the employee and employer contributions from the plan.

  Employees should understand that "withdrawal" of funds from either retirement plan assumes that the funds will be "rolled-over" into another qualified retirement plan. If the funds are not placed into another qualified retirement plan, there can be penalties and income tax consequences to the employee. Employees are urged to consult a qualified financial consultant, or the City's benefits Agent of Record, Benefit Consultants (541) 298-1563, if they have any questions concerning their options.

- Concerning withdrawal of deferred compensation funds, employees who leave employment with the City are eligible to withdraw funds in their deferred compensation account. If you have any questions regarding withdrawing funds in the following accounts please contact:

Safeco Life Insurance
Dorothy Davison
2500 East 12th Street
The Dalles, OR 97058
(541) 296-4200

Northwestern Mutual Life
Mary Kirchofer
321 West 4th Street
The Dalles OR 97058
(541) 296-1966

Standard Insurance
Benefit Consultants
(541)298-1563

## ARTICLE VII

## DISTRIBUTIONS

### 7.1 Termination of Employment Before Retirement

If a Participant's employment as an Employee is terminated due to any other reason except his death, Total and Permanent Disability, or Retirement, he may elect to receive the entire sum of all amounts attributable to his Voluntary and Mandatory Participant Contributions, if any. To be effective for the purposes of this Plan, such an election must be delivered in writing to the Plan Administrator before the Annuity Starting Date that he has selected. In the election he shall specify a time at which the distribution is to be made. The distribution shall be made in the form of a lump sum.

In the event of a distribution to a Participant of his accumulated Voluntary and Mandatory Participant Contributions pursuant to this Section, all other rights of the Participant to any other benefits under this Plan shall be immediately forfeited. All Forfeitures that occur pursuant to this paragraph shall be applied to offset Employer Contributions as such obligations accrue.

A Participant may not elect to withdraw his Mandatory Participant Contributions without also withdrawing all amounts attributable to his Voluntary Participant Contributions. However, a Participant may at any time withdraw some or all of his Voluntary Participant Contribution Account balance pursuant to Section 4.2.5, without regard to this Section, and therefore without any Forfeiture resulting.

### 7.2 Death Benefits

(a) If a Participant who is credited with a Vested Benefit dies prior to the Annuity Starting Date of his Vested Benefit, then the Plan shall distribute a death benefit on his behalf.

The amount of the death benefit shall equal the Participant's Vested Benefit.

If the Participant has a surviving spouse as of his date of death, the death benefit shall be payable to such surviving spouse. If the Participant has no surviving spouse, the death benefit will be paid to the Participant's Beneficiary.

(b) The death benefit shall be distributed to the surviving spouse (or other Beneficiary, as applicable) in the form of a lump sum as soon as administratively practicable (in any event, within one year) following the Participant's date of death. However, the person to whom that benefit is to be distributed, whether surviving spouse or other Beneficiary, may elect to have the death benefit distributed in any other form of benefit described in Section 7.4 and not precluded thereby. To be effective for the purposes of this Plan, such an election must be in writing, and must be received by the Plan Administrator prior to the death benefit's Annuity Starting Date. Given such an election, the Annuity Starting Date for the death benefit would then occur within 90 days after receipt of that election.

In any event, any death benefit payable pursuant to this Section shall commence or be distributed not later than the time period described in (1) or (2) below, as appropriate:

## CONTINUATION OF HEALTH INSURANCE - COBRA

- Your coverage would normally end the first of the month following the date that you were no longer employed by the City. However, you may be able to continue group health coverage for a limited period of time at your own expense. Enclosed with this packet are copies of a COBRA continuation notice and application for COBRA continuation available through the Employee Benefit Services Trust. If you need assistance in completing the application form, please contact Esther Holliday at City Hall, (541) 296-5481, ext. 114, or the Wasco County Human Resources Department, 511 Washington, The Dalles, OR., (541) 296-2276.

EMPLOYEE BENEFITS SERVICES TRUST

POLICY

SUBJECT: Continuation of Benefits ("COBRA")

EFFECTIVE DATE: August 1, 1986
Revised October 31, 1986
Revised June 22, 1990
Revised January 1, 1997

PURPOSE: As part of the Federal Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), new mandatory provisions for extending health plan coverage were enacted. This policy outlines eligibility, the coverage and administrative requirements under the new law. The Health Insurance Portability and Accountability Act of 1996 contained several provisions making relatively minor changes to the COBRA continuation coverage rules. The new rules were effective January 1, and are contained in this policy.

I. General Policy Intent

A. It is the intent of this EBS Policy to establish provisions for continuation of group health plan coverage through the EBS Trust whereby the Trust and its members are in compliance with HR3128, Title XXII and the amendments contained in the Tax Reform Act of 1986. To assure timely and efficient service to individuals who apply for continuation under this policy, the Trust is delegating responsibilities for notification and processing applications to the cities' personnel administrators or staff responsible for administering the Trust's insurance programs.

II. General Provisions

A. The continuation provisions apply to all Trust member cities and affiliate groups.

B. The types of extended health coverage to be made available include all that are currently provided to the other employees in the group in which the eligible individual was enrolled. This includes medical,

dental, vision and prescription drug coverage, if presently offered. It does not include life, long-term disability or accidental death and dismemberment coverages.

C. The implementation date of "COBRA" is August 1, 1986. Differing effective dates based on collective bargaining or management agreements are not allowable since EBS does not qualify as a "collectively bargained" Trust.

III. Individuals Eligible for Continued Benefits

A. The following types of individuals are eligible for extended coverage when a "qualifying event" (see III B.) occurs:

1. Employees terminated from employment (voluntary or involuntary) for reasons other than the employee's gross misconduct, and any of their dependents who are covered are also eligible for the extended coverage. This includes disability terminations.

2. Employees who lose plan eligibility (voluntary or involuntary) through reduction of hours and their covered dependents;

3. Divorced, legally separated or widowed spouses and dependents;

4. Dependents who would otherwise lose eligibility due to the employee's eligibility for Medicare;

5. Dependent children who cease to be eligible under the terms of the plan (due to age, marriage, etc.); and

6. A child born to, or placed for adoption with, a covered employee during the COBRA continuation period will be treated as a "qualified beneficiary" for COBRA purposes. The employee must notify their employer in order for the child to be added to the plan. However, if the covered parent should die, the newborn or adopted child will have the right to independently retain COBRA for the duration of the normal coverage period.

B. Events that "qualify" an individual for extended benefits include the following:

1. Termination of employment (other than for gross misconduct) or reduction of hours of the employee;

2. Loss or reduction in employment due to disability;

3. Death of the covered employee;

4. Divorce or legal separation of the covered employee from the employee's spouse;

5. Covered employee becoming entitled to benefits under Medicare and dependents thereby lose coverage; and

6. A child ceasing to be an eligible dependent under the plan.

IV. Selection of Coverage

A. At the time of election of coverage under COBRA, individuals must select the core (medical) plan in which they were enrolled. However, they may choose whether to continue other non-core coverages (i.e., vision or dental) in which they were enrolled. Individuals may not elect a non-core benefit as the sole coverage to be continued. Orthodontia coverage may not be dropped from the dental plan if such is part of the coverage. Individuals selecting non-core benefits in addition to the core medical plan must elect all non-core benefits as part of their continued coverage.

B. If the City provides an open enrollment period in which active employees can change plans, individuals on continuation have the same right.

C. Each individual family member eligible for continuation may choose the coverage desired (e.g., a terminated employee may choose the full medical, dental, and vision coverage provided to the active employee groups and the spouse may choose medical only. They must elect at least the core medical plan.

D. If different continuation coverages are elected that change the number of parties covered in the family unit, premiums will be charged based on the number of individuals that have the same coverage (e.g., in a family of three, two individuals elect both the medical and dental plans provided to the active groups, and one individual does not want the

dental insurance, the two individuals will pay the two-party rate and the individual with medical only will pay the one-party medical premium rate.

V. Duration of Extended Benefits

A. Extended coverage for terminating employees and their dependents, or employees losing eligibility due to reduced hours and their dependents is available for up to 18 months, as provided in V.B.

B. Individuals who incur social security "certified" disability during the first 60 days of COBRA continuation coverage, as well as those who had such disabilities at the time of the qualifying event, will be entitled to 11 months of coverage in addition to the standard 18 months. Notification of the disability award must be given to the employer within 60 days of the award and before the standard 18 months period has ended.

C. If a qualified beneficiary is entitled to an extension of the maximum COBRA continuation periods from 18 months to 29 months as the result of a social security certified disability, all other family members who are qualified beneficiaries due to the same qualifying event are also entitled to the extension from 18 to 29 months.

D. Extended coverage is available or up to 36 months for the following individuals:

1. Divorced, legally separated or widowed spouses and their dependents;

2. Dependents who would otherwise lose eligibility due to the employee's eligibility for Medicare;

3. Dependent children who are no longer eligible under the terms of the plan;

4. Individuals who experience a second qualifying event (e.g., divorce from terminated employee) within their first period of eligibility. The combined continuation period shall not exceed a total of 36 months.

E. The extended coverage can be terminated in less than the 18 or 36 months under the following conditions:

1. The employer ceases providing any group plan to any employee;

2. The individual on continuation fails to make timely premium payment;

3. An individual on continuation becomes, after the date of his or her election to take continuation, a covered employee under any other group plan or entitled to Medicare. A qualified beneficiary with a pre-existing condition who becomes covered under another group plan may no longer be able to retain COBRA coverage. Federal legislation rules state the new plan must credit the beneficiary's prior continuous coverage against the new plan's pre-existing condition exclusion period. COBRA continuation coverage can be terminated when the new plan's pre-existing limitation no longer applies to the beneficiary because of the Federal requirement that credit for prior coverage be given. (The effective date of the Federal law requiring credit for prior coverage is July 1, 1997.

4. In the case of divorced or widowed spouses, when the spouse remarries and becomes covered under another group health plan.

F. The extended coverage will begin at the beginning of the next month after the coverage would have normally ended (rather than from the specific date of the "qualifying event").

V. Notification and Election of Coverage

A. A City is required to provide written notification of the availability of continuation coverage to all covered employees and their spouses at the time an employee becomes covered under a City plan.

B. The health plan booklets describing coverage elected through the Trust will include an explanation of the continuation provisions for the coverages.

C. The option to elect continued coverage must be offered during a period that:

1. Begins not later than the date coverage terminates by reason of a "qualifying event";

2. Last at least 60 days; and

3. Ends no earlier than 60 days after the later of the date of the "qualifying event" or the date the City notifies the individual of his or her continuation coverage rights in the event of a termination or reduction of hours of employment.

D. A City's personnel officer or other City staff (as designated by the City) who administer the Trust's insurance plans must be notified within 30 days by an individual's supervisor or other appropriate personnel; in the event of an employee's death, termination or reduction of hours.

E. It is the responsibility of the employee, spouse or dependent to notify the City's personnel officer or staff that administer the Trust's insurance of the occurrence of a legal separation, divorce or loss of eligibility as a dependent or other applicable "qualifying event". This must be done within 60 days of the "qualifying event" in order to be eligible for the extended coverage.

F. Within 14 days of notification of a "qualifying event" by a potentially qualified individual, the administrator designated by the City must inform the individual of the continuation provisions and premium costs.

G. A qualified individual who elects continued coverage must submit a new enrollment application that identifies the coverages selected.

VII. Premium Payments

A. Premium payments for extended coverage for qualified individuals may be on a self-pay basis by the individual or partially or fully paid by the employer.

B. Individuals who elect the continued coverage have 45 days from the date of election to make back and current premium payments. Back premiums are those payable from the last month of coverage in which the qualifying event occurred through the month in which election is

made. The required re-enrollment applications will not be submitted to the carrier until such premiums have been received.

C. After the initial election and premium payment, individuals will have a grace period of 30 days from the premium due date set by the City before they are dropped from the coverage. At that time, a conversion option is available to the individual.

D. All payments made by an individual for continued benefits must be made payable to the City. The premium coverage should be submitted a part of the regular monthly billing payments to the Trust. **Checks from individuals for their coverage will not be accepted.**

RESOLUTION NO. 00-014

A RESOLUTION ADOPTING RULES TO ALLOW THE CITY OF THE DALLES TO NEGOTIATE WITH THE LOWEST RESPONSIBLE AND RESPONSIVE BIDDER WHEN BIDS EXCEED THE CITY'S COST ESTIMATE

WHEREAS, ORS 279.015(1)(h) includes a provision which allows a public agency to adopt rules which would allow the public agency to negotiate with the lowest responsible and responsive bidder, prior to awarding a contract for a public improvement, in order to solicit value engineering and other options in an attempt to bring the project within the agency's cost estimate, where all responsive bids received exceed the agency's cost estimate; and

WHEREAS, the City of The Dalles, which qualifies as a "public agency" under public contract law, desires to adopt rules which will allow it to negotiate with the lowest responsible and responsive bidder under the circumstances outline in ORS 279.015(1)(h); NOW, THEREFORE

THE CITY COUNCIL OF THE DALLES RESOLVES AS FOLLOWS:

Section 1. Rules Adopted. Pursuant to the provisions of ORS 279.015(1)(h), the City Council of The City of The Dalles adopts the following rules which authorize negotiation with the lowest responsible and responsive bidder when bids exceed the City's cost estimate:

A) General. In accordance with ORS 297.015(1)(h), if all responsive and responsible bids on a competitively bid project exceed the City's cost estimate, prior to award of the contract, the City may negotiate Value Engineering and Other Options with the lowest responsive and responsible bidder in an attempt to bring the project within the City's estimate.

B) Definitions. The following definitions apply to these rules:

1) Cost Estimate: The City's most recent pre-bid, good faith assessment of anticipated contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

2) Other Options: Those items generally considered appropriate for negotiation in the competitive proposal process, which include details of contract performance, methods of construction, timing, assignment of risk in specified areas, fees and other matters which affect cost or quality, but excluding any material requirements previously announced in the solicitation process which would likely affect the field of competition.

3) Project: A contract for a public improvement as defined in ORS 279.011(8).

4) Value Engineering: Those proposed changes to the plans, specifications, or



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other contract requirements which may be made, consistent with industry practice, under the original contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the public improvement. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

C) Rejection of Bids. In determining whether all responsive and responsible bids exceed the City's cost estimate, only those bids which have been formally rejected by the City in accordance with public contracting law shall be excluded from consideration.

D) Scope of Negotiations. Negotiations shall not result in an award of a contract if the scope of the Project is significantly changed from the original bid proposal. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by that change; that is, if other bidders would have been expected to participate in the bidding process had the change been made during the solicitation process rather than during negotiations. These rules shall not be construed to prohibit resolicitation of trade subcontracts.

E) Discontinuing Negotiations. The City may discontinue negotiations at any time, and shall do so if it appears to the City that the apparent low bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.

F) Limitation. Negotiations may only be undertaken with the lowest responsive and responsible bidder pursuant to ORS 279.015(1)(h). This statute does not provide any additional authority to further negotiate with bidders next in line for award of the contract.

G) Public Records. Notwithstanding any other provision of law, the records of a bidder used in contract negotiations pursuant to these rules are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated.

PASSED AND ADOPTED THIS 24TH DAY OF APRIL, 2000.

Voting Yes, Councilor: Davison, Wasser, Broehl, Davis
Voting No, Councilor: None
Absent, Councilor: Gosiak
Abstaining, Councilor: None

AND APPROVED BY THE MAYOR THIS 24TH DAY OF APRIL, 2000.

ATTEST:

Robb Van Cleave, Mayor

Julie Krueger, CMC/AAE, City Clerk

**RESOLUTION NO. 00-029**

**A RESOLUTION ADOPTING A POLICY ESTABLISHING AN EMPLOYEE RECOGNITION PROGRAM**

**WHEREAS**, the City is desirous to provide a recognition program for the employees; and

**WHEREAS**, the City has prepared guidelines and procedures to implement an employee recognition program; and

**WHEREAS**, the City Council has reviewed the proposed policy and believes adoption of the policy is in the best interest of the City;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:**

Section 1. Policy Adopted. The policy establishing an employee recognition program as set forth in Exhibit A, is hereby approved and adopted.

**PASSED AND ADOPTED THIS 13TH DAY OF NOVEMBER, 2000**

| | |
|---|---|
| Voting Yes, Councilors: | Broehl, Gosiak, Davis, Davison |
| Voting No, Councilors: | None |
| Absent, Councilors: | Council position #1 vacant |
| Abstaining, Councilors: | None |

**AND APPROVED BY THE MAYOR THIS 13TH DAY OF NOVEMBER, 2000**

SIGNED: Mary Ann Davis

~~Robb Evans, Mayor~~

Mary Ann Davis, Mayor pro-tem

ATTEST: Julie Krueger

Julie Krueger, CMC, City Clerk

INDEXED 11-14-00

CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058
(541) 296-5481

# EMPLOYEE RECOGNITION PROGRAM

***Purpose***: The purpose of the City of The Dalles Employee Recognition Program is to acknowledge and reward outstanding efforts of employees, and to recognize years of service of employees.

***Annual Recognition***: Annual employee recognition awards and service awards will be presented at the first City Council meeting in April.

***Section 1. Service Awards*** - Employees who have worked for the City of The Dalles for periods of 5, 10, 15, and 20 years, will be recognized annually, at the first City Council meeting in April. Employees will receive certificates of recognition and plaques, designating the number of years of service they have with the City.

***Section 2. Excellent Customer Service Award*** - This award is open to all employees, and includes outstanding customer service to both external and internal customers (this includes citizens, other City employees, working with other governmental agencies, etc.). An employee may be nominated for this award who has provides customer service which is noticeably outstanding, by consistently displaying an exemplary attitude toward the public; providing customer service above and beyond expected service levels; "goes the extra mile"; and shows exceptional customer service efforts.

***Section 3. Innovative Thinking Award*** - This award is for an employee who creates a new or improved idea which creatively leads toward attaining the City's values of quality, integrity, and respect; saves the City money or generates a new source of revenue; or makes a process or procedure more efficient.

***Section 4. "Pete Wasser Team Player" Award*** - This award is for an employee who has demonstrated excellent performance, productivity, professionalism and other noteworthy accomplishments. The award exemplifies the employee values in daily performance by consistently performing work with the highest quality; demonstrating a respectful attitude toward the public and co-workers; approaching work with integrity; demonstrating a professional, positive attitude about work; and completing work in a manner which supports a safe working environment.

***Section 5. Retirement*** - Awarded to employees upon retirement from City service, for those who have served a minimum of five years.

***Forms of Recognition***. The service award recipients will receive a Certificate of Recognition and a City of The Dalles Service Plaque, which will include the number of years of service.

The award recipients for the Excellent Customer Service, Innovative Thinking, and Pete Wasser Team Player awards will received a Certificate of Recognition, and a $25 gift certificate to a local restaurant.

The retirement awards will include a plaque recognizing the years of service to the City and the City will pay up to $150 toward a gift and/or retirement party.

***Nominations***. Annual nominations will remain open from January 1 through December 31 of each year. Forms will be made available at all City locations, and are to be filled out completely, including summary, and turned into the City Clerk's Office by the last day of the calendar year. Any City employee or City Councilor may submit nominations.

***Awards***. All nominations will be reviewed by a panel, which will include representation from each City site, including City Hall, Public Works, Police Department, Library, and one City Councilor. The City Manager will appoint staff representatives to the review panel and the Mayor will select a City Councilor to serve on the panel. One recipient will be selected for the categories of Excellent Customer Service, Innovative Thinking, and Team Player per year. Award recipients will be notified in advance of the award ceremony.

RESOLUTION NO. 01-030

A RESOLUTION ESTABLISHING
A CITY-WIDE FEE SCHEDULE

WHEREAS, at its April, 2001, Goal Setting session, the City Council established a goal to create a City-wide fee schedule; and

WHEREAS, at the October, 2001, Goal Setting session, the City Council had an opportunity to review preliminary recommendations of staff concerning a City-wide fee schedule; and

WHEREAS, City Council directed staff to prepare a resolution which lists the current fees charged by the City in one resolution, and includes revised administrative fees related to photocopying charges and providing documents in response to public records requests;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:

Section 1. Fees Established. The City of The Dalles City-Wide Fee Schedule, attached as Exhibit A, is hereby approved. The fee schedule in this Resolution shall supercede any fee schedule adopted by resolution prior to November 26, 2001.

Section 2. Effective Date. This resolution shall be effective as of November 26, 2001.

Section 3. Classification of Fees. The City Council classifies the fees set forth in Exhibit "A" as fees which are not subject to the limits of Section 11B, Article XI, of the Oregon Constitution.

PASSED AND ADOPTED THIS 26TH DAY OF NOVEMBER, 2001.

Voting Yes, Councilor: Tenney, Zukin, Broehl, Davis, Davison
Voting No, Councilor: None
Absent, Councilor: None
Abstaining, Councilor: None

AND APPROVED BY THE MAYOR THIS 26TH DAY OF NOVEMBER, 2001.

Attest:

Robb Van Cleave, Mayor

Julie Krueger, CMC/AAE, City Clerk



(102501 01-030.res)

# CITY OF THE DALLES

## CITY FEE SCHEDULE
## NOVEMBER 26, 2001

| **POLICE DEPARTMENT** | |
|---|---|
| Report Search & copy | $5.00 |
| Request for Fingerprints | $10.00 |
| Burglary Alarm Permit (annual fee) | $8.00 |
| **LIBRARY** | |
| Overdue materials fee - juvenile, per day | $0.05 |
| Overdue materials fee- juvenile, maximum | $0.50 |
| Overdue materials fee-adult, per day | $0.10 |
| Overdue materials fee-adult, maximum | $1.00 |
| Interlibrary Loan | $1.00 |
| Non-resident borrowing privilege (annual fee) | $25.00 |
| **FINANCE DEPARTMENT** | |
| Transaction fee (when account is set up) | $20.00 |
| Delinquency Processing Fee (door hanger) | $20.00 |
| After hours call out fee (for overtime) | $20.00 |
| Non-sufficient funds check fee | $25.00 |
| Animal License Fee | $25.00 |
| Peddler's License Fees: | |
| Investigation Fee | $10.00 |
| Monthly license | $25.00 |
| Yearly license | $50.00 |
| Commercial Resale License (annual fee) | $25.00 |

| UTILITIES | |
|---|---|
| Industrial Pretreatment Fees: | |
| Initial permit application fee | $1,000.00 |
| Renewal of permit | $500.00 |
| Annual permit fee | $335.00 |
| Annual monitoring fee | $600.00 |
| Monthly fees for Significant Industrial User (SIU) under Pretreatment Program: | |
| Volume charge: one sewer unit per 10,000 gallons of discharge. | |
| Strength surcharges: | |
| BOD greater than 200 mg/L, per BOD | $0.50 |
| TSS greater than 200 mg/L, per TSS | $0.25 |
| Discharge fees for batch discharges by permit under Pretreatment Program: | |
| One time discharger (per gallon/minimum $250.00) | $0.05 |
| Batch basis discharger (per gallon) | $0.05 |
| Residential Water Rates (Monthly): | |
| Meter size 0.75" (volume $.60 per 1,000 gallons over 15,000 gallons per month | Fixed Charge $25.00 |
| Meter size 1" (volume $.60 per 1,000 gallons over 15,000 gallons per month | Fixed Charge $25.00 |
| Meter size 1.5" (volume $.60 per 1,000 gallons over 15,000 gallons per month | Fixed Charge $30.00 |
| Meter size 2" (volume $.60 per 1,000 gallons over 15,000 gallons per month | Fixed Charge $38.00 |
| Meter size 3" (volume $.60 per 1,000 gallons over 15,000 gallons per month | Fixed Charge $55.00 |

| **UTILITIES, Continued** | |
|---|---|
| Commercial Water Rates (Monthly): | |
| Meter size 0.75" (volume $1.60 per 1,000 gallons over 7,000 gallons per month) | Fixed Charge $19.75 |
| Meter size 1" (volume $1.60 per 1,000 gallons over 7,000 gallons per month) | Fixed Charge $22.30 |
| Meter size 1.5" (volume $1.60 per 1,000 gallons over 7,000 gallons per month) | Fixed Charge $27.30 |
| Meter size 2" (volume $1.60 per 1,000 gallons over 7,000 gallons per month) | Fixed Charge $35.00 |
| Meter size 2.5" (volume $1.60 per 1,000 gallons over 7,000 gallons per month) | Fixed Charge $45.15 |
| Meter size 3" (volume $1.60 per 1,000 gallons over 7,000 gallons per month) | Fixed Charge $52.75 |
| Meter size 4" (volume $1.60 per 1,000 gallons over 7,000 gallons per month) | Fixed Charge $80.65 |
| Meter size 6" (volume $1.60 per 1,000 gallons over 7,000 gallons per month) | Fixed Charge $144.10 |
| Outside city limits (residential and commercial) are charges 1.5 times the applicable rates, in lieu of debt service property taxes collected inside the City for bonded water system improvements | |
| Sewer Fees: | |
| Inside city limits (per unit, per month) | $17.20 |
| Outside city limits (per unit, per month) | $29.25 |
| Systems Development Fees (water): | |
| Application (per unit) | $672.00 |

| **UTILITIES: Systems Development Fees, Continued** | |
|---|---|
| Water Unit Calculations | |
| .75" service or meter = 1 unit | |
| 1" service or meter = 2 units | |
| 1.5" service or meter = 4 units | |
| 2" service or meter = 7 units | |
| 3" service or meter = 14 units | |
| 4" service or meter = 25 units | |
| 6" service or meter = 50 units | |
| 8" service or meter = 80 units | |
| Systems Development Fees (sewer): | |
| Application fee (per unit) | $264.00 |
| Sanitary Sewer Unit Calculations | |
| Residential Dwelling = 1 unit | |
| Multiple Family Dwelling = 1 unit per residential dwelling | |
| Motor Courts, Motels, Hotels = 1 unit per 2 rental rooms | |
| Recreational Camping Parks = 1 unit per 2 spaces | |
| Schools: | |
| High & Middle Schools = 1 unit per 15 students | |
| Elementary Schools = 1 unit per 20 students | |
| Restaurants, Cafes, Coffee Shops = 1 unit per 10 seats | |
| Banquet rooms, Taverns, Lounges = 1 unit per 10 seat capacity | |

| **UTILITIES, Systems Development Fees, Continued (sewer)** | |
|---|---|
| Hospitals: | |
| With Laundry Facilities = 1 unit per bed | |
| Without Laundry Facilities = 1 unit per 2 beds | |
| Rest Homes = 1 unit per 2 beds | |
| Commercial = 1 unit per 9 or less employees | |
| Laundromats = 1 unit per machine | |
| Theaters = 1 unit per 100 seat capacity | |
| Churches = 1 unit per 100 seat capacity | |
| Auto Service Stations = 1 unit per 9 employees | |
| Commercial car washes = 1 unit per 10,000 gallons per month | |
| Medical, Veterinary = 1 unit per 10,000 gallons per month or 1 unit per 2 exam rooms | |
| Prison, Jails = 0.5 unit per bed | |
| Industrial, Domestic Strength = 1 unit per 10,000 gallons per month | |
| **PUBLIC WORKS** | |
| Banner Permit | $25.00 |
| Blue line/large format copies (per square foot) | $0.50 |
| Aerial copies (11"x17", per page) | $25.00 |
| **PLANNING DEPARTMENT** | |
| Annexation | $50.00 |
| Appeal | $300.00 |
| Building Permit | $10.00 |
| Comprehensive Plan Amendment | $375.00 |

| **PLANNING DEPARTMENT, Continued** | |
|---|---|
| Comprehensive Plan/Zone Change | $650.00 |
| Conditional Use | $350.00 |
| Historical Review | No charge |
| Home Occupation | $50.00 |
| Major Partition | $300.00 |
| Minor Partition | $200.00 |
| Mobile Home Park | $375.00 |
| Planned Unit Development | $400.00 |
| Property Line Adjustment | $50.00 |
| Sign - flush Mount | $25.00 |
| Sign - Freestanding under 8' | $50.00 |
| Sign - Freestanding over 8' | $75.00 |
| Sign - over 250 square feet | $125.00 |
| Site Plan Review | $275.00 |
| Subdivision | $400.00 |
| Vacation (Street) | $300.00 |
| Variance | $300.00 |
| Zone Change | $375.00 |
| Document Fees: | |
| Comprehensive Plan | $10.00 |
| Comprehensive Plan Map | $5.00 |
| Geologic Hazard Study | $20.00 |
| Zoning Ordinance (LUDO) | $10.00 |
| Zoning Map | $5.00 |

| **ADMINISTRATIVE FEES** | |
|---|---|
| Parking Permit Fees (City lots): | |
| Monthly | $15.00 |
| Annually | $150.00 |
| Reserved space/annual - first year | $325.00 |
| Reserved space/annual - subsequent years | $300.00 |
| Photocopy Fees: | |
| Per page (less than 50 pages) | $0.25 |
| Document (between 50 and 100 pages) | $15.00 |
| Document (over 100 pages) | $25.00 |
| Ordinances, maps, odd size documents, filling public records requests that do not fit in another category, including research time, supervision, etc. | $25.00 per hour |
| Liquor Licenses (OLCC): | |
| New Outlet | $100.00 |
| Change in Ownership/Privilege | $75.00 |
| Annual Renewals | $35.00 |
| Tape recording of a proceeding or meeting | $10.00 |

**RESOLUTION NO. 03-016**

**A RESOLUTION ADOPTING CHENOWETH CREEK INDUSTRIAL SUBDIVISION DEVELOPMENT STANDARDS POLICY**

**WHEREAS**, The City of The Dalles recognizes that the Port of The Dalles is a public sector developer, supported in part by tax dollars; and

**WHEREAS**, The Port of The Dalles provides economic development benefits to the City; and

**WHEREAS**, The Port of The Dalles must be competitive to attract tenants; and

**WHEREAS**, The Port of The Dalles should be given flexibility with regards to certain development standards in order to remain competitive;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:**

Section 1. Policy. Adopt the Chenoweth Creek Industrial Subdivision Development Standards Policy.

Section 2. Effective Date. This Resolution is effective March 10, 2003.

**PASSED AND ADOPTED THIS 10TH DAY OF MARCH, 2003**

Voting Yes, Councilors: Broehl, Zukin, Davis
Voting No, Councilors: None
Absent, Councilors: Davison, Tenney
Abstaining, Councilors: None

**AND APPROVED BY THE MAYOR THIS 10TH DAY OF MARCH, 2003**

SIGNED: Mary Ann Davis
~~Robb E. Van Cleave, Mayor~~
Mary Ann Davis, Mayor pro-tem

ATTEST: Julie Krueger
Julie Krueger, CMC, City Clerk

INDEXED 31703

# CITY COUNCIL POLICY

**NUMBER:** Industrial Development #2 **DATE:**

**EFFECTIVE DATE:** **AMENDED:**

## CHENOWETH CREEK INDUSTRIAL SUBDIVISION DEVELOPMENT STANDARD

## 1.0 PURPOSE

1.1 This policy is to establish and clarify development standards and requirements for the Port of The Dalles Industrial Center.

## 2.0 SCOPE

2.1 Whereas, The City of The Dalles recognizes that the Port of The Dalles:
a. is a public sector developer, supported in part by tax dollars;
b. provides economic development benefits to the City;
c. must be competitive to attract tenants; and,
d. should be given flexibility with regards to certain development standards in order to remain competitive;
the City may grant modifications to street design requirements and pedestrian design requirements within the Chenoweth Creek Industrial Subdivision, when findings are presented and accepted as detailed below.

## 3.0 POLICY

3.1 The Port of The Dalles may propose alternate designs for streets and pedestrian accessways for improvements within the Chenoweth Creek Industrial Subdivision area. Such modifications include, but are not limited to: street widths, curb design, cross-section design, location and width of sidewalks, location and width of planter strips, block length, and pedestrian connectivity design and location.

3.2 The City may grant modifications to any and all design standards for streets and pedestrian accessways for improvements within the Chenoweth Creek Industrial Subdivision area, if it finds that:

A. The proposed modification will not be contrary to the purposes of the Land Use and Development Ordinance (LUDO), policies of the Comprehensive Plan, or any other applicable policies and standards adopted by the City; and

B. Modifications to structural standards are supported by findings of fact, detailed in a report created by a licensed professional engineer, and submitted with the modification request. Additional engineering certifications may be required for specific analysis related to structural and/or geotechnical issues; and

C. Modifications to street design and/or pedestrian design standards are supported by findings of fact, detailed in a report created by a licensed professional engineer, and submitted with the modification request. Additional engineering certifications may be required for specific analysis related to pedestrian/bicycle/vehicle facilities design and

management.

D. The authority to grant any modifications to structural standards pursuant to Section 3.2 shall rest with the Director of Public Works. The Director of Public Works shall retain the right to define "structural standards" for the purposes of this Policy. The authority to grant any other modifications pursuant to Section 3.2 shall rest with the Planning Commission, and shall be processed as a Quasi-Judicial Action, as noted in Section 3.020.050 of the Land Use and Development Ordinance of the City of The Dalles.

3.3 When the Port of The Dalles is the landowner and the applicant for a land division action, the Port may request modifications to the bonding requirements for street and/or pedestrian improvements through the variance procedure or other means stated in an intergovernmental agreement. The authority to grant any modifications pursuant to this Section 3.3 shall rest with the Planning Commission.

3.4 The Port shall continue to require nonremonstrance agreements in leases and sales.

RESOLUTION NO. 04-016

A RESOLUTION ADOPTING PRIVACY POLICIES A PROCEDURES FOR COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

WHEREAS, the Health Insurance Portability and Accountability Act of 1996 (HIPPA), 42 U.S.C. Section 1320(d) et. seq., prohibits the unauthorized disclosure of individually identifiable health information; and

WHEREAS, the U.S. Department of Health and Human Services has promulgated regulations at 45 C.F.R. Parts 160 and 164 (hereinafter referred to as the "HIPPA Privacy Rule"), which govern the use and disclosure of individually identifiable health information and particularly govern the use and disclosure of information defined as "protected health information"; and

WHEREAS, the City of The Dalles, through a third party administrator, maintains for its employees a flexible spending account which includes health care benefits and is a "health plan" as defined by HIPPA, which makes the plan subject to the rules and regulations of HIPPA; and

WHEREAS, the City Council of the City of The Dalles recognizes that only the departments that perform the covered functions are required to comply with the HIPPA Privacy Rule and to protect the privacy and security of health information, and that identification of these departments will establish the City of The Dalles as a hybrid entity; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:

Section 1. The City of The Dalles is hereby designated as a hybrid entity, as defined in the HIPPA Privacy Rule.

Section 2. The City Council approves and adopts the Flexible Service Account Privacy Policies and Procedures attached to this Resolution. The City of The Dalles designates the following departments as its health care component for purposes of complying with the HIPPA Privacy Rule, and provides the departments will take measures to assure compliance with the HIPPA Privacy Rule in accordance with the Privacy Policies and Procedures:

a. City Manager, with the City Manager to serve as Administrator of the health plan.
b. Legal, with the City Attorney to serve as Privacy Officer.
c. Finance Department.

The above listed departments are designated as a health care component only to the extent that each department performs covered functions. This resolution is being adopted for the purpose of ensuring the City's compliance with HIPPA as a covered entity only, and does not

affect the City as a business associated, or any other state or federal law dealing with health care.

Section 3. This resolution shall be effective as of June 28, 2004.

PASSED AND ADOPTED THIS 28TH DAY OF JUNE, 2004.

Voting Yes, Councilor: Zukin, Broehl, Davis, Davison
Voting, No, Councilor: None
Absent, Councilor: Tenney
Abstaining, Councilor: None

AND APPROVED BY THE MAYOR THIS 28TH DAY OF JUNE, 2004.

Mary Ann Davis

Robb E. Van Cleave, Mayor
Mary Ann Davis, Mayor pro-tem

Attest:

Julie Krueger

Julie Krueger, CMC/AAE, City Clerk

**City of The Dalles**
**Flexible Service Account**
**Privacy Policies and Procedures**

**Table of Contents**

## I. General Statement: Compliance with the Health Insurance Portability and Accountability Act (HIPAA)

As the City of The Dalles (the City) maintains a health care plan i.e., a flexible spending account with medical benefits administered through a third party administrator (TPA), the City has been determined to be a Covered Entity under the Health Insurance Portability and Accountability Act (HIPAA). Although, the majority of City's responsibilities and duties are minimal and delegated by contract to the TPA, these policies and procedures outline the clear intent to comply with HIPAA and protect any health information handled internal to City operations. All protected health information (PHI) must be handled according to this policy and procedure.

## II. Health Care Plan Operation Outline

The operation implemented by the City to maintain the flexible service account is related only to the following activities:

A Contracting with a TPA required to sign a Business Associate Agreement including all required conditions of a Business Associate Agreement and particularly agree to maintain the privacy of PHI according to the requirements of applicable privacy laws and the group plan's privacy requirements.

B. Providing educational material to all potential enrollees.

C. Direct potential enrollees to send enrollment forms to the designated third party administrator, and sign an authorization with the City to deduct the appropriate amount monthly from their salary.

D. Distribute Notice of Privacy Practice to all enrollees.

E. Receive de-identified information (as defined in the Privacy Rule) specifying only amounts contributed and remaining fund amounts will be received from TPA, unless otherwise requested of TPA.

F. Remittance of monthly funds to TPA for the administration of the flexible spending account.

G. Upon request, provide, through the Privacy Officer, a review of any complaint processed by the TPA.

H. Monitoring of Business Associate Agreements.

## III. Applicability of Procedure.

**1. Employees.** This procedure applies to all employees of the City who may or may not directly or indirectly process PHI in their job duties. Employees who become aware of violations or potential violations of this procedure will report the specifics of the situation to the Privacy Officer and /or Plan Administrator.

**2. Protected Individuals.** The protections provided by this procedure apply to the employees enrolled in the health plan and their spouse and/or dependents covered by the plan. These protections extend to the individual even after the individual no longer is covered by the Plan or employed by the City.

## IV. Privacy Officer.

The City Attorney is designated as the Privacy Officer for the City and is responsible for the:

A. Development and enforcement of privacy policies and procedures

B. Receipt and resolution of privacy complaints.

C. Arrangement and development of training for affected employees specific to these procedures and to assure records of such training are maintained for at least six years after the specific training.

## V. Notice of Privacy Practice.

A Notice of Privacy Practice (NOPP) has been developed and is attached to these procedures. Any revisions to this NOPP will be documented and all NOPP's will be retained at least six years along with these procedures.

The following employees will be sent a NOPP:

A. All employees enrolled in the Plan as of April 14, 2004,

B. All employee's enrolling in the plan after April 14, 2004,

## VI. General Policy Regarding Use and Disclosure of Protected Health Information (PHI)

Unless otherwise permitted by law or authorized by the individual who is the subject of the record to be released, employees are prohibited from disclosing to unauthorized personnel or any other entity the fact of an enrollee's participation in the

flexible spending account plan or the balance of any flexible spending account funds, or any other information gained through the Plan or Plan enrollment.

In addition to applicable privacy laws, the following general principles govern all situations in which the plan is called upon to disclose or exchange PHI:

A. The plan will not disclose any PHI except as permitted by HIPAA.

B. The plan will only disclose medical or health information in de-identified form unless the disclosure:

1. Is to the person who is the subject of the information, or

2. Is subject to a Valid Written Authorization, or

3. Is required by law enforcement, applicable law or a court with jurisdiction, or

4. Is required by Public Policy, i.e. pursuant to laws regarding child abuse reporting, homeland security, health care oversight. (Only relevant information must disclosed to the appropriate governmental authorities.) or

5. Is required by the TPA, i.e. all relevant identifying information as outlined in the business associate agreement, must be disclosed to TPA for the administration of the plan, as long as TPA complies with the business associate agreement and acts as the TPA.

C. In all cases in which medical or health information cannot be provided in de-identified form, the plan will only disclose the Minimum Necessary PHI for the stated purpose and only to an individual with a legitimate need to know for healthcare operations purposes.

**VII. General Procedures.**

A. **Educational Material and Enrollment Form**. Either directly or through a subcontracted recruiter, the educational material regarding the flexible spending account will be delivered directly to potential enrollees. If the potential enrollee chooses to enroll in the plan, the enrollment form will be delivered by the enrollee directly to the TPA. (The subcontracted recruiter does not receive this form or a copy of this form or notice regarding who has enrolled in the plan.)

B. **Authorization Form for Deduction of Funds**. In order to direct the City to deduct a monthly amount from the employee's salary, a Deduction Authorization must be signed by the employee and retained in the City's Finance Office. (This Deduction Authorization should not be confused with an Authorization for Disclosure.)

C. **TPA delivers a report monthly to the Accountant.** Each month the City Accountant receives a report from the TPA which reports for accounting purposes the enrollees, the social security number, the type of enrollment, the amounts of annual contribution, and the balance of the account.

D. **Reimbursement Forms.** Submission of any reimbursement request is through use of a form available to all enrollees and is submitted directly by the enrollee to the TPA without a copy to the City.

## VIII. Minimum Necessary.

The following City employees will have access to PHI for the following purposes:

**City Manager**: As Plan Administrator, the City Manager will assure administrative compliance with the flexible spending account requirements around eligibility, plan documents, etc.

**City Attorney**: As the Privacy Officer, the City Attorney will only have access to PHI dealing with any complaint being brought to the City by an enrollee.

**Financial Director**: The Financial Director of the City will have access to the records and documents to supervise the payment process.

**Accountant**: The Accountant receives financial information from TPA, determines amounts to be deducted from enrollee's paychecks and total amount to be disbursed to TPA.

## IX. Procedure for Disclosing PHI on the Telephone.

From time to time plan details will need to be discussed with either enrollees of the plan or with TPA staff. It is important that these phone calls be handled in a professional manner to minimize the risk that PHI might be either discussed with the wrong person or might be left exposed to other employees.

A. Telephone calls from persons requesting information regarding any details around a specific enrollee's payments will be verified as either being 1) directly from the enrollee or someone the enrollee has Authorized by a signed Authorization form to receive the information, or 2) from an employee of the TPA.

B. Unless the person receiving the call is familiar with the caller and can readily identify the voice, verification of the identity of a caller must be determined.

This may be accomplished by calling the person back or by some other reliable method.

## X. Procedure for Sending PHI Out of the Office via FAX or Email.

Correspondence with the TPA or plan enrollees by FAX or email will be handled according to the following procedures:

A. FAX. City employees sending reporting or correspondence by FAX that contains PHI will call the person to receive the information prior to the transmission to allow the person to pick up the information immediately. City Employees will request any business associates to do the same prior to sending PHI by FAX.

B. A FAX cover sheet will be used in all transmissions with the following statement:

"This FAX may contain confidential information that is intended for the recipients named above. It is strictly prohibited for anyone other than the intended recipients or their designees to read, disclose, or distribute this information. If you have received this FAX in error, please call the name and phone number on this cover sheet to report the error."

B. Email transmissions with PHI will be determined to be reasonably secure prior to transmission. In addition transmissions will include the following message:

"This transmission may contain confidential information that is only intended for the recipients named in the message. It is strictly prohibited for anyone other than the intended recipients or their designees to read, disclose, or distribute this information. If you have received this transmission in error, please reply to the person sending to report the error."

## XI. Mitigation.

If an employee becomes aware of a disclosure of PHI that is not permitted by these procedures or State or Federal law, the disclosure will be reported to the Privacy Official. The Privacy Officer will determine:

**A.** Whether a action must be taken to mitigate the consequence of the disclosure, and
**B.** What action must be taken,
**C.** Whether the individual who is the subject of the information disclosed should be notified,
**D.** Direct that a record of the disclosure be kept with the individual's file.

## XII. Individual's Right to Request Access, Amendment, and Accounting of Personal Records.

**A. Requests Handled by TPA.** The TPA contracting with the City to administer the plan will process any requests for access, amendment, or accounting. Any covered individual requesting information on these requests will be referred to the TPA. If an individual indicates a lack of action or dissatisfaction with the action taken by the TPA, they will be referred to the Privacy Officer or Plan Administrator to file a Complaint.

**B. Requests Defined.** A plan enrollee or an individual covered by the plan may request:

1. **Access to the Record.** Individuals who are the subject of a record have a right to request "access" or copies of the record. Unless the TPA can show a valid reason for denial of the request, the copies must be forwarded to the enrollee within a specified amount of time. The enrollee may be charged for the copies.

2. **Amendment to the Record.** Individuals who are the subject of a record have a right to request the record be "amended" or corrected. Unless the TPA can show a valid reason for the denial, the record must be corrected within a specified amount of time and the corrections must be sent to any provider, etc., who has been sent the erroneous record.

   Note: If the amendment is not accepted by the TPA, the individual must be offered the option of having the request for amendment included in the record.

3. **An Accounting of the Record Disclosures.** Individuals who are the subject of a record have a right to an accounting of all disclosures made without their authorization, except disclosures for the purpose of treatment, payment, or operations.

## XIII. Individual's Right to Request Restrictions or Alternative Communication.

Enrollees can request City employees to either add additional restrictions in the disclosure of any PHI which they are the subject of or ask for an alternative method or place o f communication.

**A. Additional Restriction.** Any requested additional restriction will be submitted in writing and reviewed by the Privacy Official to determine whether the restriction is reasonable or it conflicts with public policy.

**B. Alternative Communication.** An enrollee can request that City employees contact him or her regarding the plan only at a certain time or location. The Accountant may determine if the request is reasonable. If the alternative communication is denied, the employee may complain to the Privacy Officer.

## XIV. Procedure for Maintenance and Destruction of PHI.

**A. Storage of Plan Documents and Records.** City employees with the responsibility to maintain and store PHI relating to the plan will maintain all hard copy records in locked cabinets when not in use.

**B. Work Stations.** Employee work stations will be maintained as follows:

1. Work stations will be free of visible PHI, except when in use.
2. Only limited paper copies of information should be retained at the work station, and only if there is a legitimate reason for the information to be retained in hard copy.
3. PHI at the work stations will be in a secured location, a locked cabinet, not accessible to other employees.
4. Employees will take steps to secure computer terminals, including locking the screen or turning the computer off for breaks, and during non working hours to protect access to PHI databases.
5. Employees are to turn computers off at the end of the day and position computer terminals in such a way as to prevent viewing from by an unauthorized person.

**C. Retention of Plan Records and Documents.** All plan records, documents, contracts, policies, procedures, and Notices, shall be retained by the City for six years.

**D. Disposal of Plan Records and Documents.** Hard copies determined to have been retained over six years and which are no longer required by the City as determined by the Privacy Officer, will be shredded in a manner to completely destroy the document and render it unreadable

## XV. Administrative Safeguards

The City will create and maintain electronic and procedural safeguards that comply with applicable federal and state regulations to protect enrollee information, including:

**A. Computer Use.** Employees working with PHI will use the following procedures:

**1.** All PHI stored electronically will be password protected.
2. Employees will turn off their computers when leaving at the end of the business day and will "lock the screen" when leaving on breaks or for lunch.
3. Monitors will be positioned in such a way as to as to avoid viewing by unauthorized persons.

**B. Email Use .**

1. Third Party Administrator. PHI may be transmitted to the third party administrator by email, if the email address is reliable and verified.

2. Email to an enrollee regarding information about the enrollee's status, etc., may be transmitted if the enrollee has been notified that this may not be a secure.

**C. Electronic Database Back Up.** Electronic PHI will be secured by electronic back up of the information system.

**D. Disposal of Hard Ware Containing Electronic PHI.** City employees charged with disposal of computers, servers, etc., which have stored electronic PHI during the course of their use will assure the PHI is:

1. Maintained in its original form on another computer, server, etc. prior to its destruction, and

2. Assure the destruction of the PHI is complete prior to the hard ware being transferred out of the possession of the City, or

3. Assure the contractor disposing of hard ware has signed a confidentiality agreement within a business associate agreement assuring such PHI will not be viewed, transferred, or otherwise retained and will be completely removed from the hard ware.

**XVI. Complaints.**

Enrollees of the plan may file complaints with the City Privacy Officer for resolution or may file a complaint directly with the third party administrator.

The Privacy Officer will request the third party administrator, annually, to report in a de-identified method, the number, type, and resolution of complaints received from enrollee and whether there are any unresolved complaints received from enrollees.

## XVII. Staff Training.

City employees responsible to carry out duties regarding PHI, or trained as back up to the administration of the plan, will receive training covering the requirements of HIPAA and these specific procedures. The Privacy Officer will maintain a record of all employees trained, the date, and the subject matter of the training.

## XVIII. Definitions.

**A. Business Associate Agreement:** An agreement with an individual or organization who, on behalf of the plan, performs, or assists in the performance of a function or activity involving the use or disclosure of Protected Health Information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing benefit management, practice management, and re-pricing.

**B. Covered Entity:** An entity subject to the standards, requirements, and implementation specifications of the Health Insurance Portability and Accountability Act

**C. De-identified Information:** Information required for plan administration which does not include information that would link the medical condition to a particular individual.

**D. HIPAA:** Health Insurance Portability and Accountability Act.

**E. Plan:** Any designated group health plan administered by the City.

**F. Protected Health Information (PHI):** any information created or received by the City in the performance of its obligations or the obligations of the third party administrator under the Plan Document from which the identity of an individual can reasonable be determined, including all information within the statutory meaning of Protected Health Information (45 CFR § 164.501).

**G. Third Party Administrator (TPA).** The organization contracted by the City to pay claims under the conditions as outlined in the Plan.

# NOTICE OF PRIVACY PRACTICES

**THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.**

## Protecting Your Personal Health Information

The *[insert name of employer/Trust/etc]* Personal Choice Account Plan (the "Plan") is committed to protecting the privacy of your personal health information. We are required by applicable federal and state laws to maintain the privacy of your personal health information. This notice explains our privacy practices, our legal duties, and your rights concerning your personal health information. Personal health information (referred to in this notice as "PHI") means any information regarding your health care and treatment and that is identifiable to you as your personal information, including your name, age, address, and financial information. We will follow the privacy practices that are described in this notice while it is in effect.

### Why does the Plan collect your Personal Health Information?

We collect PHI from you for a number of reasons, including to determine the appropriate benefits to offer you, to pay claims, to provide case management services, and to provide quality improvement services.

### How does the Plan collect your Personal Health Information?

We collect PHI from you, your health care providers, and our Business Associates (defined below). For example, Associated Administrators, Inc. is a Business Associate of the Plan and it receives PHI from you on your health care enrollment application and from your health care providers through various activities, including the submission of a claim for reimbursement of covered benefits.

### How does the Plan protect your Personal Health Information?

We protect your PHI by:

- Treating all of your PHI that is collected as confidential;
- Including confidentiality policies and practices in our group health plan administrative procedure manual;
- Restricting access to your PHI to those employees who need to see your PHI in order to provide services to you, such as paying a claim for a covered benefit;
- Disclosing the minimum amount of your PHI necessary for a service company to perform its function on our behalf, and requiring the company to agree to protect and maintain the confidentiality of your PHI; and
- Maintaining physical, electronic, and procedural safeguards that comply with federal and state regulations to guard your PHI.

**How do we use and disclose your Personal Health Information?**

We will not disclose your PHI unless we are allowed or required by law to make the disclosure, or if you (or your authorized representative) give us permission. Uses and disclosures, other than those listed below, require your authorization. If there are other legal requirements under applicable state laws that further restrict our use or disclosure of your PHI, we will comply with those legal requirements as well. Following are the types of disclosure we may make as allowed or required by law:

- **Treatment**: We may use and disclose your PHI for the treatment activities of a health care provider. Treatment activities include disclosing your PHI to a provider in order for that provider to treat you.

- **Payment:** We may use and disclose your PHI for our payment activities, including the payment of claims from physicians, hospitals and other providers for services delivered to you.

- **Health Care Operations:** We may use and disclose your PHI for our internal operations, including our customer service activities.

- **Business Associates:** We may share your PHI with third party "business associates" who perform certain activities for us, such as claims processing and other administrative activities. We require these business associates to afford your PHI the same protections afforded by us and referenced in this notice.

- **Plan Sponsors:** As you are enrolled in a self-insured group health plan, we may disclose your PHI to the Plan's sponsor to permit it to perform administrative activities.

- **Underwriting:** We may receive, use and disclose your PHI for underwriting, premium rating or other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits.

- **To You or Your Authorized Representative:** Upon your request, we will disclose your PHI to you or your authorized representative. If you authorize us to do so, we may use your PHI or disclose it to the person or entity you name on your signed authorization. Once you provide us with an authorization, you may revoke it in writing at any time. Your revocation will not affect any use or disclosures permitted by your authorization while it was in effect. In certain situations when disclosure of your information could be harmful to you or another person, we may limit the information available to you, or use an alternative means of meeting your request.

- **To Your Parents, if You are a Minor:** Some state laws concerning minors permit or require disclosure of protected health information to parents, guardians, and persons acting in a similar legal status. We will act consistently with the laws of the state where the treatment is provided, and will make disclosures consistent with such laws.

- **Your Family and Friends:** If you are unable to consent to the disclosure of your PHI, such as in a medical emergency, we may disclose your PHI to a family member or friend to the extent necessary to help with your health care or with payment for your health-care. We will only do so if we determine that the disclosure is in your best interest.

- **Marketing:** We may use your PHI to contact you with information about health-related products and services or about treatment alternatives that may be of interest to you.

- **Research; Death; Organ Donation:** We may use or disclose your PHI for research purposes in limited circumstances. We may disclose the PHI of a deceased person to a coroner, medical examiner, funeral director, or organ procurement organization for certain purposes.

- **Public Health and Safety:** We may disclose your PHI if we believe disclosure is necessary to avert a serious and imminent threat to your health or safety or the health or safety of others. We may disclose your PHI to appropriate authorities if we reasonably believe that you are a possible victim of abuse, neglect, domestic violence or other crimes.

- **Required by Law:** We must disclose your PHI when we are required to do so by law.

- **Process and Proceedings:** We may disclose your PHI in response to a court or administrative order, subpoena, discovery request, or other lawful process.

- **Law Enforcement:** We may disclose limited information to law enforcement officials.

- **Military and National Security:** We may disclose to military authorities the PHI of Armed Forces personnel under certain circumstances. We may disclose to authorized federal officials PHI required for lawful intelligence, counterintelligence, and other national security activities.

**What rights do you have as an individual regarding our use and disclosure of your Personal Health Information?**

You have the right to request all of the following:

- **Access to Your Personal Information:** You have the right to review and receive a copy of your PHI. We may charge you a nominal fee for providing you with copies of your PHI. This right does not include the right to obtain copies of the following records: psychotherapy notes; information compiled in reasonable anticipation of, or use in, a civil, criminal, or administrative action or proceeding; and protected health information that is subject to other state or federal laws that prohibit us to release such information. We may also limit your access to your PHI if we determine that providing the information could possibly harm you or another person. If we limit access based upon the belief that it could harm you or another person, you have the right to request a review of that decision.

- **Amendment:** You have the right to request that we amend your PHI. Your request must be in writing, and it must identify the information that you think is incorrect and explain why the information should be amended. We may decline your request for certain reasons, including if you ask us to change information that we did not create. If we decline your request to amend your records, we will provide you a written explanation. You may respond with a statement of disagreement to be appended to the information you wanted amended. If we accept your request to amend the information, we will make reasonable efforts to inform others, including people you have authorized, of the amendment and to include the changes in any future disclosures of that information.

- **Accounting of Disclosures:** You have the right to receive a report of instances in which we or our business associates disclosed your PHI for purposes other than for treatment, payment, health care operations, and certain other activities. You are entitled to such an accounting for the 6 years prior to your request, though not for disclosure made prior to April 14, 2004. We will provide you with the date on which we made a disclosure, the name of the person or entity to whom we disclosed your PHI, a description of the PHI we disclosed, the reason for the disclosure, and other applicable information. If you request this list more than once in a 12-month period, we may charge you a reasonable fee for creating and sending these additional reports.

- **Restriction Requests:** You have the right to request that we place additional restrictions on our use or disclosure of your PHI for treatment, payment, health care operations or to persons you identify. We are not required to agree to these additional restrictions, but if we do, we will abide by our agreement (except in an emergency or if disclosure is required by law).

- **Confidential Communication:** You have the right to request that we communicate with you in confidence about your PHI by alternative means or to an alternative location. If you advise us that disclosure of all or any part of your PHI could endanger you, we will comply with any reasonable request provided you specify an alternative means of communication.

- **Electronic Notice:** If you receive this notice on our Web site or by electronic mail (email), you are also entitled to receive this notice in written form. Please contact us using the information listed at the end of this notice to obtain this notice in written form.

**Can you "opt out" of certain disclosures?**

You may have received notices from other organizations that allow you to "opt out" of certain disclosures. The most common type of disclosure that applies to "opt outs" is the disclosure of PHI to a non-affiliated company so that company can market its products or services to you. As a self-insured health plan, we must follow many federal and state laws that prohibit us from making these types of disclosures. Because we do not make disclosures that apply to "opt outs," it is not necessary for you to complete an "opt out" form or take any action to restrict such disclosures.

**When is this notice effective?**

This notice takes effect April 1, 2004, and will remain in effect until we revise it.

**What if the Plan changes it notice of privacy practices?**

We reserve the right to change our privacy practices and the terms of this notice at any time, provided such changes are permitted by applicable law. A revised notice will be distributed within 60 days of the effective date of any material change to the uses or disclosures stated or individual rights referenced in this notice. For your convenience, a copy of our current notice of privacy practices is always available on our Web site at *[insert web site address]* and you may request a copy at any time by contacting us at the number below.

**How can you reach us?**

If you want additional information regarding our Privacy Practices, or if you believe we have violated any of your rights listed in this notice, please contact our Privacy Officer at *[insert telephone number and/or address information for Privacy Officer]*. If you have a complaint, you may also submit a written complaint to the U.S. Department of Health and Human Services. We will provide you with the address to file your complaint with the U.S. Department of Health and Human Services upon request. Your privacy is one of our greatest concerns and we will not penalize you or retaliate against you in any way if you choose to file a complaint with us or with the U.S. Department of Health and Human Services.

**RESOLUTION No. 04-020**

**A RESOLUTION ESTABLISHING A CENTRAL CITY SAFETY COMMITTEE AND SATELLITE SAFETY COMMITTEES**

**WHEREAS**, the Oregon Occupational Safety and Health Administration (OR-OSHA) has mandated the establishment of safety committees by OAR 437-001-0765; and

**WHEREAS**, the City of The Dalles realizes that it has the responsibility to provide a safe work environment for its employees and that each employee must pursue the highest standards in his or her assigned activities, and that all municipal employees are expected to recognize that the well-being of persons involved and the protection of the City's physical resources are as important as the activity and work being performed.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF THE DALLES AS FOLLOWS:**

**Section 1.** The City will take an active and comprehensive approach to an overall safety organizational system.

**Section 2.** Safety shall be an integral part of all operations, including planning, development, production, administration (City Hall), public safety, utilities, transportation, library, airport, etc. Accidents and time loss have no place in the City.

**Section 3.** The City will establish individual satellite safety committees at each of the five distinct department/division locations, as well as, a central City-Wide Safety Committee to coordinate safety activities for the City as a whole. This type of involvement of personnel at all levels of the organization is an important part of an effective safety program, because it increases safety awareness and makes it practical to accomplish more work within a given period of time.

**Section 4.** A City Safety Coordinator will be assigned the authority and responsibility to set realistic objectives for managing the City safety program through the City Manager's Office.

The Safety Coordinator is responsible for providing advice and assistance to the City's safety organizational system in complying with mandated programs of the State of Oregon.

**Section 5.** Each municipal department director will be responsible for the safety and well-being of the workers in his or her department, as well as, the repair and maintenance of facilities and equipment in his or her area of responsibility.

**Section 6.** Each municipal employee will be responsible for his or her own personal safety and for the safe completion of assigned tasks.

**Section 7.** The City of The Dalles is committed to making its Safety Program a success and expects all municipal employees to assist in this effort by contributing expertise and by following all established rules and procedures.

**Section 8**. This Resolution shall be effective July 26, 2004.

**PASSED AND ADOPTED THIS 26th DAY OF JULY, 2004.**

| | |
|---|---|
| Voting Yes, Councilors: | Tenney, Davis, Davison, Zukin |
| Voting No, Councilors: | None |
| Absent, Councilors: | Broehl |
| Abstaining, Councilors: | None |

**AND APPROVED BY THE MAYOR THIS 26th DAY OF JULY, 2004**

SIGNED:

Robb E. Van Cleave, Mayor

ATTEST:

Julie Krueger, CMC, City Clerk

# CITY-WIDE SAFETY COMMITTEE POLICY

To meet all requirements of OR-OSHA Rule 437-001-0765, the following policy has been developed for the City and its employees.

Because of the diversity of the City departments and the need to properly administer their safety policies and procedures, it is recommended that the City of The Dalles authorize the formation of a City-Wide Safety Committee, as well as separate safety committees for the defined areas listed below:

City Police Department
Administration (City Hall)
Public Works Department - Shop
Water Treatment Plant
Library

## CITY-WIDE SAFETY COMMITTEE FORMATION AND MEMBERSHIP

1. The City-Wide Safety Committee shall be made up of representatives from each of the defined areas with the City Safety Coordinator as its chairperson.

2. The City-Wide Safety Committee members shall consist of representatives from the satellite committees.

3. Membership shall be staggered appropriately to provide continuity of the committee's goals.

4. The Public Works Regulatory Compliance Officer shall be a member of this committee.

5. The committee shall be directly responsible to the City Manager.

## CITY-WIDE SAFETY COMMITTEE DUTIES

1. Conduct committee meetings from written agenda prescribing order of business during meeting.

2. Hold regular meetings once per month.

3. Assist with safety inspections as requested by the satellite committees.

4. Minutes recorded, posted and issued to each committee member. Maintained for three years.

## CITY-WIDE SAFETY COMMITTEE FUNCTIONS

1. Evaluate the City's safety and health programs, policies and training procedures.

2. Make written recommendations regarding the safety program for the City as a complete entity and specific policies/procedures for each satellite committee.

3. Define the accountability system and procedure for investigation of safety-related accidents and illness.

4. Establish procedures for review of corrective action taken on the committee's recommendations.

5. Determine reasons why corrective action has not been taken.

6. Set time limits for response to recommendations.

7. Perform Hazard Survey inspections and investigation of accidents if deemed necessary by review of satellite data.

8. Annually evaluate employer's and employees' overall commitment to workplace safety and submit results in a formal report to the City Manager.

9. All recommendations shall be brought to the City Manager or his/her designee for approval and/or direction before implementation.

**RESOLUTION NO. 09-026**

**A RESOLUTION CONCERNING THE PROVISION OF HEALTH CARE INSURANCE COVERAGE FOR RETIRED EMPLOYEES, AND THEIR SPOUSES AND UNMARRIED CHILDREN UNDER THE AGE OF EIGHTEEN**

**WHEREAS**, pursuant to ORS 243.303(2), a governing body of any local government that contracts for or otherwise makes available health care insurance coverage for officers and employees of the local government, shall, insofar as and to the extent possible, make that coverage available for any retired employees of the local government who elects within 60 days after the effective date of retirement to participate in that coverage, and, at the option of the retired employee, for the spouse of the retired employee and any unmarried children under 18 years of age; and

**WHEREAS**, the City's current health care insurance program allows for employees to provide coverage for certain unmarried children over the age of 18 (for example, when the child is enrolled in regular full-time attendance at an accredited or similarly recognized secondary school, trade school, college or university); and

**WHEREAS**, the City has been advised that under the health care coverage plan available for City employees, such coverage would be available for retired employees and their spouses and unmarried children under the age of 18, and certain unmarried children over the age of 18, if they chose to make the election to participate in that coverage under the provisions of ORS 243.303; and

**WHEREAS**, the City Council desires to adopt a Resolution which establishes the terms and conditions under which the health care insurance will be made available for retired employees, their spouses, and unmarried children under the age of 18, in accordance with ORS 243.303, and with the provisions of the City's current policy providing health care coverage;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF THE DALLES RESOLVES AS FOLLOWS**:

Section 1. Definitions. As used in this Resolution, the following definitions shall apply:

A. "Health care" means medical, surgical, hospital or any other remedial care recognized by state law and related services and supplies and includes comparable benefits for persons who rely upon spiritual means of healing. For purposes of this Resolution, health care coverage does not include coverage provided by the City under a dental or vision insurance plan.

B. "Retired employee" means a former officer or employee of the City who is retired for service or disability, and who received or is receiving retirement benefits under any retirement system or plan applicable to officers and employees of the City. Normal retirement age for public safety and non-public safety employees is 60 with no minimum required length of service. To be eligible for early retirement, an employee must be at least 50 years of age and have provided 10 years of service as an eligible employee. The retiree must be covered as an active employee under a health care coverage plan provided by the City at the time of retirement to qualify for continued coverage.

Section 2. Election for Coverage. Effective July 27, 2009, a retired employee shall have sixty (60) days from the date of his or her retirement in which to elect to continue his or her participation in the City's health insurance program. The retired employee also can elect to enroll his or her spouse and unmarried children under the age of eighteen (18) and certain unmarried children over the age of eighteen (18) as provided for under the City's current health care policy, in the program allowing for continued health care coverage, provided the spouse or unmarried child or children were covered under the City's health care insurance plan while the retired employee was employed by the City.

Section 3. Effective Term of Coverage. The health care coverage provided under this Resolution shall remain in effect until one of the more of the following events occurs:

A. For the retired employee, until the retired employee becomes eligible for federal Medicare coverage.

B. For the spouse of the retired employee, until the spouse becomes eligible for federal Medicare coverage.

C. For an unmarried child of the retired employee, when the child arrives at the age when the City's health care insurance plan provides that coverage for the child shall be terminated .

D. For the retired employee, a spouse, or unmarried child under 18 years of age, when the program offering health care coverage for retired employees is terminated by the City or by the City's health care insurance provider, or when the retired employee fails to pay the required premium cost for such health care coverage.

Section 4. Costs of Coverage. The City shall not pay any of the cost of making the health care insurance coverage available for retired employees under this Resolution.

Section 5. Effective Date. This Resolution shall be considered effective as of July 27, 2009.

**PASSED AN D ADOPTED THIS 27TH DAY OF JULY, 2009.**

Voting Yes, Councilors: Spatz, Dick, Ahier, Wilcox, Wood
Voting No, Councilors: None
Absent, Councilors: None
Abstaining, Councilors: None

**AND APPROVED BY THE MAYOR THIS 27TH DAY OF JULY, 2009.**

James B. Wilcox - Mayor Pro Tem

~~Nikki L. Lesich, Mayor~~
Jim Wilcox, Mayor pro-tem

Attest:

Julie Krueger

Julie Krueger, MMC, City Clerk

**RESOLUTION NO. 09-036**

**A RESOLUTION ADOPTING A POLICY FOR USE OF ELECTRONIC MESSAGES AND RETENTION OF SUCH MESSAGES FOR THE CITY COUNCIL**

**WHEREAS**, with the increasing use of electronic messages, commonly referred to as "email", as a communication tool, public bodies have been encouraged to develop a policy for use of email messages by members of the governing body, and for the retention of email messages generated by members of the governing body; and

**WHEREAS**, City staff has prepared such a policy for the City Council's review and consideration; and

**WHEREAS**, the City Council has reviewed the proposed policy and believes that adoption of such a policy is in the best interests of the citizens of The Dalles;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF THE DALLES RESOLVES AS FOLLOWS**:

Section 1. Policy Adopted. The policy establishing procedures for the use of electronic messages (e-mail) by City Council members, and for the retention of email messages generated by Council members, as set forth in Exhibit "A", is hereby approved and adopted.

Section 2. Effective Date. This Resolution shall be effective as of December 14, 2009.

**PASSED AND ADOPTED THIS 14TH DAY OF DECEMBER, 2009**

Voting Yes, Councilors: Wilcox, Wood, Ahier, Dick, Spatz
Voting No, Councilors: None
Absent, Councilors: None
Abstaining, Councilors: None

**AND APPROVED BY THE MAYOR THIS 14TH DAY OF DECEMBER, 2009**

Attest:

Nikki L. Lesich, Mayor

Julie Krueger, MMC, City Clerk



(0112409 09-036.res)

INDEXED 12-18-09

# CITY COUNCIL E-MAIL POLICY

## 1. GENERAL

Electronic mail (e-mail) messages are within the scope of the Public Records Law and Records Retention Law. Because of this, the City Council has developed the following policy for use of electronic messages (e-mail) by City Council members and the retention of e-mail messages generated by City Council members.

## 2. STATUS OF E-MAIL MESSAGES

A. E-mail messages generated or retained in a laptop computer provided by the City for a Council member's use, have the potential to be classified as a public record under Oregon law, potentially subject to disclosure under the provisions of the public records law. E-mail messages which relate to City business, which are generated or transmitted within the course of a Council member's regular duties, which messages are retained upon a personal computer belonging to the Council member, are likely to be classified as a public record under Oregon public records law, and potentially be subject to disclosure.

B. On behalf of a City Council member, the City retains the discretion to assert any applicable privileges and objections if a public records request or discovery request is made for any e-mail messages which are retained upon a laptop computer furnished by the City for the Council member's use, or upon a personal computer belonging to the City Council member.

## 3. USE OF E-MAIL

A. City Business. E-mail is to be used for matters that pertain directly to the business of the City. E-mail communications must be professional in content and appropriate to a governmental agency.

B. General Guidelines. Electronic messages are legally discoverable and permissible as evidence in a court of law. Electronic messages can never be unconditionally and unequivocally deleted. The remote possibility of discovery always exists. Council members should use caution and judgment in determining whether a message should be delivered electronically instead of in person. Councilors should be suspicious of messages sent by persons not known by the Council member. Council members should not open an attachment in an electronic message unless the attachment was expected to be sent. Council members shall delete and not forward any "chain letters". Council members should not read an email message containing an attachment from an unknown source. Such messages should be

immediately deleted. Email messages which have been identified as "spam" messages should be immediately deleted.

C. Public Meetings Issues. Under Oregon law, any exchange of emails between the Council members which effectively would result in a decision concerning an issue, or where it appears that the Council members are deliberating on an issue, or appear to be gathering information to engage in future deliberation on an issue, could be construed to constitute a public meeting. The use of email messages by Council members to engage in active deliberations or discussion, including the expression of opinions or the promotion and discussion of ideas related to a particular issue, is strongly discouraged. The use of email messages for the passive receipt of information among Council members, such as the distribution of an agenda staff report, is a permissible use of e-mail among Council members.

D. Use for Community Service or Charitable or Non-profit Purposes. Council members may use e-mail for community service, non-profit or charitable activity not sponsored by the City.

E. Prohibited Use. Use of City e-mail resources for non-City business activities, outside business activities or activities for personal gain is prohibited. Council members are strongly cautioned that such use likely constitutes a violation of the Oregon Ethics Code and may result in civil liability for the Council member. The City prohibits discrimination based on age, race, gender, sexual orientation or preference, physical or mental disability, sources of income, or religious or political beliefs. Use of the City's electronic messaging resources to harass or discriminate for any or all of the aforementioned reasons is prohibited.

F. Identification of E-mail. All e-mail messages shall be clearly identified as to the author of the message. Anonymous messages are prohibited.

4. RETENTION OF E-MAIL

A. Because e-mail messages sent or received by Council members in connection with City business are public records, they are subject to the same retention requirements as hard copy documents. In the e-mail context, "retention" means "do not delete." E-mail messages must be retained even if they are confidential, privileged, or otherwise exempt from disclosure under Oregon public records law. The retention and disposition of public records is authorized by retention schedules issued by the Secretary of State Archives Division. Records may be retained in hard copy or electronic format. If a hard copy of the e-mail message is printed, then the electronic version may be deleted. The hard copy must then be kept as long as required by the applicable retention schedule. An e-mail message

retained in electronic format shall be retained for the applicable period set forth in the retention schedule adopted by the City.

B. Council members have a responsibility to be familiar with the retention schedules applicable to City records, and to ensure that the e-mail messages they send or receive are retained in accordance with the appropriate records retention schedules. Council members shall not delete any e-mail message unless its retention period has expired or it has been printed out as a hard copy.

C. Personal email messages are defined as a personal exchange not covered by the State of Oregon records retention schedule, and they should be deleted after they have been read. Examples of personal e-mail messages include:

- Lunch plans
- Jokes
- Chain letters
- Messages to family and friends
- Attached files such as photographs

D. Temporary or transitory e-mail messages are any exchange of communication that is fulfilled almost immediately upon request. These messages should be kept until the task is completed or the value of the message has passed. Examples of these types of messages include:

- Charity campaigns
- Listserv messages
- City-wide communications
- Meeting reminders
- Deadline reminders
- Routing slips
- Fax confirmation
- Reading materials
- Reference materials
- FYI (for your information) e-mail information that does not elicit a response

E. E-mail messages soliciting a response are any exchange of communication that requires the recipient to respond or perform an action on the message received. These messages may include attachments to which the recipient will also need to respond. The retention of these e-mails and any accompanying attachments will depend upon the content of the message. Examples of these types of messages include:

- Contract negotiations
- Administration of fiscal communications
- Policy drafts
- Reports
- Requests for information

F. E-mail messages which document communications created or received by the City, and which directly relate to a City program or City administration, and which are not otherwise specified in the City Records Retention Schedule, or in any applicable state rule or statute, will be classified as correspondence. Such e-mail could include messages which communicate formal approvals, direction for action, and information about contracts, purchases, grants, personnel and particular projects or programs. A copy of the e-mail message should be filed with the associated program or administrative records, and retained in accordance with the retention schedule specified for the program or administrative records.

G. Questions about retention of e-mail messages should be directed to either the City Clerk or the City Attorney.

Signed and dated: December 14, 2009

Mayor Nikki L. Lesich

Councilor at Large Carolyn Wood

Councilor Positions #1 Jim Wilcox

Councilor Position #2 Dan Spatz

Councilor Position #3 Bill Dick

Councilor Position #4 Brian Ahier

**RESOLUTION NO. 10-023**

**A RESOLUTION ADOPTING THE AMENDED IDENTITY THEFT PROGRAM AND PROCEDURES TO COMPLY WITH FEDERAL REGULATIONS AND LAWS RELATING TO UTILITY BILLING; AND REPEALING RESOLUTION NO. 08-034.**

**WHEREAS**, the Federal Trade Commission promulgated Identity Theft rules requiring the adoption of programs relating to a creditor's detection, prevention, and mitigation of Identity Theft; and

**WHEREAS**, the Federal Trade Commission's regulations apply to governmental utilities which grant "credit" to utility customers through billing for utility services in arrears;

**WHEREAS**, the Fair and Accurate Credit Transactions Act of 2003 (FACTA), 15 USC Section 1681, requires such utilities to adopt "Red Flag" policies to detect, prevent and mitigate Identity Theft and to protect customers' personally identifiable information; and

**WHEREAS**, the City of The Dalles provides utility services and bills for such services in arrears, and is therefore subject to the Federal Trade Commission's Red Flag rules and FACTA; and

**WHEREAS**, the City Council adopted Resolution No. 08-034 on October 27, 2008, establishing an Identity Theft Program and procedures to comply with Federal regulations and laws relating to utility billing; and

**WHEREAS**, the Program so adopted contains in section VI. PROGRAM UPDATES, a directive to review and update the Program at least once a year to reflect changes in risks to customers and the soundness of the City from Identity Theft; and

**WHEREAS**, the purpose of this Resolution is to update the Program as required to more accurately provide for actual practices and processes in the utility billing account set up function;

**WHEREAS**, the City Council has determined that the Program is appropriate for the City and has approved the Program as revised;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:**

Section 1. Amendments to the Identity Theft Program. The City Council hereby amends the previously adopted Program IV. DETECTING RED FLAGS, A. New Accounts, to read as follows:

**A. New Accounts**

In order to detect any of the Red Flags identified above associated with the opening of a new

account, City personnel will take the following steps to obtain and verify the identity of the person opening the account:

**Detect**

Require certain identifying information, including the following:

1. Full name;
2. Date of birth (for individual);
3. Previous and current residential or business address;
4. Principal place of business (for an entity); and
5. Proof of identification. Identification can be established by providing the following documents:

    a. For a U.S. Citizen
        (1) Taxpayer Identification number (for business) or Social Security Number; and/or
        (2) Photo-bearing documents (original required) such as:
            (a) State-issued driver's license; or
            (b) State-issued identification card; or
            (c) Passport.

    b. For a Non-U.S. Citizen
        (1) Social Security Number; and/or
        (2) Photo-bearing documents (original required) such as:
            (a) State-issued driver's license; or
            (b) State-issued identification card; or
            (c) Passport; or
            (d) Documents containing an alien identification number and country of issuance; or
            (e) Any other photo-bearing government issued document evidencing nationality or residence.

***In the event an applicant is not able to present him/herself in the City offices along with the required photo identification so that identity can be visually verified by City Staff prior to the connection of services to the new account, the applicant must choose one of the following alternatives:***

1. ***The applicant can make an arrangement with City Staff to present him/herself and the required identification in the City Hall offices, within five (5) business days following the connection of the services to comply with the City's policy on new accounts. If the applicant does not comply with this arrangement, services will be disconnected at the service location and will not be reconnected until compliance is established and any fess and service charges are paid in full.***

1. ***The applicant can make an arrangement with City Staff to present themselves and the required identification in the City Hall offices, within five (5) business days following the connection of the services to comply with the City's policy on new accounts. If the applicant does not comply with this arrangement, services will be disconnected at the service location and will not be reconnected until compliance is established and any fess and service charges are paid in full.***

2. ***The applicant must submit a completed application form with the signature being legally notarized. The application form, notary documentation and a copy of the identification must then be received in the City offices via mail or fax prior to opening the account and providing the requested services.***

Review documentation showing the existence of a business entity. A copy of an application for commercial or industrial service shall be forwarded to the City Attorney's office for examination of the Corporate Division website records to confirm if the business entity is duly registered with the State of Oregon; and/or

Independently contact the customer.

Section 2. Revised Program Adopted. The City Council hereby approves and adopts the revised Identity Theft Program attached hereto as Exhibit A, which is incorporated herein by this reference.

Section 3. Repeal of Resolution No. 08-034. Resolution No. 08-034 is hereby repealed.

Section 4. Effective Date. This Resolution shall be effective upon adoption by the City Council and approval by the Mayor.

**PASSED AND ADOPTED THIS 25th DAY OF OCTOBER, 2010.**

| | |
|---|---|
| Voting Yes, Councilors: | Spatz, Ahier, Dick, McGlothlin, Wood |
| Voting No, Councilors: | None |
| Absent, Councilors: | None |
| Abstaining, Councilors: | None |

**AND APPROVED BY THE MAYOR THIS 25th DAY OF OCTOBER, 2010.**

SIGNED:

James L. Wilcox, Mayor

ATTEST:

Julie Krueger, MMC, City Clerk

# City of The Dalles

# Identity Theft Prevention Program

## Effective November 1, 2008
## *Revised October 25, 2010*

### I. PROGRAM ADOPTION

The City of The Dalles ("City") developed this Identity Theft Prevention Program ("Program") pursuant to the Federal Trade Commission's Red Flags Rule ("Rule") ,(16 C. F. R. §681.2), which implements Section 114 of the Fair and Accurate Credit Transactions (FACT) Act of 2003 and ORS 646A.622, the Oregon Consumer Identity Theft Protection Act, (OCITPA). This Program was developed with oversight by the City Attorney ("Program Administrator") and approved by the City of The Dalles City Council. After consideration of the size and complexity of the City's operations and account systems, and the nature and scope of the City's activities, the City of The Dalles City Council has determined that this Program was appropriate for the City of The Dalles, and therefore approved this Program on October 27, 2008.

### II. PROGRAM PURPOSE AND DEFINITIONS

#### A. Fulfilling requirements of the Red Flags Rule

Under the Red Flags Rule, every financial institution and creditor is required to establish an "Identity Theft Prevention Program" tailored to its size, complexity and the nature of its operation. Each program must contain reasonable policies and procedures to:

1. Identify relevant Red Flags for new and existing covered accounts and incorporate those Red Flags into the Program;
2. Detect Red Flags that have been incorporated into the Program;
3. Respond appropriately to any Red Flags that are detected to prevent and mitigate Identity Theft; and
4. Ensure the Program is updated periodically, to reflect changes in risks to customers or to the safety and soundness of the creditor from Identity Theft.

#### B. Red Flags Rule definitions used in this Program

The Red Flags Rule defines "Identity Theft" as "fraud committed using the identifying information of another person" and a "Red Flag" as "a pattern, practice, or specific activity that indicates the possible existence of Identity Theft."

According to the Rule, a municipal utility is a creditor subject to the Rule requirements. The Rule defines creditors "to include finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies. Where non-profit and government entities defer payment for goods or services, they, too, are to be considered creditors."

All the City's accounts that are individual utility service accounts held by customers of the City whether residential, commercial or industrial are covered by the Rule. Under the Rule, a "covered account" is:

1. Any account the City offers or maintains primarily for personal, family or household purposes, that involves multiple payments or transactions; and
2. Any other account the City offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the City from Identity Theft.

"Identifying information" is defined under the Rule as "any name or number that may be used, alone or in conjunction with any other information, to identify a specific person," including: name, address, telephone number, social security number, date of birth, government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, unique electronic identification number, computer's Internet Protocol address, or routing code.

## III. IDENTIFICATION OF RED FLAGS

In order to identify relevant Red Flags, the City considers the types of accounts that it offers and maintains, the methods it provides to open its accounts, the methods it provides to access its accounts, and its previous experiences with Identity Theft. The City identifies the following red flags, in each of the listed categories:

### A. Notifications and Warnings From Credit Reporting Agencies, when used

**Red Flags**

1. Report of fraud accompanying a credit report;
2. Notice or report from a credit agency of a credit freeze on a customer or applicant;
3. Notice or report from a credit agency of an active duty alert for an applicant; and
4. Indication from a credit report of activity that is inconsistent with a customer's usual pattern or activity such as the following:
    a. A recent and significant increase in the volume of inquiries;
    b. An unusual number of recently established credit relationships;
    c. A material change in the use of credit, especially with respect to recently established credit relationships; or
    d. An account that was closed for cause or identified for abuse of account privileges by a financial institution or creditor.

### B. Suspicious Documents

**Red Flags**

1. Identification document or card that appears to be forged, altered or inauthentic;
2. Identification on which the photograph or physical description is inconsistent with the appearance of the applicant or customer;
3. Identification on which the information is inconsistent with information provided by the applicant or customer;
4. Identification on which the information is inconsistent with readily accessible information that is on file with the City, such as a signature card or a recent check, which would indicate the person's signature appears to be forged; or
5. An application for service that appears to have been altered or forged, or appears to have been destroyed and reassembled.

### C. Suspicious Personal Identifying Information

**Red Flags**

1. Identifying information presented that is inconsistent with other information the customer provides (example: inconsistent birth dates or lack of correlation between SSN range and date of birth);
2. Identifying information presented that is inconsistent with other sources of information (for instance, an address not matching an address on a credit report);
3. Identifying information presented that is the same as information shown on other applications that were found to be fraudulent;
4. Identifying information presented that is consistent with fraudulent activity (such as an invalid phone number, pager number or answering service; or mail drop address, jail address, or fictitious billing address);
5. Social security number presented that is the same as one given by another customer;
6. An address or phone number presented that is the same as that of another person;
7. A person fails to provide complete personal identifying information on an application when reminded to do so (however, by law social security numbers must not be required); and
8. A person's identifying information is not consistent with the information that is on file for the customer.

### D. Suspicious Account Activity or Unusual Use of Account

**Red Flags**

1. Change of address for an account followed by a request to change the account holder's name;
2. Payments stop on an otherwise consistently up-to-date account;

3. Account used in a way that is not consistent with prior use (example: very high activity or an account that has been inactive for a long time is used);
4. Mail sent to the account holder is repeatedly returned as undeliverable, although transactions continue to be conducted in connection with the customer's account;
5. Notice to the City that a customer is not receiving mail sent by the City;
6. Notice to the City that an account has unauthorized activity;
7. Breach in the City's computer system security;
8. Unauthorized access to or use of customer account information; and
9. Discovery by the City that utility service is be provided to a premises without evidence that a current service account has been established for that premises.

**E. Alerts from Others**

**Red Flag**

1. Notice to the City from a customer, identity theft victim, law enforcement or other person that it has opened or is maintaining a fraudulent account for a person engaged in Identity Theft.

## IV. DETECTING RED FLAGS

**A. New Accounts**

In order to detect any of the Red Flags identified above associated with the opening of a **new account**, City personnel will take the following steps to obtain and verify the identity of the person opening the account:

**Detect**

Require certain identifying information including the following:

1. Full name;
2. Date of birth (for individual);
3. Previous and current residential or business address;
4. Principal place of business (for an entity); and
5. Proof of identification. Identification can be established by providing the following documents:

    a. For a U.S. Citizen

        (1) Taxpayer Identification number (for business) or Social Security Number; and/or
        (2) Photo-bearing documents (original required) such as:

            (a) State-issued driver's license; or
            (b) State-issued identification card; or
            (c) Passport.

(3) For a Non-U.S. Citizen

(a) Social Security Number; and/or
(b) Photo-bearing documents (original required) such as:

i) State-issued driver's license; or
ii) State-issued identification card; or
iii) Passport; or
iv) Documents containing an alien identification number and country of issuance; or
v) Any other photo-bearing government-issued document evidencing nationality or residence.

***In the event an applicant is not able to present him/herself in the City offices along with the required photo identification so that identity can be visually verified by City Staff prior to the connection of services to the new account, the applicant must choose one of the following alternatives:***

1. ***The applicant can make an arrangement with City Staff to present him/herself and the required identification in the City Hall offices, within five (5) business days following the connection of the services to comply with the City's policy on new accounts. If the applicant does not comply with this arrangement, services will be disconnected at the service location and will not be reconnected until compliance is established and any fess and service charges are paid in full.***

2. ***The applicant must submit a completed application form with the signature being legally notarized. The application form, notary documentation and a copy of the identification must then be received in the City offices via mail or fax prior to opening the account and providing the requested services.***

Review documentation showing the existence of a business entity. A copy of an application for commercial or industrial service shall be forwarded to the City Attorney's office for examination of the Corporation Division website records to confirm if the business entity is duly registered with the State of Oregon; and/or

Independently contact the customer.

**A. Existing Accounts**

In order to detect any of the Red Flags identified above for an **existing account**, City personnel will take the following steps to extent possible to monitor transactions with an account:

**Detect**

1. Verify the identification of customers if they request information (in person, via telephone, via facsimile, via email. Verification may be confirmed by the person providing information concerning their existing account number);
2. Verify the validity of requests to change billing addresses; and
3. Verify changes in banking information given for payment purposes.

## V. PREVENTING AND MITIGATING IDENTITY THEFT

In the event City personnel detect Red Flags, such personnel shall take one or more of the following steps, depending on the degree of risk posed by the Red Flag:

**Prevent and Mitigate**

4. Continue to monitor an account for evidence of Identity Theft;
5. Contact the customer;
6. Not open a new account;
7. Close an existing account;
8. Reopen an account with a new number;
9. Notify the Program Administrator for determination of the appropriate step(s) to take;
10. Notify law enforcement; or
11. Determine that no response is warranted under the particular circumstances.

**Protect customer identifying information**

In order to further prevent the likelihood of Identity Theft occurring with respect to City accounts, the City will take the following steps with respect to its internal operating procedures to protect customer identifying information:

12. Ensure complete and secure destruction of paper documents and computer files containing customer information;
13. Ensure that office computers are password protected;
14. Keep offices clear of papers containing customer information, and arrange for secure storage of such papers when necessary;
15. Ensure computer virus protection is up to date;
16. Require and keep only the kinds of customer information that are necessary for City purposes;
17. Transmit Identifying Information using only approved methods and include the following statement on any transmitted Identifying Information:

> "This message may contain confidential and/or proprietary information, and is intended for the person/entity to which it was originally addressed. If you have received this email by error, please contact the City and then shred the original document. Any use by others is strictly prohibited."

18. Do not use or post customer's Social Security number as an account identifier or on any other documents unless requested by customer or required by federal law (such as W-2 forms).

## VI. PROGRAM UPDATES

The Program Administrator will review and update this Program at least once a year to reflect changes in risks to customers and the soundness of the City from Identity Theft. In doing so, the Program Administrator will consider the City's experiences with Identity Theft situations, changes in Identity Theft methods, changes in Identity Theft detection and prevention methods, and changes in the City's business arrangements with other entities. After considering these factors, the Program Administrator will determine whether changes to the Program, including the listing of Red Flags, are warranted. If warranted, the Program Administrator will update the Program and present the City of The Dalles City Council with his or her recommended changes and the City of The Dalles City Council will make a determination of whether to accept, modify or reject those changes to the Program.

## VII. PROGRAM ADMINISTRATION

### A. Oversight

Responsibility for developing, implementing and updating this Program lies with an Identity Theft Committee for the City. The Committee is headed by the Program Administrator or his or her appointee, and the committee membership shall consist of the Program Administrator and the City Finance Director. The Program Administrator will be responsible for the Program administration, for ensuring appropriate training of City staff on the Program, for reviewing any staff reports regarding the detection of Red Flags and the steps for preventing and mitigating Identity Theft, determining which steps of prevention and mitigation should be taken in particular circumstances and considering periodic changes to the Program.

### B. Staff Training and Reports

City staff responsible for implementing the Program shall be trained either by or under the direction of the Program Administrator in the detection of Red Flags, and the responsive steps to be taken when a Red Flag is detected. City staff will provide reports to the Program Administrator on incidents of Identity Theft.

Department Managers are responsible to be familiar with the Identity Theft Protection Act and to meet with their staff to assess current compliance and document appropriate safeguard practices in writing.

### C. Service Provider Arrangements

In the event the City engages a service provider to perform an activity in connection with one or more accounts, the City will take the following steps to ensure the service provider performs its

activity in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of Identity Theft:

1. Require, by contract, that service providers have such policies and procedures in place; and
2. Require, by contract, that service providers review the City's Program and report any Red Flags to the Program Administrator.

**D. Non-disclosure of Specific Practices**

For the effectiveness of this Identity Theft Prevention Program, knowledge about specific Red Flag identification, detection, mitigation and prevention practices must be limited to the Identity Theft Committee who developed this Program and to those employees with a need to know them. Any documents that may have been produced or are produced in order to develop or implement this program that list or describe such specific practices and the information those documents contain are considered "Security information" (as defined in the following paragraph) and are unavailable to the public because disclosure of them would be likely to substantially jeopardize the security of information against improper use, that use being to circumvent the City's Identity Theft prevention efforts in order to facilitate the commission of Identity Theft.

"Security information" is defined as government data the disclosure of which would be likely to substantially jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury.

**RESOLUTION NO. 11-018**

**A RESOLUTION ADOPTING FISCAL MANAGEMENT POLICIES FOR THE CITY OF THE DALLES**

**WHEREAS**, the City of The Dalles has several fiscal management polices that have been approved by the City Council over the years by separate actions, and now wishes to consolidate, update and clarify the City's Fiscal Management Policies into one document; and

**WHEREAS**, the Governmental Accounting Standards Board (GASB) Statement No. 54 "Fund Balance Reporting and Governmental Fund Type Definitions" outlines the procedure for categorizing the different components of ending fund balances; and

**WHEREAS**, the City wishes to include the requirements of GASB 54 formally in the City's Fiscal Management Policies;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:**

Section 1. The City Council hereby adopts the Fiscal Management Policies shown as Exhibit A to this Resolution. These policies supersede any prior policies adopted by the City Council which concern the same subject matter addressed by policies set forth in Exhibit A.

Section 2. The City Council hereby authorizes the City Manager to develop, approve and change Administrative Policies as needed that reflect procedures and directives concerning financial management that support or clarify the Fiscal Management Policies approved by the City Council.

Section 3. This Resolution shall be effective upon adoption.

**PASSED AND ADOPTED THIS 13th DAY OF JUNE, 2011**

| | |
|---|---|
| Voting Yes, Councilors: | McGlothlin, Dick, Ahier, Spatz, Wood |
| Voting No, Councilors: | None |
| Absent, Councilors: | None |
| Abstaining, Councilors: | None |

**AND APPROVED BY THE MAYOR THIS 13th DAY OF JUNE, 2011**

SIGNED:

James L. Wilcox, Mayor

ATTEST:

Julie Krueger, MMC, City Clerk



INDEXED 6-17-11

# City of The Dalles
# Fiscal Management Policies

## Section 1. Purpose

The Finance Department has developed the following Fiscal Management Policies in an effort to fulfill its mission to provide accurate and timely financial information that will assist in the sound management of the City by the City Council and staff. These policies serve as a guide for both everyday and long-term, general financial management of the City.

## Section 2. Fund Balance Policies

A. **Purpose:** The purpose of this policy is to outline the procedure for categorizing the different components of ending fund balance in conformity with GASB Statement No. 54, "Fund Balance Reporting and Governmental Fund Type Definitions". In summary, the categories for fund balance consider "the extent to which the government is bound to honor constraints on the specific purposes for which amounts in the fund can be spent."

B. **Fund Balance Definitions:** Accountants use the term "Fund Balance" to describe the difference between the assets and liabilities reported in a governmental fund. A financial reporting unit (i.e. business, proprietary fund, fiduciary fund) reports all related assets and all related liabilities. The difference between the two is called "Net Assets" and might be described as a measure of net worth. Because governmental funds report only a subset of related assets (i.e. financial assets) and liabilities (i.e. those normally expected to be liquidated with current financial resource), the difference between the two is more of a measure of liquidity than of net worth. Accountants underscore this distinction by using the term "Fund Balance" in government funds, rather than the term "net assets" employed elsewhere. As an approximate measure of liquidity, fund balance is similar to the working capital of a private-sector business.

C. **Fund Balance Categories:** The components of fund balance will be categorized into one of the five following categories:

1. **Non-Spendable Fund Balance** (inherently non-spendable) – A portion of net resources that cannot be spent because of their form and/or cannot be spent because they must be maintained intact. Examples include:
   a. Pre-paid items
   b. Inventories of supplies
   c. Long-term portion of loans receivable
   d. Financial assets held for resale, such as foreclosed properties
   e. Principal of an endowment
   f. Capital of a revolving loan fund
2. **Restricted Fund Balance** (externally enforceable limitations on use) – Limitations imposed by creditors, grantors, contributors, or laws and regulations of other governments. Limitations may also be imposed by law through constitutional provisions or enabling legislation. Examples include:
   a. Specific purpose grants
   b. State Gas Tax funds

c. Restriction from other governments through laws and regulations
d. Creditors through debt covenants
e. Contributors for specific purposes
f. Public, Educational and Governmental fees

3. **Committed fund balance** (self-imposed limitations set in place prior to the end of the period by highest level of decision making – City Council/ Board of Directors) – Limitations are imposed at the highest level of decision making (recommended to be in the form of a resolution) that requires formal action at the same level to remove. Examples include:
   a. City Council decision to commit a portion of the Natural Gas franchise fess to provide multi-frontage lot relief for construction and installation of public improvements for residential local improvement districts.
   b. Stabilization arrangements (rainy day funds)
4. **Assigned fund balance** (limitation resulting from intended use) – The City Council/ Board of Directors has delegated decision making authority to the City Manager/Budget Officer for "assigning" this category of fund balances. Less formality is necessary in the case of assigned fund balance. Examples include:
   a. City Manager/Budget Officer assigns the amount used to reflect the appropriation of a portion of existing fund balance to eliminate a projected deficit in the subsequent year's budget.
   b. City Manager/Budget Officer is responsible for insuring that unappropriated ending fund balance, along with other cash carry forward, is adequate to fund operations until tax revenue is available in November each year.
   c. The City will consider all amounts as budgeted to be designated as "assigned", unless amounts are otherwise committed in the form of resolution or restricted if it meets the limitations discussed above. Any balances that are budgeted as unappropriated will be considered by the City to be "unassigned".
5. **Unassigned fund balance** (residual net resources) – For the General Fund this classification represents fund balance that has not been assigned to other funds and that has not been restricted, committed, or assigned to specific purposes within the General Fund. The General Fund should be the only fund that reports a positive unassigned fund balance amount. Total fund balance in the General Fund in excess of other categories (surplus). In funds other than the General Fund, if expenditures incurred for specific purposes exceed the amounts restricted, committed, or assigned to those purposes, it may be necessary to report a negative unassigned fund balance (deficit).

**D. Order of Spending Resources:** When both restricted and unrestricted resources are available for use, it is the City's policy to use restricted resources first, and the unrestricted resources (committed, assigned and unassigned) as they are needed. When unrestricted resources are available for use, it is the City's policy to use committed resources first, then assigned, and then unassigned as they are needed.

## Section 3. Annual Budget Policies:

A. **Budget Preparation:** The City Manager/Budget Officer will prepare and present a balanced, proposed annual operating budget with the participation of all departments and in accordance with Oregon Local Budget Law.

B. **Approval and Adoption of Budget:** The City Council and Budget Committee will adopt and amend the operating budget in accordance with Oregon Local Budget Law.

C. **Support of Council Goals:** The operating budget will support the City Council's goals and long-range plans, as well as the needs of the community.

D. **Enterprise Funds:** The City will budget water, sewer and utilities funds as enterprise funds with no General Fund subsidies and no transfers to the General Fund except as compensation for services received.

E. **Capital Outlay:** Only costs related to projects or purchases that result in Capital Assets will be budgeted as Capital Outlay. See Section 6. A. "Capital Asset Policy" below.

1. **Capital Outlay Costs:** Budgets for Capital Outlay projects include all costs for design and engineering, land or right-of-way acquisitions, appraisals, construction and construction management, furnishings, legal and administrative costs, and interest incurred during the construction phase, net of interest earned on the invested proceeds over the same period, for business-type activities only.

F. **Contingency:** Contingency amounts are budgeted to meet emergency conditions that were unknown at the time the budget was prepared, infrequent, and unanticipated. The City Council must authorize the transfer of funds from Contingency to the appropriate expenditure line item within that fund by resolution before those funds can be used.

1. **General Fund Contingency:** A Contingency of at least 10% of the operating budget, excluding Special Payments, Interfund Transfers and Unappropriated Ending Balance, may be budgeted each year in the General Fund. One half of that Contingency amount shall be used to respond to significant gaps between revenues and expenditures, and to mitigate negative effects of short-term economic downturns from year to year. The other half shall be kept in order to meet unanticipated increases in costs or unexpected, non-recurring expenditures during each fiscal year.

2. **Utility Fund Contingency:** The City will strive to maintain at least a 1% to 5% contingency in each of the utility funds.

G. **Unappropriated Ending Balance:** The City will strive to maintain an Unappropriated Ending Fund Balance equal to four months of net operating expenses in the General Fund and in the Library Fund.

H. **Budget Review System:** The City will employ a budget review system in order to regularly monitor revenues and expenditures with the opportunity for budget adjustment as needed.

## Section 4. Revenue Policies

A. **Diverse and Stable Revenues:** The City will pursue a diversified and stable revenue stream in order to avoid over-reliance on, and short-term fluctuations in, one source of funds

B. **Windfalls and One Time Revenue:** The City will not use windfalls or one-time revenue sources to fund ongoing activities and mainstream services; one-time revenues will be used only for one-time expenditures.

C. **Fees and Charges for Service:** Fees and charges for service are assessed to specific users where the user pays all or a portion of the costs to provide the service.
   1. **Cost Recovery:** When establishing charges and fees, the City will consider the full cost of providing the service, along with any circumstances and issues that may be factors that do not allow for full recovery of the costs of providing the service.
   2. **Annual Review:** The City will strive to review charges and fees annually in order to allow for regular, incremental rate increases to offset the effects of inflation and additional costs.

D. **Utility Fees (Water, Wastewater, Stormwater):**
   1. **Basis of User Charges:** User charges for each of the City utilities will be based on the cost of providing the services (i.e., set to fully support the total direct, indirect, and capital costs) and are established so that the operating revenues of each utility are at least equal to its operating expenditures, reserves, debt coverage and annual debt service obligations, and planned replacement of the utility's facilities.
   2. **Periodic Review:** The City will review the user charges for each of the City utilities periodically in order to allow for regular, incremental rate increases to offset the effects of inflation and additional costs.
   3. **Utility Right-of-Way Franchise Fees:** Franchise fees equal to 3% of the Water and Wastewater user charges will be budgeted and paid annually from those funds to the Street Fund for utility rights-of-way.

## Section 5. Expenditure Policies

A. **General Provisions Related to Public Contracting:** The City Council, acting as the Contract Review Board, adopts rules of procedure for public contracting for the City of The Dalles via a separate resolution. The Model Rules adopted by the Attorney General do not apply to the City of The Dalles except where they have been incorporated into the City's Contract Review Board Rules.

B. **Purchasing Authority Levels and Required Documentation:** Purchasing authority levels and the required documentation for each are listed below. Purchase processing details shall be set by Administrative Policy.

| | | | | |
|---|---|---|---|---|
| **1.** | **0** | **to** | **$ 1,000** | Field Purchase Order – authorization by signature of Dept Manager |
| **2.** | **$ 1,000** | **to** | **$ 5,000** | Department Manager authority –three documented phone quotes |
| **3.** | **$ 5,000** | **to** | **$14,999** | Department Manager authority –minimum of three written quotes |
| **4.** | **$15,000** | **to** | **$49,999** | City Manager authority –minimum of three written quotes |
| **5.** | **$50,000** | **and above** | | City Council authority – requires RFP or formal bids process as deemed appropriate by the situation. |

## Section 6. Capital Asset and Improvement Policies

### A. Capital Asset Policy:

#### 1. Definition of Capital Asset:

a. Capital Assets include property, plant, equipment, and infrastructure assets (e.g., roads, bridges, sidewalks, and similar items).

b. A Capital Asset must meet the following criteria

   i. Be an item or system of components that cost more than $5,000, and

   ii. Have a life of more than one year, or

   iii. Add value to or materially extend the life of an existing Capital Asset

c. Costs of normal maintenance and repairs that do not add to the value of the asset or materially extend asset lives are not capitalized.

#### 2. Capital Asset Accounting Policy:

a. Assets are recorded at actual cost, or historical cost or estimated historical cost when actual cost is not available.

b. Donated capital assets are recorded at estimated fair market value at the date of donation.

c. Major outlays for capital assets and improvements are capitalized as the projects are constructed, and include all costs of the project.

   i. all design and engineering costs
   ii. land or right-of-way acquisitions
   iii. appraisals
   iv. construction and construction management
   v. furnishings
   vi. legal and administrative costs
   vii. interest incurred during the construction phase, net of interest earned on the invested proceeds over the same period, for business-type activities only.

d. Property, plant and equipment of the City is depreciated using the straight line method over the following estimated useful lives:

   i. Buildings and Improvements 50 years

   ii. Plant in service 45 years

   iii. Machinery and equipment 5 – 20 years

e. Land is not depreciated

f. No depreciation on capital assets is recorded in the year of acquisition and a full year of depreciation is recorded in the year of disposition.

### B. Intangible Capital Assets Policy (GASB 51):

#### 1. Definition of Intangible Capital Asset:

a. Intangible assets include easements, water rights, patents, and internally generated computer software, etc.

b. An Intangible Capital Asset must meet the following criteria

   i. Have an individual cost more than $5,000, and

ii. Have a life of more than five years, or

iii. Add value to or materially extend the life or significantly increase the capacity of an existing Intangible Capital Asset

c. Costs of normal maintenance and repairs that do not add to the value of the asset or materially extend asset lives are not capitalized.

2. **Intangible Capital Asset Accounting Policy:**

a. Assets are recorded at actual cost, or historical cost or estimated historical cost when actual cost is not available.

b. Contributed intangible assets are recorded at estimated fair market value at the time received.

c. Intangible assets are amortized using the straight line method over the estimated useful life of the asset.

d. Intangible assets with indefinite lives are not amortized.

e. No amortization on intangible capital assets is recorded in the year of acquisition and a full year of amortization is recorded in the year of disposition.

**C. Capital Improvement Policy:**

1. **Five-Year Capital Improvement Plans:** The City will maintain its commitment to its five-year Capital Improvement Plans for the City, including the Street, Water, Wastewater, and Storm Water systems.

2. **Funding Methods:** The City will actively pursue the least costly funding methods for its capital projects, including grants, contributions and low-cost state or federal loans whenever possible.

3. **Debt Financing:** The City will only pursue debt financing in order to finance capital improvement projects, and only when other funding possibilities have been exhausted or are inadequate to finance the projects.

a. The City will only utilize debt financing which does not extend past the expected useful life of the project.

b. Capital projects will only utilize debt financing if market conditions present favorable interest rates for the City.

c. Capital projects will only utilize debt financing if the issuance of that debt will not adversely affect the City's credit and bond ratings.

## Section 7. Land Acquisition Policies

**A. Purchase of Land:** The City will pursue the purchase of land in order to serve the anticipated future needs of the community.

**B. Approval of Land Acquisitions:** The City Council will approve all land acquisitions entered into by the City, excluding easements, dedications and liens.

**C. Proposal Requirements:** Any land acquisition proposal submitted to the City Council will be accompanied by City staff review and recommendations.

## Section 8. Banking/Deposits Policies

A. **Collateralization:** The City will participate in the State Treasurer's Public Funds Collateralization Program (PFCP). The City will ensure that all bank deposits with banks that are not participants in the PFCP are entirely insured or adequately collateralized in accordance with Oregon Revised Statute 295.

## Section 9. Investment Policies

A. **Investment Objectives:** The City will seek to attain a market rate-of-return throughout all fiscal cycles, while avoiding imprudent credit and speculative risk, and maintaining liquidity sufficient to meet operating needs.

B. **Investment Restrictions:** The City will manage its investment program in accordance with the Oregon Revised Statute 294, and does not further restrict investment choices.

## Section 10. Debt Policies

A. **Statutory Debt Limits:** The City will comply with all statutory debt limitations imposed by the Oregon Revised Statutes.

B. **Purpose of Debt:** The City will only incur long-term debt in order to finance capital improvement projects, and only when those projects are too large to be financed from current available resources.

C. **Maintain Bond Rating:** The City will avoid financial activities that will have an adverse affect on its outstanding bond rating.

## Section 11. Risk Management Policies

A. **Risk Management Program:** The City will implement and maintain a Risk Management program designed to decrease exposure to risk. At a minimum, the program will include:

1. **Annual Insurance Evaluation:** An annual examination of the City's insurance program to evaluate how much risk the City should assume.
2. **Internal Controls:** Internal Control procedures shall be set by Administrative Policy.
3. **Safe Workplace Action Plan:** A safety program that emphasizes reducing risks through creating an attitude and culture of safety in the workplace and emphasizes reducing risks through training and safe work habits.

## Section 12. Accounting and Financial Reporting Policies

A. **Accounting:** The City will maintain a system of financial management and accounting that ensures transactions are appropriately recorded, risk of fraud or financial loss is identified, and internal controls are developed and maintained to manage the risk.

1. **Internal Controls:** The City will maintain policies and processes that are designed to provide reasonable assurance that the City is achieving the following objectives:
   a. Effective and efficient operations
   b. Reliable and accurate financial information

c. Compliance with applicable laws and regulations

d. Safeguarding assets against unauthorized acquisition, use or disposition

2. **Annual Audit:** The City shall hire an independent external auditor to perform an annual audit of the financial statements, including tests of the internal controls.

**B. Financial Reporting:**

**1. Internal Reporting:**

a. The City Manager will receive monthly financial reports sufficient to ascertain the City's financial status.

b. The City Council will receive monthly budget comparison reports.

c. Department Managers will receive monthly budget comparison reports.

**2. External Reporting:**

a. The City will prepare and publish a Comprehensive Annual Financial Report (CAFR), including the annual independent audit results, in accordance with generally accepted accounting principles (GAAP). The CAFR will be submitted to the State prior to December 31st each year.

b. The City will submit the CAFR to the Government Finance Officers Association (GFOA) by December 31st each year to be considered for the Award for Excellence in Financial Reporting.

c. The City will provide the CAFR and/or other financial information as required by any laws, statutes, bond disclosure requirements, debt requirements, contractual requirements, or other similar obligations.

**RESOLUTION NO. 15-046**

**A RESOLUTION ESTABLISHING A LOCAL GRANTS POLICY**

**WHEREAS,** the City Council desires to establish a method for non-profit groups to apply for funding assistance for projects that will promote economic development, tourism, or social benefit to the community; and

**WHEREAS**, a policy has been drafted, including a process and criteria for applying;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:**

Section 1. Policy Approved. The City Council hereby adopts the Local Grants Policy and application, attached to this Resolution as Exhibit "A".

Section 2. Effective Date. This Resolution shall be effective November 23, 2015.

**PASSED AND ADOPTED THIS 23RD DAY OF NOVEMBER, 2015**

Voting Yes, Councilors: Elliott, Miller, Brown, McGlothlin, Spatz
Voting No, Councilors: None
Absent, Councilors: None
Abstaining, Councilors: None

**AND APPROVED BY THE MAYOR THIS 23RD DAY OF NOVEMBER, 2015**

SIGNED: Stephen E. Lawrence
Stephen E. Lawrence, Mayor

ATTEST: Julie Krueger
Julie Krueger, MMC, City Clerk

INDEXED 12-7-15

CITY of THE DALLES
313 COURT STREET
THE DALLES, OR 97058
PH. (541) 296-5481
FAX (541) 296-6906

# CITY OF THE DALLES
# LOCAL GRANTS POLICY

The City of The Dalles will fund grants for projects and programs, as funds are available, to not for profit organizations within the City of The Dalles, who are able to demonstrate how they would stimulate economic development or tourism or provide social benefit in the community.

Annually, through the City's budget process, applications may be submitted for consideration.

## Process

Applications will be accepted between January 1 and 31 each year.

Qualifying applications will be reviewed by the City Manager or designee, who will make recommendations to the City Council.

The City Council will make the final decision on which applications are approved for funding. Those applications will be included in the annual budget process for final approval.

Grant funds will be available after July 1.

## Application Criteria

Applicant is a non-profit or not for profit organization.

Description of how the project or program will be an economic, tourism, or social benefit to the City of The Dalles.

Provide detailed budget.

If a grant is awarded, provide report, including proof that funds were spent as indicated.

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313 COURT STREET
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# CITY OF THE DALLES
# LOCAL GRANTS APPLICATION

The City of The Dalles will fund grants for projects and programs, as funds are available, to non-profit organizations within the City of The Dalles, who are able to demonstrate how they would stimulate economic development or tourism in the community, or provide social benefit for the community.

Applications are available at the City Clerk's Office, 313 Court Street, The Dalles, between January 1 and January 31 each year. Applications will be reviewed by the City Manager or designee, who will make recommendations to the City Council. Approved applications will be submitted for funding through the annual budget process, with funds being awarded after July 1.

## Criteria

Applicant is a non-profit organization.
Detailed budget to be submitted with application.
Follow up for approved grants, including a report and proof funds were spent as indicated.

Organization: _____

Mailing Address: _____

Telephone Number: _____ Email address: _____

Contact Person: _____

Project/Use of Funds: _____

Amount Requested: _____

On a separate page, please describe how the funds will be used, including an explanation as to how your proposal will stimulate economic development or tourism in the community, or how it will provide social benefit for the community.

Return completed applications by January 31 to:

City Clerk
313 Court Street
The Dalles OR 97058
jkrueger@ci.the-dalles.or.us

**RESOLUTION NO. 16-028**

**A RESOLUTION ESTABLISHING NEW PROCEDURES FOR THE SALE OF CERTAIN CLASSES OF CITY-OWNED REAL PROPERTY AND REPEALING RESOLUTION NO. 98-013**

**WHEREAS**, ORS 221.727 provides the City may adopt a procedure for the sale of individual parcels of a class of City-owned real properties, or any interest therein, under a single program established within the City for the sale of that class of properties; and

**WHEREAS**, on March 9, 1998, the City Council adopted Resolution No. 98-013 establishing procedures for the sale of certain classes of City-owned real property; and

**WHEREAS**, a review of Resolution No. 98-013 indicates that some of its provisions are obsolete or have the potential to create some confusion or inefficiencies, and the Council desires to adopt a new resolution to address these issues;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:**

**Section 1**. The following procedures shall be adopted for the sale of individual parcels of the following categories of real property.

Vacant Undevelopable Lots

The City owns certain vacant lots which are generally small and irregularly shaped. Typically these lots are adjacent to larger developed lots. These lots are not of sufficient size to be developed, and have minimal market value. The procedure for disposition of these parcels is as follows:

A. The City Council will schedule a public hearing to take public testimony as to whether there is any public use for the property, or whether transfer of the property would benefit the public interest. Notice shall be given of the agenda item not less than ten (10) days before the Council meeting to all owners whose property is adjacent to the vacant lot. If either of these criteria is satisfied, the City Council will adopt a resolution declaring the property to be surplus.

B. Notice of the proposed sale of the property shall be published once in a newspaper of general circulation in the City. The notice shall provide that persons interested in negotiating a purchase of the property must notify the City Manager's office by 5:00 PM on the fourteenth day from the date of publication. The City Manager shall proceed to negotiate with persons who have expressed an interest in purchasing the property. Potential purchasers shall be advised that they will be responsible for obtaining estimated costs for any necessary survey, preparation of preliminary title reports and title insurance costs, and for payment of required recording or mapping fees. Within sixty (60) days of the date of publication of the notice of the proposed sale, the interested purchaser who is the first purchaser to obtain confirmation

from the City Manager that terms for a purchase agreement have been negotiated, will be entitled to have the City Manager present the negotiated agreement for approval by the City Council at a regularly scheduled Council meeting. Following the Council's approval of the negotiated agreement, the City Attorney will proceed with preparation of documents to complete the purchase agreement.

Vacant Developable Lots and Developed Lots

A. The City Council will schedule a public hearing and shall describe the proposed property for sale. Notice shall also be given to property owners within three hundred (300) feet of the subject property.

B. Public testimony shall be solicited at the hearing to determine if there is any public use for the property, or if a transfer of the property is in the public interest.

C. After the hearing, the Council shall decide if it will offer the property for sale, and what the minimum acceptable terms shall be. The minimum acceptable terms may include the following:

1. The minimum bid acceptable to the City reflective of a market value for the property established by the City, either by a formal appraisal or a market analysis conducted with assistance from local real estate agents; and reflective of the City's estimate of the amount intended to compensate the City for any nuisance abatement costs, lien foreclosure costs, costs associated with closing the purchase, including the costs of a preliminary title report and title insurance.

2. Submission of documentation of pre-qualification for any proposed financing for the purchase including pulling of credit reports and processing by automated underwriting.

D. If an offer to sell is authorized by the Council, a notice soliciting sealed bids shall be published at least once in a newspaper of general circulation in the City at least two (2) weeks prior to the bid deadline date. The notice shall describe the property to be sold, the minimum acceptable terms of sale, the person designated to receive bids, the last date bids will be received, and the date, time, and place that bids will be opened.

E. In the event bids are received which exceed the amount included in the City's minimum acceptable bid, the highest bid shall be accepted, and the City Manager, or his/her designee, shall complete the sale. In the event two or more bids are received which are equivalent to the amount included in the City's minimum acceptable bid, the bidders shall have a period of seven (7) business days from receipt of the notice to submit a revised bid. The highest revised bid which is submitted shall be accepted, and the City Attorney shall proceed to prepare documents to complete the sale.

F. In the event no acceptable bids are received, the City reserves the right to reject all bids, and re-advertise the property for sale, or list the property for six months with a local real estate broker/agent on a multiple listing basis, at the same or different minimum acceptable terms established under Section C. A broker/agent shall be selected in accordance with the criteria found in Section G. A listing may be renewed for additional six (6) month periods at the Council's discretion.

G. The selection of a real estate broker/agent shall be in accordance with the following procedures:

1. The City shall publish notice in a newspaper of general circulation in The Dalles inviting proposals for the services to be provided in connection with the listing of the property. The notice shall be published at least two (2) weeks prior to the date on which proposals are due. Copies of the notice inviting proposals shall be mailed to local real estate brokers/agents within the City of The Dalles.

2. The broker's/agent's proposal shall be in writing and it shall address the selection criteria set forth in subsection 3 of this section.

3. The City Manager, or his/her designee, shall consider the following factors in the selection of a broker/agent:

a. The broker's/agent's record in selling the type of real property being offered by the City for sale and the broker or agent's familiarity with The Dalles area market values;

b. The broker's/agent's proposed marketing plan and timelines: signs, advertising, direct mail, and/or other methods;

c. The amount of the broker's/agent's commission; and

d. Other factors which were stated in the notice of the invitation to submit a proposal.

**Section 2.** Resolution No. 98-013 is hereby repealed.

**PASSED AND ADOPTED THIS 24TH DAY OF OCTOBER, 2016.**

Voting Yes, Councilor: McGlothlin, Spatz, Miller, Elliott, Brown
Voting No, Councilor: none
Absent, Councilor: none
Abstaining, Councilor: none

**AND APPROVED BY THE MAYOR THIS 24TH DAY OF OCTOBER, 2016.**

Stephen E. Lawrence

Stephen E. Lawrence, Mayor

Attest:

Izetta Grossman

Izetta Grossman, City Clerk

# RESOLUTION NO. 17-001

## A RESOLUTION ADOPTING POLICIES OF NO RETALIATION FOR REPORTING IMPROPER OR UNLAWFUL CONDUCT

**WHEREAS**, the 2016 Legislature of the State of Oregon amended Oregon Revised Statutes 659A.200, 659A203, and 659A.885 providing further protections for Public Employees from retaliation due to a good faith reporting of improper or unlawful conduct; and

**WHEREAS**, the new law requires employers to produce a policy that "delineates the rights and remedies found in the law"; and

**WHEREAS**, the City has a policy for Appropriate Conduct in City Resolution 97-004; and

**WHEREAS**, the City currently provides for "Whistle Blower" protection in Section 21 Exempt-Employee Handbook; and

**WHEREAS**, the City Council intends to comply with State law by adopting an updated policy related to reporting of improper conduct and prohibiting retaliation for reporting such conduct;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:**

Section 1. Reporting. An employee, or volunteer member of a City Board, Commission, Committee, or Task Force of the City of The Dalles, or an elected City Official, may report reasonable concerns about the City's compliance with any laws, regulation or policy using one of the methods identified in this policy:

**A.** Immediate Supervisor: An employee of the City may report the potentially improper or unlawful conduct to his or her immediate supervisor. If the employee is not comfortable speaking with their immediate supervisor, or they are not satisfied with their supervisor's response, they are encouraged to speak with the following, in order:

1. The employee's Department Director.
2. The City Human Resources Director.
3. The City Attorney.
4. The City Manager.

Supervisors and managers are required to inform the City Manager about reports of improper or unlawful conduct they receive from employees immediately.

**B.** Open Door: Nothing in Section 1(A.) will preclude an employee from availing themselves of the City Manager's Open Door policy. However, the employee should first talk to their immediate supervisor.

**C.** Improper or Unlawful Conduct: The City will not retaliate against any employee, volunteer, or elected City Official, who discloses information that the employee, volunteer, or elected City Official reasonably believes is evidence of:

1. A violation of any federal, Oregon, or local law, rules or regulations by the City;

2. Mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health resulting from actions of the City;

3. A substantial and specific danger to the public health and safety resulting from actions of the City; or

4. The fact that a recipient of government services is subject to a felony or misdemeanor arrest warrant.

Section 2. Prohibited Acts of The City. The City is prohibited from engaging in disciplinary actions in response to an employee who reasonably believes there is an improper or unlawful conduct which the employee has reported or is attempting to report. The City is further prohibited from removing any volunteer member of a City Board, Commission, Committee, or Task Force of the City, or Elected City Official, who reasonably believes there is improper or unlawful conduct and reports, or attempts to report such conduct. The City may not prohibit an employee, volunteer, or elected City Official who reasonably believes there is improper or unlawful conduct from reporting such conduct.

Section 3. Employee, Volunteer, and Elected City Official Protections. In accordance with State law, the City will not prohibit an employee, volunteer of a City Board, Commission, Committee, or Task Force, or Elected City Official from discussing the activities of a public body or a person authorized to act on behalf of a public body with a member of the Legislative Assembly, legislative committee staff acting under the direction of a member of the Legislative Assembly, any member of the elected governing body of the City, County, or other service district.

**A.** Employee, Volunteer, and Elected City Official Remedies: If the City were to prohibit, discipline, or threaten to discipline an employee, volunteer, or Elected City Official for engaging in an activity described above, the employee, volunteer, or Elected City Official has the following remedies:

1. An employee may file a complaint with the Oregon Bureau of Labor and Industries or bring civil action in court to secure all remedies provided for under Oregon law.

2. A volunteer or Elected City Official may file a complaint with the City Attorney or District Attorney, or bring civil action in court to secure all remedies provided for under Oregon law.

Section 4. Confidentiality. Reports of unlawful or improper conduct will be kept confidential to the extent allowed by law and consistent with the need to conduct an impartial and efficient investigation.

Section 5. Effective Date. This Resolution shall be effective upon adoption by the City Council and approval of the Mayor.

**PASSED AND ADOPTED THIS 23rd DAY OF JANUARY, 2017**

Voting Yes, Councilors: McGlothlin, Miller, Long-Curtiss, Elliott, Brown
Voting No, Councilors: —
Absent, Councilors: —
Abstaining, Councilors: —

**AND APPROVED BY THE MAYOR THIS 23rd DAY OF JANUARY, 2017**

SIGNED:

Stephen E. Lawrence, Mayor

ATTEST:

Izetta Grossman, City Clerk

**RESOLUTION NO. 18-028**

**A RESOLUTION UPDATING THE EMPLOYEE RECOGNITION PROGRAM**

**WHEREAS**, The City has an Employee Recognition Program;

and

**WHEREAS**, that program was established as policy by Resolution 00-029;

and

**WHEREAS**, the City Council has reviewed an update to that policy;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:**

Section 1. Policy Adopted. The policy established by Resolution 00-029 is repealed and replaced by this Resolution and program as set forth in Exhibit A, is hereby approved and adopted.

**PASSED AND ADOPTED THIS 26TH DAY OF NOVEMBER, 2018**

Voting Yes, Councilors: Long Curtiss, Miller, Brown, Elliott, McGlothlin

Voting No, Councilors: —

Absent, Councilors: —

Abstaining, Councilors: —

**AND APPROVED BY THE MAYOR THIS 26TH DAY OF NOVEMBER, 2018**

SIGNED: Steve E. Lawrence

Steve Lawrence, Mayor

ATTEST: Izetta Grossman

Izetta Grossman, City Clerk

# EMPLOYEE RECOGNITION PROGRAM

*Purpose:* The purpose of the City of The Dalles Employee Recognition Program is to acknowledge and reward outstanding efforts of employees, and to recognize years of service of employees.

*Annual Recognition:* Annual employee recognition awards and service awards will be presented at the first City Council meeting in April.

*Section 1. Service Awards-* Employees who have worked for the City of The Dalles for periods of 5, 10, 15, 20, and more than 20 years, will be recognized annually, at the first City Council meeting in April.

*Section 2. Excellent Customer Service Award-* This award is open to all employees, and includes outstanding customer service to both external and internal customers (this includes citizens, other City employees, working with other governmental agencies, etc.). An employee may be nominated for this award who has provided customer service which is noticeably outstanding, by consistently displaying an exemplary attitude toward the public; providing customer service above and beyond expected service levels; "goes the extra mile"; and shows exceptional customer service efforts.

*Section 3. Innovative Thinking Award-* This award is for an employee who creates a new or improved idea, which creatively leads toward attaining the City's values of quality, integrity, and respect; saves the City money or generates a new source of revenue; or makes a process or procedure more efficient.

*Section 4. Team Player Award* - This award is for an employee who has demonstrated excellent performance, productivity, professionalism and other noteworthy accomplishments. The award exemplifies the employee values in daily performance by consistently performing work with the highest quality; demonstrating a respectful attitude toward the public and co-workers; approaching work with integrity; demonstrating a professional, positive attitude about work; and completing work in a manner which supports a safe working environment.

*Section 5. Retirement* - Awarded to employees upon retirement from City service, for those who have served a minimum of five years.

***Forms of Recognition.*** The service award recipients will receive a Certificate of Recognition and a City of The Dalles Service Plaque, which will include the number of years of service. The employee will also receive a gift of their choosing, selected from the catalog provided by Human Resources. The value of awards will be budgeted annually and may be adjusted for economic conditions, City Manager or Council request.

The award recipients for the *Excellent Customer Service*, *Innovative Thinking*, and *Team Player* awards will receive a Certificate of Recognition, and a gift of their choosing from a catalog provided by Human Resources. The value of awards will be budgeted annually and may be adjusted for economic conditions, City Manager or Council request.

The retirement awards will include a plaque recognizing the years of service to the City and the City will pay up to $150 toward a gift and/or retirement party.

***Nominations.*** Annual nominations will remain open from January 1 through December 31 of each year. Forms will be made available to all City Employees and Councilors, and are to be filled out completely, including summary, and turned into the Human Resources Office by the last day of the calendar year. Any City employee or City Councilor may submit nominations.

***Awards.*** All nominations will be reviewed by a panel, which will include the Mayor, Human Resources Director and City Manager. One recipient will be selected for the categories of Excellent Customer Service, Innovative Thinking, and Team Player per year. Award recipients will be notified in advance of the award ceremony.

**CITY OF THE DALLES**
**PROFESSIONAL ETHICS**

**COMPENDIUM**

# ICMA Code of Ethics with Guidelines

**The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in June 2020. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in June 2020.**

The mission of ICMA is to advance professional local government through leadership, management, innovation, and ethics. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

**Tenet 1.** We believe professional management is essential to efficient and democratic local government by elected officials.

**Tenet 2.** Affirm the dignity and worth of local government services and maintain a deep sense of social responsibility as a trusted public servant.

**GUIDELINE**

Advice to Officials of Other Local Governments. When members advise and respond to inquiries from elected or appointed officials of other local governments, they should inform the administrators of those communities in order to uphold local government professionalism.

**Tenet 3.** Demonstrate by word and action the highest standards of ethical conduct and integrity in all public, professional, and personal relationships in order that the member may merit the trust and respect of the elected and appointed officials, employees, and the public.

**GUIDELINES**

Public Confidence. Members should conduct themselves so as to maintain public confidence in their position and profession, the integrity of their local government, and in their responsibility to uphold the public trust.

Length of Service. For chief administrative/executive officers appointed by a governing body or elected official, a minimum of two years is considered necessary to render a professional service to the local government. In limited circumstances, it may be in the best interests of the local government and the member to separate before serving two years. Some examples include refusal of the appointing authority to honor commitments concerning conditions of employment, a vote of no confidence in the member, or significant personal issues. It is the responsibility of an applicant for a position to understand conditions of employment, including expectations of service. Not understanding the terms of employment prior to accepting does not justify

premature separation. For all members a short tenure should be the exception rather than a recurring experience, and members are expected to honor all conditions of employment with the organization.

Appointment Commitment. Members who accept an appointment to a position should report to that position. This does not preclude the possibility of a member considering several offers or seeking several positions at the same time. However, once a member has accepted a formal offer of employment, that commitment is considered binding unless the employer makes fundamental changes in the negotiated terms of employment.

Credentials. A member's resume for employment or application for ICMA's Voluntary Credentialing Program shall completely and accurately reflect the member's education, work experience, and personal history. Omissions and inaccuracies must be avoided.

Professional Respect. Members seeking a position should show professional respect for persons formerly holding the position, successors holding the position, or for others who might be applying for the same position. Professional respect does not preclude honest differences of opinion; it does preclude attacking a person's motives or integrity.

Reporting Ethics Violations. When becoming aware of a possible violation of the ICMA Code of Ethics, members are encouraged to report possible violations to ICMA. In reporting the possible violation, members may choose to go on record as the complainant or report the matter on a confidential basis.

Confidentiality. Members shall not discuss or divulge information with anyone about pending or completed ethics cases, except as specifically authorized by the Rules of Procedure for Enforcement of the Code of Ethics.

Seeking Employment. Members should not seek employment for a position that has an incumbent who has not announced his or her separation or been officially informed by the appointive entity that his or her services are to be terminated. Members should not initiate contact with representatives of the appointive entity. Members contacted by representatives of the appointive entity body regarding prospective interest in the position should decline to have a conversation until the incumbent's separation from employment is publicly known.

Relationships in the Workplace. Members should not engage in an intimate or romantic relationship with any elected official or board appointee, employee they report to, one they appoint and/or supervise, either directly or indirectly, within the organization.

This guideline does not restrict personal friendships, professional mentoring, or social interactions with employees, elected officials and Board appointees.

Influence. Members should conduct their professional and personal affairs in a manner that demonstrates that they cannot be improperly influenced in the performance of their official duties.

Conflicting Roles. Members who serve multiple roles – either within the local government organization or externally – should avoid participating in matters that create either a conflict of interest or the perception of one. They should disclose any potential conflict to the governing body so that it can be managed appropriately.

Conduct Unbecoming. Members should treat people fairly, with dignity and respect and should not engage in, or condone bullying behavior, harassment, sexual harassment or discrimination on the basis of race, religion, national origin, age, disability, gender, gender identity, or sexual orientation.

**Tenet 4.** Serve the best interests of the people.

**GUIDELINES**

Impacts of Decisions. Members should inform their governing body of the anticipated effects of a decision on people in their jurisdictions, especially if specific groups may be disproportionately harmed or helped.

Inclusion. To ensure that all the people within their jurisdiction have the ability to actively engage with their local government, members should strive to eliminate barriers to public involvement in decisions, programs, and services.

**Tenet 5.** Submit policy proposals to elected officials; provide them with facts, and technical and professional advice about policy options; and collaborate with them in setting goals for the community and organization.

**Tenet 6.** Recognize that elected representatives are accountable to their community for the decisions they make; members are responsible for implementing those decisions.

**Tenet 7.** Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.

**GUIDELINES**

Elections of the Governing Body. Members should maintain a reputation for serving equally and impartially all members of the governing body of the local government they serve, regardless of party. To this end, they should not participate in an election campaign on behalf of or in opposition to candidates for the governing body.

Elections of Elected Executives. Members shall not participate in the election campaign of any candidate for mayor or elected county executive.

Running for Office. Members shall not run for elected office or become involved in political activities related to running for elected office, or accept appointment to an elected office. They shall not seek political endorsements, financial contributions or engage in other campaign activities.

Elections. Members share with their fellow citizens the right and responsibility to vote. However, in order not to impair their effectiveness on behalf of the local governments they serve, they shall not participate in political activities to support the candidacy of individuals running for any city, county, special district, school, state or federal offices. Specifically, they shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office.

Elections relating to the Form of Government. Members may assist in preparing and presenting materials that explain the form of government to the public prior to a form of government election. If assistance is required by another community, members may respond.

Presentation of Issues. Members may assist their governing body in the presentation of issues involved in referenda such as bond issues, annexations, and other matters that affect the government entity's operations and/or fiscal capacity.

Personal Advocacy of Issues. Members share with their fellow citizens the right and responsibility to voice their opinion on public issues. Members may advocate for issues of personal interest only when doing so does not conflict with the performance of their official duties.

**Tenet 8.** Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

**GUIDELINES**

Self-Assessment. Each member should assess his or her professional skills and abilities on a periodic basis.

Professional Development. Each member should commit at least 40 hours per year to professional development activities that are based on the practices identified by the members of ICMA.

**Tenet 9.** Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

**Tenet 10.** Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

**GUIDELINE**

Information Sharing. The member should openly share information with the governing body while diligently carrying out the member's responsibilities as set forth in the charter or enabling legislation.

**Tenet 11.** Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline.

**GUIDELINE**

Equal Opportunity. All decisions pertaining to appointments, pay adjustments, promotions, and discipline should prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, political affiliation, disability, age, or marital status.

It should be the members' personal and professional responsibility to actively recruit and hire a diverse staff throughout their organizations.

**Tenet 12.** Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

**GUIDELINES**

Gifts. Members shall not directly or indirectly solicit, accept or receive any gift if it could reasonably be perceived or inferred that the gift was intended to influence them in the performance of their official duties; or if the gift was intended to serve as a reward for any official action on their part.

The term "Gift" includes but is not limited to services, travel, meals, gift cards, tickets, or other entertainment or hospitality. Gifts of money or loans from persons other than the local government jurisdiction pursuant to normal employment practices are not acceptable.

Members should not accept any gift that could undermine public confidence. De minimus gifts may be accepted in circumstances that support the execution of the member's official duties or serve a legitimate public purpose. In those cases, the member should determine a modest maximum dollar value based on guidance from the governing body or any applicable state or local law.

The guideline is not intended to apply to normal social practices, not associated with the member's official duties, where gifts are exchanged among friends, associates and relatives.

Investments in Conflict with Official Duties. Members should refrain from any investment activity which would compromise the impartial and objective performance of their duties. Members should not invest or hold any investment, directly or indirectly, in any financial business, commercial, or other private transaction that creates a conflict of interest, in fact or appearance, with their official duties.

In the case of real estate, the use of confidential information and knowledge to further a member's personal interest is not permitted. Purchases and sales which might be interpreted as speculation for quick profit should be avoided (see the guideline on "Confidential Information"). Because personal investments may appear to influence official actions and decisions, or create the appearance of impropriety, members should disclose or dispose of such investments prior to accepting a position in a local government. Should the conflict of interest arise during employment, the member should make full disclosure and/or recuse themselves prior to any official action by the governing body that may affect such investments.

This guideline is not intended to prohibit a member from having or acquiring an interest in or deriving a benefit from any investment when the interest or benefit is due to ownership by the member or the member's family of a de minimus percentage of a corporation traded on a recognized stock exchange even though the corporation or its subsidiaries may do business with the local government.

Personal Relationships. In any instance where there is a conflict of interest, appearance of a conflict of interest, or personal financial gain of a member by virtue of a relationship with any individual, spouse/partner, group, agency, vendor or other entity, the member shall disclose the relationship to the organization. For example, if the member has a relative that works for a developer doing business with the local government, that fact should be disclosed.

Confidential Information. Members shall not disclose to others, or use to advance their personal interest, intellectual property, confidential information, or information that is not yet public knowledge, that has been acquired by them in the course of their official duties.

Information that may be in the public domain or accessible by means of an open records request, is not confidential.

Private Employment. Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties.

Teaching, lecturing, writing, or consulting are typical activities that may not involve conflict of interest, or impair the proper discharge of their official duties. Prior notification of the appointing authority is appropriate in all cases of outside employment.

Representation. Members should not represent any outside interest before any agency, whether public or private, except with the authorization of or at the direction of the appointing authority they serve.

Endorsements. Members should not endorse commercial products or services by agreeing to use their photograph, endorsement, or quotation in paid or other commercial advertisements,

marketing materials, social media, or other documents, whether the member is compensated or not for the member's support. Members may, however, provide verbal professional references as part of the due diligence phase of competitive process or in response to a direct inquiry.

Members may agree to endorse the following, provided they do not receive any compensation: (1) books or other publications; (2) professional development or educational services provided by nonprofit membership organizations or recognized educational institutions; (3) products and/or services in which the local government has a direct economic interest.
Members' observations, opinions, and analyses of commercial products used or tested by their local governments are appropriate and useful to the profession when included as part of professional articles and reports.

# OREGON RULES OF PROFESSIONAL CONDUCT

(as amended effective January 13, 2020)

## CONTENTS

## RULE 1.0 TERMINOLOGY

**(a) "Belief" or "believes" denotes that the person involved actually supposes the fact in question to be true. A person's belief may be inferred from circumstances.**

**(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (g) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.**

**(c) "Electronic communication" includes but is not limited to messages sent to newsgroups, listservs and bulletin boards; messages sent via electronic mail; and real time interactive communications such as conversations in internet chat groups and conference areas and video conferencing.**

**(d) "Firm" or "law firm" denotes a lawyer or lawyers, including "Of Counsel" lawyers, in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a private or public legal aid or public defender organization, a legal services organization or the legal department of a corporation or other public or private organization. Any other lawyer, including an office sharer or a lawyer working for or with a firm on a limited basis, is not a member of a firm absent indicia sufficient to establish a de facto law firm among the lawyers involved.**

**(e) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.**

**(f) "Information relating to the representation of a client" denotes both information protected by the attorney-client privilege under applicable law, and other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.**

**(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.**

**(h) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question, except that for purposes of determining a lawyer's knowledge of the existence of a conflict of interest, all facts which the lawyer knew, or by the exercise of reasonable care should have known, will be attributed to the lawyer. A person's knowledge may be inferred from circumstances.**

**(i) "Matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and any other matter covered by the conflict of interest rules of a government agency.**

**(j) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.**

**(k)"Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.**

**(l) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.**

**(m) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.**

**(n) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.**

**(o) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.**

**(p) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.**

**(q) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostatting, photography, audio or videorecording and electronic communications. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.**

*Adopted 01/01/05*

*Amended 01/01/14: "Electronic communications" substituted for "email."*

*Comparison to Oregon Code*

This rule replaces DR 10-101 and is significantly more expansive. Some DR 10-101 definitions were retained, but others were not incorporated into this rule.

The definition of "firm member" was eliminated as not necessary, but a reference to "of counsel" was retained in the definition of "firm." The definition of "firm" also distinguishes office sharers and lawyers working in a firm on a limited basis.

The concept of "full disclosure" is replaced by "informed consent," which, in some cases, must be "confirmed in writing."

The definition of "professional legal corporation" was deleted, as the term does not appear in any of the rules and does not require explanation.

The definitions of "person" and "state" were also eliminated as being unnecessary.

## *CLIENT-LAWYER RELATIONSHIP*

### RULE 1.1 COMPETENCE

**A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Reasonably"*

*Comparison to Oregon Code*

This rule is identical to DR 6-101(A).

### RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

**(a) Subject to paragraphs (b) and (c), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.**

**(b) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.**

**(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.**

**(d) Notwithstanding paragraph (c), a lawyer may counsel and assist a client regarding Oregon's marijuana-related laws. In the event Oregon law conflicts with federal or tribal law, the lawyer shall also advise the client regarding related federal and tribal law and policy.**

*Adopted 01/01/05*

*Amended 02/19/15: Paragraph (d) added*

*Defined Terms (see Rule 1.0):*

*"Fraudulent"*
*"Informed consent"*
*"Knows"*
*"Matter"*
*"Reasonable"*

*Comparison to Oregon Code*

This rule has no real counterpart in the Oregon Code. Subsection (a) is similar to DR 7-101(A) and (B), but expresses more clearly that lawyers must defer to the client's decisions about the objectives of the representation and whether to settle a matter. Subsection (b) is a clarification of the lawyer's right to limit the scope of a representation. Subsection (c) is similar to DR 7-102(A)(7), but recognizes that counseling a client about the meaning of a law or the consequences of proposed illegal or fraudulent conduct is not the same as assisting the client in such conduct. Paragraph (d) had no counterpart in the Oregon Code.

**RULE 1.3 DILIGENCE**

**A lawyer shall not neglect a legal matter entrusted to the lawyer.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0)*

*"Matter"*

*Comparison to Oregon Code*

This rule is identical to DR 6-101(B).

**RULE 1.4 COMMUNICATION**

**(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information**

**(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.**
*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Knows"*
*"Reasonable"*
*"Reasonably"*

*Comparison to Oregon Code*

This rule has no counterpart in the Oregon Code, although the duty to communicate with a client may be inferred from other rules and from the law of agency.

**RULE 1.5 FEES**

**(a) A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses.**

**(b) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:**

**(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;**

**(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;**

**(3) the fee customarily charged in the locality for similar legal services;**

**(4) the amount involved and the results obtained;**

**(5) the time limitations imposed by the client or by the circumstances;**

**(6) the nature and length of the professional relationship with the client;**

**(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and**

**(8) whether the fee is fixed or contingent.**

**(c) A lawyer shall not enter into an arrangement for, charge or collect:**

**(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support or a property settlement;**

**(2) a contingent fee for representing a defendant in a criminal case; or**

**(3) a fee denominated as "earned on receipt," "nonrefundable" or in similar terms unless it is pursuant to a written agreement signed by the client which explains that:**

**(i) the funds will not be deposited into the lawyer trust account, and**

**(ii) the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed.**

**(d) A division of a fee between lawyers who are not in the same firm may be made only if:**

**(1) the client gives informed consent to the fact that there will be a division of fees, and**

**(2) the total fee of the lawyers for all legal services they rendered the client is not clearly excessive.**

**(e) Paragraph (d) does not prohibit payments to a former firm member pursuant to a separation or retirement agreement, or payments to a selling lawyer for the sale of a law practice pursuant to Rule 1.17.**

*Adopted 01/01/05*

*Amended 12/01/10: Paragraph(c)(3) added.*

*Defined Terms (see Rule 1.0):*

*"Firm"*
*"Informed Consent"*
*"Matter"*
*"Reasonable"*

*Comparison to Oregon Code*

Paragraphs (a), (b) and (c)(1) and (2) are taken directly from DR 2-106, except that paragraph (a) is amended to include the Model Rule prohibition against charging a

"clearly excessive amount for expenses." Paragraph (c)(3) had no counterpart in the Code. Paragraph (d) retains the substantive obligations of DR 2-107(A) but is rewritten to accommodate the new concepts of "informed consent" and "clearly excessive." Paragraph (e) is essentially identical to DR 2-107(B).

**RULE 1.6 CONFIDENTIALITY OF INFORMATION**

**(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).**

**(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:**

**(1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;**

**(2) to prevent reasonably certain death or substantial bodily harm;**

**(3) to secure legal advice about the lawyer's compliance with these Rules;**

**(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;**

**(5) to comply with other law, court order, or as permitted by these Rules; or**

**(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.**

**(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.**

**(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.**

*Adopted 01/01/05*

*Amended 12/01/06: Paragraph (b)(6) amended to substitute "information relating to the representation of a client" for "confidences and secrets."*

*Amended 01/20/09: Paragraph (b)(7) added.*

*Amended 01/01/14: Paragraph (6) modified to allow certain disclosures to avoid conflicts arising from a change of employment or ownership of a firm. Paragraph (c) added.*

*Defined Terms (see Rule 1.0):*

*"Believes"*
*"Firm"*
*"Information relating to the representation of a client"*
*"Informed Consent"*
*"Reasonable"*
*"Reasonably"*
*"Substantial"*

*Comparison to Oregon Code*

This rule replaces DR 4-101(A) through (C). The most significant difference is the substitution of "information relating to the representation of a client" for "confidences and secrets." Paragraph (a) includes the exceptions for client consent found in DR 4-101(C)(1) and allows disclosures "impliedly authorized" to carry out the representation, which is similar to the exception in DR 4-101(C)(2).

The exceptions to the duty of confidentiality set forth in paragraph (b) incorporate those found in DR 4-101(C)(2) through (C)(5). There are also two new exceptions not found in the Oregon Code: disclosures to prevent "reasonably certain death or substantial bodily harm" whether or not the action is a crime, and disclosures to

obtain legal advice about compliance with the Rules of Professional Conduct.

Paragraph (b)(6) in the Oregon Code pertained only to the sale of a law practice.

Paragraph (b)(7) had no counterpart in the Oregon Code.

### RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

**(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:**

**(1) the representation of one client will be directly adverse to another client;**

**(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or**

**(3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.**

**(b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:**

**(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;**

**(2) the representation is not prohibited by law;**

**(3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and**

**(4) each affected client gives informed consent, confirmed in writing.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Believes"*
*"Confirmed in writing"*
*"Informed consent"*
*"Knows"*
*"Matter"*
*"Reasonably believes"*

*Comparison to Oregon Code*

The current conflicts of interest prohibited in paragraph (a) are the self-interest conflicts currently prohibited by DR 5-101(A) and current client conflicts prohibited by DR 5-105(E). Paragraph (a)(2) refers only to a "personal interest" of a lawyer, rather than the specific "financial, business, property or personal interests" enumerated in DR 5-101(A)(1). Paragraph (a)(3) incorporates the "family conflicts" from DR 5-101(A)(2).

Paragraph (b) parallels DR 5-101(A) and DR 5-105(F) in permitting a representation otherwise prohibited if the affected clients give informed consent, which must be confirmed in writing. Paragraph (b)(3) incorporates the "actual conflict" definition of DR 5-105(A)(1) to make it clear that that a lawyer cannot provide competent and diligent representation to clients in that situation.

Paragraph (b) also allows consent to simultaneous representation "not prohibited by law," which has no counterpart in the Oregon Code. According to the official Comment to MR 1.7 this would apply, for instance, in jurisdictions that prohibit a lawyer from representing more than one defendant in a capital case, to certain representations by former government lawyers, or when local law prohibits a government client from consenting to a conflict of interest.

### RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

**(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:**

**(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;**

**(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and**

**(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.**

**(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, confirmed in writing, except as permitted or required under these Rules.**

**(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift, unless the lawyer or other recipient of the gift is related to the**

**client. For purposes of this paragraph, related persons include a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or individual with whom the lawyer or the client maintains a close familial relationship.**

**(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.**

**(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:**

**(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and**

**(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.**

**(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:**

**(1) the client gives informed consent;**

**(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and**

**(3) information related to the representation of a client is protected as required by Rule 1.6.**

**(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.**

**(h) A lawyer shall not:**

**(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement;**

**(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith;**

**(3) enter into any agreement with a client regarding arbitration of malpractice claims without informed consent, in a writing signed by the client; or**

**(4) enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or to pursue any complaint before the Oregon State Bar.**

**(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:**

**(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and**

**(2) contract with a client for a reasonable contingent fee in a civil case.**

**(j) A lawyer shall not have sexual relations with a current client of the lawyer unless a consensual sexual relationship existed between them before the client-lawyer relationship commenced; or have sexual relations with a representative of a current client of the lawyer if the sexual relations would, or would likely, damage or prejudice the client in the representation. For purposes of this rule:**

**(1) "sexual relations" means sexual intercourse or any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party; and**

**(2) "lawyer" means any lawyer who assists in the representation of the client, but does not include other firm members who provide no such assistance.**

**(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.**

*Adopted 01/01/05*

*Amended 01/01/13: Paragraph (e) amended.*

*Defined Terms (see Rule 1.0):*

*"Confirmed in writing"*
*"Information relating to the representation of a client"*
*"Informed consent"*
*"Firm"*
*"Knowingly"*
*"Matter"*
*"Reasonable"*
*"Reasonably"*
*"Substantial"*
*"Writing"*

*Comparison to Oregon Code*

This rule has no exact counterpart in the Oregon Code, although it incorporates prohibitions found in several separate disciplinary rules.

Paragraph (a) replaces DR 5-104(A) and incorporates the Model Rule prohibition against business transactions with clients even with consent except where the transaction is "fair and reasonable" to the client. It also includes an express requirement to disclose the lawyer's role and whether the lawyer is representing the client in the transaction.

Paragraph (b) is virtually identical to DR 4-101(B).

Paragraph (c) is similar to DR 5-101(B), but broader because it prohibits soliciting a gift as well as preparing the instrument. It also has a more inclusive list of "related persons."

Paragraph (d) is identical to DR 5-104(B).

Paragraph (e) incorporates ABA Model Rule 1.8(e).

Paragraph (f) replaces DR 5-108(A) and (B) and is essentially the same as it relates to accepting payment from someone other than the client. This rule is somewhat narrower than DR 5-108(B), which prohibits allowing influence from someone who "recommends, employs or pays" the lawyer.

Paragraph (g) is virtually identical to DR 5-107(A).

Paragraph (h)(1) and (2) are similar to DR 6-102(A), but do not include the "unless permitted by law" language. Paragraph (h)(3) retains DR 6-102(B), but substitutes "informed consent, in a writing signed by the client" for "full disclosure." Paragraph (h)(4) is new and was taken from Illinois Rule of Professional Conduct 1.8(h).

Paragraph (i) is essentially the same as DR 5-103(A).

Paragraph (j) retains DR 5-110, reformatted to conform to the structure of the rule.

Paragraph (k) applies the same vicarious disqualification to these personal conflicts as provided in DR 5-105(G).

**RULE 1.9 DUTIES TO FORMER CLIENTS**

**(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless each affected client gives informed consent, confirmed in writing.**

**(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:**

**(1) whose interests are materially adverse to that person; and**

**(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter, unless each affected client gives informed consent, confirmed in writing.**

**(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:**

**(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or**

**(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.**

**(d) For purposes of this rule, matters are "substantially related" if (1) the lawyer's representation of the current client will injure or damage the former client in connection with the same transaction or legal dispute in which the lawyer previously represented the former client; or (2) there is a substantial risk that confidential factual information as would normally have been obtained in the prior representation of the former client would materially advance the current client's position in the subsequent matter.**

*Adopted 01/01/05*

*Amended 12/01/06: Paragraph (d) added.*

*Defined Terms (see Rule 1.0):*

*"Confirmed in writing"*
*"Informed consent"*
*"Firm"*
*"Knowingly"*
*"Known"*
*"Matter"*
*"Reasonable"*
*"Substantial"*

*Comparison to Oregon Code*

This rule replaces DR 5-105(C), (D) and (H). Like Rule 1.7, this rule is a significant departure from the language and structure of the Oregon Code provisions on conflicts. Paragraph (a) replaces the sometimes confusing reference to "actual or likely conflict" between current and former client with the simpler "interests [that are] materially adverse." The prohibition applies to matters that are the same or "substantially related," which is virtually identical to the Oregon Code standard of "significantly related."

Paragraph (b) replaces the limitation of DR 5-105(H), but is an arguably clearer expression of the prohibition. The new language makes it clear that a lawyer who moves to a new firm is prohibited from being adverse to a client of the lawyer's former firm only if the lawyer has acquired confidential information material to the matter while at the former firm.

Paragraph (c) makes clear that the duty not to use confidential information to the client's disadvantage continues after the conclusion of the representation, except where the information "has become generally known."

Paragraph (d) defines "substantially related." The definition is taken in part from former DR 5-105(D) and in part from Comment [3] to ABA Model Rule 1.9.

**RULE 1.10 IMPUTATION OF CONFLICTS OF INTEREST; SCREENING**

**(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer or on Rule 1.7(a)(3) and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.**

**(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:**

**(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and**

**(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.**

**(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9, unless the personally disqualified lawyer is promptly screened from any form of participation or representation in the matter and written notice of the screening procedures employed is promptly given to any affected former client.**

**(d) A disqualification prescribed by this rule may be waived by the affected clients under the conditions stated in Rule 1.7.**

**(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.**

*Adopted 01/01/05*

*Amended 12/01/06: Paragraph (a) amended to include reference to Rule 1.7(a)(3).*

*Amended 01/01/14: Paragraph (c) revised to eliminate detailed screening requirements and to require notice to the affected client rather than the lawyer's former firm.*

*Defined Terms (see Rule 1.0):*

*"Firm"*
*"Know"*
*"Knowingly"*
*"Law firm"*
*"Matter"*
*"Screened"*
*"Substantial"*

*Comparison to Oregon Code*

Paragraph (a) is similar to the vicarious disqualification provisions of DR 5-105(G), except that it does not apply when the disqualification is based only on a "personal interest" of the disqualified lawyer that will not limit the ability of the other lawyers in the firm to represent the client.

Paragraph (b) is substantially the same as DR 5-105(J).

Paragraph (d) is similar to DR 5-105 in allowing clients to consent to what would otherwise be imputed conflicts.

Paragraph (e) has no counterpart in the Oregon Code because the Oregon Code does not have a special rule addressing government lawyer conflicts.

The title was changed to include "Screening."

**RULE 1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENTGOVERNMENT OFFICERS AND EMPLOYEES**

**(a) Except as Rule 1.12 or law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:**

**(1) is subject to Rule 1.9 (c); and**

**(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.**

**(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that**

**lawyer is associated may knowingly undertake or continue representation in such a matter unless:**

**(1) the disqualified lawyer is timely screened from any participation in the matter substantially in accordance with the procedures set forth in Rule 1.10(c); and**

**(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.**

**(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter substantially in accordance with the procedures set forth in Rule 1.10(c).**

**(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:**

**(1) is subject to Rules 1.7 and 1.9; and**

**(2) shall not:**

**(i) use the lawyer's public position to obtain, or attempt to obtain, special advantage in legislative matters for the lawyer or for a client.**

**(ii) use the lawyer's public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client.**

**(iii) accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.**

**(iv) either while in office or after leaving office use information the lawyer knows is confidential government information obtained while a public official to represent a private client.**

**(v) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the lawyer's former client and the appropriate government agency give informed consent, confirmed in writing; or**

**(vi) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk or staff lawyer to or otherwise assisting in the official duties of a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).**

**(e) Notwithstanding any Rule of Professional Conduct, and consistent with the "debate" clause, Article IV, section 9, of the Oregon Constitution, or the "speech or debate" clause, Article I, section 6, of the United States Constitution, a lawyer-legislator shall not be subject to discipline for words uttered in debate in either house of the Oregon Legislative Assembly or for any speech or debate in either house of the United States Congress.**

**(f) A member of a lawyer-legislator's firm shall not be subject to discipline for representing a client in any claim against the State of Oregon provided:**

**(1) the lawyer-legislator is screened from participation or representation in the matter in accordance with the procedure set forth in Rule 1.10(c) (the required affidavits shall be served on the Attorney General); and**

**(2) the lawyer-legislator shall not directly or indirectly receive a fee for such representation.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Confirmed in writing"*
*"Informed consent"*
*"Firm"*
*"Knowingly"*
*"Knows"*
*"Matter"*
*"Screened"*
*"Substantial"*
*"Tribunal"*
*"Written"*

*Comparison to Oregon Code*

This rule has no exact counterpart in the Oregon Code, under which the responsibilities of government lawyers are addressed in DR 5-109 and DR 8-101, as well as in the general conflict limitations of DR 5-105. This rule puts all the requirements for government lawyers in one place.

Paragraph (a) is essentially the same as DR 5-109(B).

Paragraph (b) imputes a former government lawyer's unconsented-to conflicts to the new firm unless the former government lawyer is screened from participation in the matter, as would be allowed under DR 5-105(I).

Paragraph (c) incorporates the prohibitions in DR 8-101(A)(1), (A)(4) and (B). It also allows screening of the disqualified lawyer to avoid disqualification of the entire firm.

Paragraph (d) applies concurrent and former client conflicts to lawyers currently serving as a public officer or employee; it also incorporates in (d)(2) (i) –(iv) the limitations in DR 8-101(A)(1)-(4), with the addition in (d)(2)(iv) of language from MR 1.11 that a lawyer is prohibited from using only that government information that the lawyer knows is confidential. Paragraph (d)(2)(v) is the converse of DR 5-109(B), and has no counterpart in the Oregon Code other than the general former client conflict provision of DR 5-105. Paragraph (d)(2)(vi) has no counterpart in the Oregon Code; it is an absolute bar to negotiating for private employment while a serving in a non-judicial government position for anyone other than a law clerk or staff lawyer assisting in the official duties of a judicial officer.

Paragraph (e) is taken from DR 8-101(C) to retain a relatively recent addition to the Oregon Code.

Paragraph (f) is taken from DR 8-101(D), also to retain a relatively recent addition to the Oregon Code.

**RULE 1.12 FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL**

**(a) Except as stated in paragraph (d) and Rule 2.4(b), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.**

**(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk or staff lawyer to or otherwise assisting in the official duties of a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.**

**(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:**

**(1) the disqualified lawyer is timely screened from any participation in the matter substantially in accordance with the procedures set forth in Rule 1.10(c); and**

**(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.**

**(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.**

*Adopted 01/01/05*

*Amended 01/01/14: References in paragraph (a) reversed.*

*Defined Terms (see Rule 1.0):*

*"Confirmed in writing"*
*"Informed consent"*
*"Firm"*
*"Knowingly"*
*"Matter"*
*"Screened"*
*"Substantial"*
*"Tribunal"*
*"Written"*

*Comparison to Oregon Code*

Paragraph (a) is essentially the same as DR 5-109(A), with an exception created for lawyers serving as mediators under Rule 2.4(b).

Paragraph (b) has no equivalent rule in the Oregon Code; like Rule 1.11(d)(2)(vi) it address the conflict that arises when a person serving as, or as a clerk or staff lawyer to, a judge or other third party neutral, negotiates for employment with a party or a party's lawyer. This situation is covered under DR 5-101(A), but its application may not be as clear.

Paragraph (c) applies the vicarious disqualification that would be imposed under DR 5-105(G) to a DR 5-109 conflict; the screening provision is broader than DR 5-105(I), which is limited to lawyers moving between firms.

Paragraph (d) has no counterpart in the Oregon Code.

**RULE 1.13 ORGANIZATION AS CLIENT**

**(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.**

**(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, referral to the highest authority that can act on behalf of the organization as determined by applicable law.**

**(c) Except as provided in paragraph (d), if**

**(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or a refusal to act, that is clearly a violation of law, and**

**(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.**

**(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.**

**(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.**

**(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.**

**(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent may only be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.**

*Adopted 01/01/05*

*Amended 12/01/06: Paragraph (b) amended.*

*Defined Terms (see Rule 1.0):*

*"Believes"*
*"Information relating to the representation"*
*"Knows"*
*"Matter"*
*"Reasonable"*
*"Reasonably"*
*"Reasonably believes"*
*"Reasonably should know"*
*"Substantial"*

*Comparison to Oregon Code*

This rule has no counterpart in the Oregon Code.

**RULE 1.14 CLIENT WITH DIMINISHED CAPACITY**

**(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.**

**(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.**

**(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Believes"*
*"Information relating to the representation of a client"*
*"Reasonably"*
*"Reasonably believes"*
*"Substantial"*

*Comparison to Oregon Code*

Paragraph (b) is similar to DR 7-101(C), but offers more guidance as to the circumstances when a lawyer can take protective action in regard to a client. Paragraph (a) and (c) have no counterparts in the Oregon Code, but provide helpful guidance for lawyers representing clients with diminished capacity.

RULE 1.15-1 SAFEKEEPING PROPERTY

**(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account" maintained in the jurisdiction where the lawyer's office is situated. Each lawyer trust account shall be an interest bearing account in a financial institution selected by the lawyer or law firm in the exercise of reasonable care. Lawyer trust accounts shall conform to the rules in the jurisdictions in which the accounts are maintained. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.**

**(b) A lawyer may deposit the lawyer's own funds in a lawyer trust account for the sole purposes of paying bank service charges or meeting minimum balance requirements on that account, but only in amounts necessary for those purposes.**

**(c) A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the fee is denominated as "earned on receipt," "nonrefundable" or similar terms and complies with Rule 1.5(c)(3).**

**(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.**

**(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.**

*Adopted 01/01/05*

*Amended 11/30/05: Paragraph (a) amended to eliminate permission to have trust account "elsewhere with the consent of the client" and to require accounts to conform to jurisdiction in which located. Paragraph (b) amended to allow deposit of lawyer funds to meet minimum balance requirements.*

*Amended 12/01/10: Paragraph (c) amended to create an exception for fees "earned on receipt" within the meaning of Rule 1.5(c)(3).*

*Defined Terms (see Rule 1.0):*

*"Law firm"*
*"Reasonable"*

*Comparison to Oregon Code*

Paragraphs (a)-(e) contain all of the elements of DR 9-101(A)-(C) and (D)(1), albeit in slightly different order. The rule is broader than DR 9-101 in that it also applies to the property of prospective clients and third persons received by a lawyer. Paragraph (c) makes it clear that fees and costs paid in advance must be held in trust until earned unless the fee is denominated "earned on receipt" and complies with the requirements of Rule 1.5(c)(3).

**RULE 1.15-2 IOLTA ACCOUNTS AND TRUST ACCOUNT OVERDRAFT NOTIFICATION**

**(a) A lawyer trust account for client funds that cannot earn interest in excess of the costs of generating such interest ("net interest") shall be referred to as an IOLTA (Interest on Lawyer Trust Accounts) account. IOLTA accounts shall be operated in accordance with this rule and with operating regulations and procedures as may be established by the Oregon State Bar with the approval of the Oregon Supreme Court.**

**(b) All client funds shall be deposited in the lawyer's or law firm's IOLTA account unless a particular client's funds can earn net interest. All interest earned by funds held in the IOLTA account shall be paid to the Oregon Law Foundation as provided in this rule.**

**(c) Client funds that can earn net interest shall be deposited in an interest bearing trust account for the client's benefit and the net interest earned by funds in such an account shall be held in trust as property of the client in the same manner as is provided in paragraphs (a) through (d) of Rule 1.15-1 for the principal funds of the client. The interest bearing account shall be either:**

**(1) a separate account for each particular client or client matter; or**

**(2) a pooled lawyer trust account with subaccounting which will provide for computation of interest earned by each client's funds and the payment thereof, net of any bank service charges, to each client.**

**(d) In determining whether client funds can or cannot earn net interest, the lawyer or law firm shall consider the following factors:**

**(1) the amount of the funds to be deposited;**

**(2) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;**

**(3) the rates of interest at financial institutions where the funds are to be deposited;**

**(4) the cost of establishing and administering a separate interest bearing lawyer trust account for the client's benefit, including service charges imposed by financial institutions, the cost of the lawyer or law firm's services, and the cost of preparing any tax-related documents to report or account for income accruing to the client's benefit;**

**( 5) the capability of financial institutions, the lawyer or the law firm to calculate and pay income to individual clients; and**

**(6) any other circumstances that affect the ability of the client's funds to earn a net return for the client.**

**(e) The lawyer or law firm shall review the IOLTA account at reasonable intervals to determine whether circumstances have changed that require further action with respect to the funds of a particular client.**

**(f) If a lawyer or law firm determines that a particular client's funds in an IOLTA account either did or can earn net interest, the lawyer shall transfer the funds into an account specified in paragraph (c) of this rule and request a refund for the lesser of either: any interest earned by the client's funds and remitted to the Oregon Law Foundation; or the interest the client's funds would have earned had those funds been placed in an interest bearing account for the benefit of the client at the same bank.**

**(1) The request shall be made in writing to the Oregon Law Foundation within a reasonable period of time after the interest was remitted to the Foundation and shall be accompanied by written verification from the financial institution of the interest amount.**

**(2) The Oregon Law Foundation will not refund more than the amount of interest it received from the client's funds in question. The refund shall be remitted to the financial institution for transmittal to the lawyer or law firm, after appropriate accounting and reporting.**

**(g) No earnings from a lawyer trust account shall be made available to a lawyer or the lawyer's firm.**

**(h) A lawyer or law firm may maintain a lawyer trust account only at a financial institution that:**

**(1) is authorized by state or federal banking laws to transact banking business in the state where the account is maintained;**

**(2) is insured by the Federal Deposit Insurance Corporation or an analogous federal government agency;**

**(3) has entered into an agreement with the Oregon Law Foundation:**

**(i) to remit to the Oregon Law Foundation, at least quarterly, interest earned by the IOLTA account, computed in accordance with the institution's standard accounting practices, less reasonable service charges, if any; and**

**(ii) to deliver to the Oregon Law Foundation a report with each remittance showing the name of the lawyer or law firm for whom the remittance is sent, the number of the IOLTA account as assigned by the financial institution, the average daily collected account balance or the balance on which the interest remitted was otherwise computed for each month for which the remittance is made, the rate of interest applied, the period for which the remittance is made, and the amount and description of any service charges deducted during the remittance period; and**

**(4) has entered into an overdraft notification agreement with the Oregon State Bar requiring the financial institution to report to the Oregon State Bar Disciplinary Counsel when any properly payable instrument is presented against such account containing insufficient funds, whether or not the instrument is honored.**

**(i) Overdraft notification agreements with financial institutions shall require that the following information**

**be provided in writing to Disciplinary Counsel within ten banking days of the date the item was returned unpaid:**

**(1) the identity of the financial institution;**

**(2) the identity of the lawyer or law firm;**

**(3) the account number; and**

**(4) either (i) the amount of the overdraft and the date it was created; or (ii) the amount of the returned instrument and the date it was returned.**

**(j) Agreements between financial institutions and the Oregon State Bar or the Oregon Law Foundation shall apply to all branches of the financial institution. Such agreements shall not be canceled except upon a thirty-day notice in writing to OSB Disciplinary Counsel in the case of a trust account overdraft notification agreement or to the Oregon Law Foundation in the case of an IOLTA agreement.**

**(k) Nothing in this rule shall preclude financial institutions which participate in any trust account overdraft notification program from charging lawyers or law firms for the reasonable costs incurred by the financial institutions in participating in such program.**

**(l) Every lawyer who receives notification from a financial institution that any instrument presented against his or her lawyer trust account was presented against insufficient funds, whether or not the instrument was honored, shall promptly notify Disciplinary Counsel in writing of the same information required by paragraph (i). The lawyer shall include a full explanation of the cause of the overdraft.**

**(m) For the purposes of paragraph (h)(3), "service charges" are limited to the institution's following customary check and deposit processing charges: monthly maintenance fees, per item check charges, items deposited charges and per deposit charges. Any other fees or transactions costs are not "service charges" for purposes of paragraph (h)(3) and must be paid by the lawyer or law firm.**

*Adopted 01/01/05*

*Amended 11/30/05: Paragraph (a) amended to clarify scope of rule. Paragraph (h) amended to allow remittance of interest to OLF in accordance with bank's standard accounting practice, and to report either the average daily collected account balance or the balance on which interest was otherwise computed. Paragraph (j) amended to require notice to OLF of cancellation of IOLTA agreement. Paragraph (m) and (n) added.*

*Amended 01/01/12: Requirement for annual certification, formerly paragraph (m), deleted and obligation moved to ORS Chapter 9.*

*Amended 01/01/14: Paragraph (f) revised to clarify the amount of interest that is to be refunded if client funds are mistakenly placed in an IOLTA account.*

*Defined Terms (see Rule 1.0)*

*"Firm"*
*"Law Firm"*
*"Matter"*
*"Reasonable"*
*"Writing"*
*"Written"*

*Comparison to Oregon Code*

This rule is a significant revision of the IOLTA provisions of DR 9-101 and the trust account overdraft notification provisions of DR 9-102. The original changes were prompted by the US Supreme Court's decision in *Brown v. Washington Legal Foundation* that clients are entitled to "net interest" that can be earned on funds held in trust. Additional changes were made to conform the rule to banking practice and to clarify the requirement for annual certification.

## RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

**(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:**

**(1) the representation will result in violation of the Rules of Professional Conduct or other law;**

**(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or**

**(3) the lawyer is discharged.**

**(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:**

**(1) withdrawal can be accomplished without material adverse effect on the interests of the client;**

**(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;**

**(3) the client has used the lawyer's services to perpetrate a crime or fraud;**

**(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;**

**(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning**

**that the lawyer will withdraw unless the obligation is fulfilled;**

**(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or**

**(7) other good cause for withdrawal exists.**

**(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.**

**(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers, personal property and money of the client to the extent permitted by other law.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Believes"*
*"Fraud"*
*"Fraudulent"*
*"Reasonable"*
*"Reasonably"*
*"Reasonably believes"*
*"Substantial"*
*"Tribunal"*

*Comparison to Oregon Code*

This rule is essentially the same as DR 2-110, except that it specifically applies to declining a representation as well as withdrawing from representation. Paragraph (a) parallels the circumstances in which DR 2-110(B) mandates withdrawal, and also includes when the client is acting "merely for the purpose of harassing or maliciously injuring" another person, which is prohibited in DR 2-109(A)(1) and DR 7-102(A)(1).

Paragraph (b) is similar to DR 2-110(C) regarding permissive withdrawal. It allows withdrawal for any reason if it can be accomplished without "material adverse effect" on the client. Withdrawal is also allowed if the lawyer considers the client's conduct repugnant or if the lawyer fundamentally disagrees with it.

Paragraph (c) is like DR 2-110(A)(1) in requiring compliance with applicable law requiring notice or permission from the tribunal; it also clarifies the lawyer's obligations if permission is denied.

Paragraph (d) incorporates DR 2-110(A)(2) and (3). The final sentence has no counterpart in the Oregon Code; it recognizes the right of a lawyer to retain client papers and other property to the extent permitted by other law. The "other law" includes statutory lien rights as well as court decisions determining lawyer ownership of certain papers created during a representation. A lawyer's right under other law to retain papers and other property remains subject to other obligations, such as the lawyer's general fiduciary duty to avoid prejudicing a former client, which might supersede the right to claim a lien.

**RULE 1.17 SALE OF LAW PRACTICE**

**(a) A lawyer or law firm may sell or purchase all or part of a law practice, including goodwill, in accordance with this rule.**

**(b) The selling lawyer, or the selling lawyer's legal representative, in the case of a deceased or disabled lawyer, shall provide written notice of the proposed sale to each current client whose legal work is subject to transfer, by certified mail, return receipt requested, to the client's last known address. The notice shall include the following information:**

**(1) that a sale is proposed;**

**(2) the identity of the purchasing lawyer or law firm, including the office address(es), and a brief description of the size and nature of the purchasing lawyer's or law firm's practice;**

**(3) that the client may object to the transfer of its legal work, may take possession of any client files and property, and may retain counsel other than the purchasing lawyer or law firm;**

**(4) that the client's legal work will be transferred to the purchasing lawyer or law firm, who will then take over the representation and act on the client's behalf, if the client does not object to the transfer within forty-five (45) days after the date the notice was mailed; and**

**(5) whether the selling lawyer will withdraw from the representation not less than forty-five (45) days after the date the notice was mailed, whether or not the client consents to the transfer of its legal work.**

**(c) The notice may describe the purchasing lawyer or law firm's qualifications, including the selling lawyer's opinion of the purchasing lawyer or law firm's suitability and competence to assume representation of the client, but only if the selling lawyer has made a reasonable effort to arrive at an informed opinion.**

**(d) If certified mail is not effective to give the client notice, the selling lawyer shall take such steps as may be reasonable under the circumstances to give the client actual notice of the proposed sale and the other information required in subsection (b).**

**(e) A client's consent to the transfer of its legal work to the purchasing lawyer or law firm will be presumed if no objection is received within forty-five (45) days after the date the notice was mailed.**

**(f) If substitution of counsel is required by the rules of a tribunal in which a matter is pending, the selling lawyer shall assure that substitution of counsel is made.**

**(g) The fees charged clients shall not be increased by reason of the sale except upon agreement of the client.**

**(h) The sale of a law practice may be conditioned on the selling lawyer's ceasing to engage in the private practice of law or some particular area of practice for a reasonable period within the geographic area in which the practice has been conducted.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Known"*
*"Law firm"*
*"Matter"*
*"Reasonable"*
*"Tribunal"*
*"Written"*

*Comparison to Oregon Code*

This rule continues DR 2-111which, when adopted in 1995, was derived in large part from Model Rule 1.17.

**RULE 1.18 DUTIES TO PROSPECTIVE CLIENT**

**(a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.**

**(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.**

**(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).**

**(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:**

**(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:**

**(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and**

**(i) the disqualified lawyer is timely screened from any participation in the matter; and**

**(ii) written notice is promptly given to the prospective client**

*Adopted 01/01/05*

*Amended 12/11/09: Paragraph (d) amended to conform to ABA Model Rule 1.18 except for prohibition against disqualified lawyer being apportioned a part of the fee.*

*Amended 01/01/14: Paragraphs (a) and (b) amended slightly to conform to changes in the Model Rule.*

*Defined Terms (see Rule 1.0):*

*"Confirmed in writing"*
*"Informed consent"*
*"Firm"*
*"Knowingly"*
*"Matter"*
*"Screened"*
*"Substantial"*
*"Written"*

*Comparison to Oregon Code*

This rule has no counterpart in the Oregon Code. It is consistent with the rule of lawyer-client privilege that defines a client to include a person "who consults a lawyer with a view to obtaining professional legal services." OEC 503(1)(a). The rule also codifies a significant body of case law and other authority that has interpreted the duty of confidentiality to apply to prospective clients.

## *COUNSELOR*

### RULE 2.1 ADVISOR

**In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.**

*Adopted 01/01/05*

*Comparison to Oregon Code*

This rule has no counterpart in the Oregon Code, although it codifies the concept of exercising independent judgment that is fundamental to the role of the lawyer and which is mentioned specifically in DRs 2-103, 5-101, 5-104, 5-108 and 7-101.

### RULE 2.2 [RESERVED]

### RULE 2.3 EVALUATION FOR USE BY THIRD PERSONS

**(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.**

**(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.**

**(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Believes"*
*"Informed consent"*
*"Knows"*
*"Matter"*
*"Reasonably believes"*
*"Reasonably should know"*

*Comparison to Oregon Code*

This rule is similar to DR 7-101(D), which was adopted in 1997 based on *former* ABA Model Rule 2.3. Paragraph (b) is new in 2002 to require client consent only when the evaluation poses is a risk of material and adverse affect on the client. Under paragraph (a), when there is no such risk, the lawyer needs only to determine that the evaluation is compatible with other aspects of the relationship.

### RULE 2.4 LAWYER SERVING AS MEDIATOR

**(a) A lawyer serving as a mediator:**

**(1) shall not act as a lawyer for any party against another party in the matter in mediation or in any related proceeding; and**

**(2) must clearly inform the parties of and obtain the parties' consent to the lawyer's role as mediator.**

**(b) A lawyer serving as a mediator:**

**(1) may prepare documents that memorialize and implement the agreement reached in mediation;**

**(2) shall recommend that each party seek independent legal advice before executing the documents; and**

**(3) with the consent of all parties, may record or may file the documents in court.**

**(c) The requirements of Rule 2.4(a)(2) and (b)(2) shall not apply to mediation programs established by operation of law or court order.**

*Adopted 01/01/05*

*Amended 01/01/14: Original paragraph (c) relating to firm representation deleted to eliminate conflict with RPC 1.12.*

*Defined Terms (see Rule 1.0):*

*"Matter"*

*Comparison to Oregon Code*

This rule retains much of *former* DR 5-106.

## *ADVOCATE*

### RULE 3.1 MERITORIOUS CLAIMS AND CONTENTIONS

**In representing a client or the lawyer's own interests, a lawyer shall not knowingly bring or defend a proceeding, assert a position therein, delay a trial or take other action on behalf of a client, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law, except that a lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration may, nevertheless so defend the proceeding as to require that every element of the case be established.**

*Adopted 01/01/05*

*Amended 12/01/06: Paragraph (a) amended to make applicable to a lawyer acting in the lawyer's own interests.*

*Defined Terms (see Rule 1.0):*

*"Knowingly"*

*Comparison to Oregon Code*

This rule retains the essence of DR 2-109(A)(2) and DR 7-102(A)(2), although neither Oregon rule expressly confirms the right of a criminal defense lawyer to defend in a manner that requires establishment of every element of the case.

**RULE 3.2 [RESERVED]**

**RULE 3.3 CANDOR TOWARD THE TRIBUNAL**

**(a) A lawyer shall not knowingly:**

**(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;**

**(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;**

**(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if permitted, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false;**

**(4) conceal or fail to disclose to a tribunal that which the lawyer is required by law to reveal; or**

**(5) engage in other illegal conduct or conduct contrary to these Rules.**

**(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if permitted, disclosure to the tribunal.**

**(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, but in no event require disclosure of information otherwise protected by Rule 1.6.**

**(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.**

*Adopted 01/01/05*

*Amended 12/01/10: Paragraphs (a)(3) and (b) amended to substitute "if permitted" for "if necessary;" paragraph (c) amended to make it clear that remedial measures do not require disclosure of information protected by Rule 1.6.*

*Defined Terms (see Rule 1.0):*

*"Believes"*
*"Fraudulent"*
*"Knowingly"*
*"Known"*
*"Knows"*
*"Matter"*
*"Reasonable"*
*"Reasonably believes"*
*"Tribunal"*

*Comparison to Oregon Code*

Paragraph (a)(1) is similar to DR 7-102(A)(5), but also requires correction of a previously made statement that turns out to be false.

Paragraph (a)(2) is the same as DR 7-106(B)(1).

Paragraph (a)(3) combines the prohibition in DR 7-102(A)(4) against presenting perjured testimony or false evidence with the remedial measures required in DR 7-102(B). The rule clarifies that only materially false evidence requires remedial action. While the rule allows a criminal defense lawyer to refuse to offer evidence the lawyer reasonably believes is false, it recognizes that the lawyer must allow a criminal defendant to testify.

Paragraphs (a)(4) and (5) are the same as DR 7-102(A)(3) and (8), respectively.

Paragraph (b) is similar to and consistent with the interpretations of DR 7-102(B)(1).

Paragraph (c) continues the duty of candor to the end of the proceeding, but, notwithstanding the language in paragraphs (a)(3) and (b), does not require disclosure of confidential client information otherwise protected by Rule 1.6.

Paragraph (d) has no equivalent in the Oregon Code.

**RULE 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL**

**A lawyer shall not:**

**(a) knowingly and unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;**

**(b) falsify evidence; counsel or assist a witness to testify falsely; offer an inducement to a witness that is prohibited by law; or pay, offer to pay, or acquiesce in payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case; except that a lawyer may advance, guarantee or acquiesce in the payment of:**

**(1) expenses reasonably incurred by a witness in attending or testifying;**

**(2) reasonable compensation to a witness for the witness's loss of time in attending or testifying; or**

**(3) a reasonable fee for the professional services of an expert witness.**

**(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;**

**(d) in pretrial procedure, knowingly make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;**

**(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused;**

**(f) advise or cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for purposes of making the person unavailable as a witness therein; or**

**(g) threaten to present criminal charges to obtain an advantage in a civil matter unless the lawyer reasonably believes the charge to be true and if the purpose of the lawyer is to compel or induce the person threatened to take reasonable action to make good the wrong which is the subject of the charge.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Believes"*
*"Knowingly"*
*"Matter"*
*"Reasonable"*
*"Reasonably"*
*"Reasonably believes"*
*"Tribunal"*

*Comparison to Oregon Code*

Paragraph (a) is similar to DR 7-109(A).

Paragraph (b) includes the rules regarding witness contact from DR 7-109, and also the prohibition against falsifying evidence that is found in DR 7-102(A)(6).

Paragraph (c) is generally equivalent to DR 7-106(C)(7).

Paragraph (d) has no equivalent in the Oregon Code.

Paragraph (e) is the same as DR 7-106(C)(1), (3) and (4).

Paragraph (f) retains the language of DR 7-109(B).

Paragraph (g) retains DR 7-105.

**RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL**

**A lawyer shall not:**

**(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;**

**(b) communicate ex parte on the merits of a cause with such a person during the proceeding unless authorized to do so by law or court order;**

**(c) communicate with a juror or prospective juror after discharge of the jury if:**

**(1) the communication is prohibited by law or court order;**

**(2) the juror has made known to the lawyer a desire not to communicate; or**

**(3) the communication involves misrepresentation, coercion, duress or harassment;**

**(d) engage in conduct intended to disrupt a tribunal; or**

**(e) fail to reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of their families, of which the lawyer has knowledge.**

*Adopted 01/01/05*

*Amended 12/01/06: Paragraph (b) amended to add "on the merits of the cause."*

*Defined Terms (see Rule 1.0):*

*"Known"*
*"Tribunal"*

*Comparison to Oregon Code*

Paragraph (a) has no counterpart in the Oregon Code.

Paragraph (b) replaces DR 7-110, making ex parte contact subject only to law and court order, without additional notice requirements.

Paragraph (c) is similar to DR 7-108(A)-(F).

Paragraph (d) is similar to DR 7-106(C)(6).

Paragraph (e) retains the DR 7-108(G).

**RULE 3.6 TRIAL PUBLICITY**

**(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.**

**(b) Notwithstanding paragraph (a), a lawyer may state:**

**(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;**

**(2) information contained in a public record;**

**(3) that an investigation of a matter is in progress;**

**(4) the scheduling or result of any step in litigation;**

**(5) a request for assistance in obtaining evidence and information necessary thereto;**

**(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and**

**(7) in a criminal case, in addition to subparagraphs (1) through (6):**

**(i) the identity, residence, occupation and family status of the accused;**

**(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;**

**(iii) the fact, time and place of arrest; and**

**(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.**

**(c) Notwithstanding paragraph (a), a lawyer may:**

**(1) reply to charges of misconduct publicly made against the lawyer; or**

**( 2) participate in the proceedings of legislative, administrative or other investigative bodies.**

**(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).**

**(e) A lawyer shall exercise reasonable care to prevent the lawyer's employees from making an extrajudicial statement that the lawyer would be prohibited from making under this rule.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Firm"*
*"Knows"*
*"Matter"*
*"Reasonable"*
*"Reasonably should know"*
*"Substantial"*

*Comparison to Oregon Code*

Paragraph (a) replaces DR 7-107(A).

Paragraph (b) has no counterpart in the Oregon Code.

Paragraphs (c)(1) and ( 2) retain the exceptions in DR 7-107(B) and (C).

Paragraph (d) applies the limitation of the rule to other members in the subject lawyer's firm or government agency.

Paragraph (e) retains the requirement of DR 7-107(C).

**RULE 3.7 LAWYER AS WITNESS**

**(a) A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a witness on behalf of the lawyer's client unless:**

**(1) the testimony relates to an uncontested issue;**

**(2) the testimony relates to the nature and value of legal services rendered in the case;**

**(3) disqualification of the lawyer would work a substantial hardship on the client; or**

**(4) the lawyer is appearing pro se.**

**(b) A lawyer may act as an advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness on behalf of the lawyer's client.**

**(c) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that the lawyer or a member of the lawyer's firm may be called as a witness other than on behalf of the lawyer's client, the lawyer may continue the representation until it is apparent that the lawyer's or firm member's testimony is or may be prejudicial to the lawyer's client.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Firm"*
*"Substantial"*

*Comparison to Oregon Code*

This rule retains DR 5-102 in its entirety.

**RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR**

**The prosecutor in a criminal case shall:**

**(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause; and**

**(b) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Known"*
*"Knows"*
*"Tribunal"*

*Comparison to Oregon Code*

Paragraph (a) is essentially the same as DR 7-103(A).

Paragraph (d) is essentially the same as DR 7-103(B), with the addition of an exception for protective orders.

**RULE 3.9 ADVOCATE IN NONADJUDICATIVE PROCEEDINGS**

**A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rule 3.3(a) through (c), 3.4(a) through (c), and 3.5.**

*Adopted 01/01/05*

*Comparison to Oregon Code*

This rule has no counterpart in the Oregon Code.

**RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS**

**In the course of representing a client a lawyer shall not knowingly:**

**(a) make a false statement of material fact or law to a third person; or**

**(b) fail to disclose a material fact when disclosure is necessary to avoid assisting in an illegal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Fraudulent"*
*"Knowingly"*

*Comparison to Oregon Code*

This rule has no direct counterpart in Oregon, but it expresses prohibitions found in DR 1-102(A)(3), DR 7-102(A)(5) and DR 1-102(A)(7).

**RULE 4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL**

**In representing a client or the lawyer's own interests, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a person the lawyer knows to be represented by a lawyer on that subject unless:**

**(a) the lawyer has the prior consent of a lawyer representing such other person;**

**(b) the lawyer is authorized by law or by court order to do so; or**

**(c) a written agreement requires a written notice or demand to be sent to such other person, in which case a copy of such notice or demand shall also be sent to such other person's lawyer.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Knows"*
*"Written"*

*Comparison to Oregon Code*

This rule retains the language of DR 7-104(A), except that the phrase "or on directly related subjects" has been deleted. The application of the rule to a lawyer acting in the lawyer's own interests has been moved to the beginning of the rule.

**RULE 4.3 DEALING WITH UNREPRESENTED PERSONS**

**In dealing on behalf of a client or the lawyer's own interests with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client or the lawyer's own interests.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Knows"*
*"Matter"*
*"Reasonable"*
*"Reasonably should know"*

*Comparison to Oregon Code*

This rule replaces DR 7-104(B). It is expanded to parallel Rule 4.2 by applying to situations in which the lawyer is representing the lawyer's own interests. The rule is broader than DR 7-104(B) in that it specifically prohibits a lawyer from stating or implying that the lawyer is disinterested. It also imposes an affirmative requirement on the lawyer to correct any misunderstanding an unrepresented person may have about the lawyer's role. The rule continues the prohibition against giving legal advice to an unrepresented person.

**RULE 4.4 RESPECT FOR THE RIGHTS OF THIRD PERSONS; INADVERTENTLY SENT DOCUMENTS**

**(a) In representing a client or the lawyer's own interests, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, harass or burden a third person, or knowingly use methods of obtaining evidence that violate the legal rights of such a person.**

**(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.**

*Adopted 01/01/05*

*Amended 12/01/06: Paragraph (a) amended to make applicable to a lawyer acting in the lawyer's own interests.*

*Amended 01/01/14: Paragraph (b) amended to expand scope to electronically stored information.*

*Defined Terms (see Rule 1.0):*

*"Knowingly"*
*"Knows"*
*"Reasonably should know"*
*"Substantial"*

*Comparison to Oregon Code*

This rule had no equivalent in the Oregon Code, although paragraph (a) incorporates aspects of DR 7-102(A)(1).

## *LAW FIRMS AND ASSOCIATIONS*

**RULE 5.1 RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS**

**A lawyer shall be responsible for another lawyer's violation of these Rules of Professional Conduct if:**

**( a) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or**

**( b) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Knowledge"*
*"Knows"*
*"Law Firm"*
*"Partner"*
*"Reasonable"*

*Comparison to Oregon Code*

This rule is essentially the same as DR 1-102(B) although it specifically applies to partners or others with comparable managerial authority, as well as lawyers with supervisory authority.

**RULE 5.2 RESPONSIBILITIES OF A SUBORDINATE LAWYER**

**(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.**

**(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Reasonable"*

*Comparison to Oregon Code*

Paragraph (a) is identical to DR 1-102(C).

Paragraph (b) has no equivalent in the Oregon Code.

**RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANCE**

**With respect to a nonlawyer employed or retained, supervised or directed by a lawyer:**

**(a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and**

**(b) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:**

**(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or**

**(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.**

*Adopted 01/01/05*

*Amended 01/01/14: Title changed from "Assistants" to "Assistance" in recognition of the broad range of nonlawyer services that can be utilized in rendering legal services.*

*Defined Terms (see Rule 1.0):*

*"Knowledge"*
*"Knows"*
*"Law firm"*
*'Partner"*
*"Reasonable"*

*Comparison to Oregon Code*

This rule has no counterpart in the Oregon Code. Paragraph ( a) is somewhat similar to the requirement in DR 4-101(D), but broader because not limited to disclosure of confidential client information.

Paragraph ( b) applies the requirements of DR 1-102(B) to nonlawyer personnel. An exception by cross-reference to Rule 8.4(b) is included to avoid conflict with the rule that was formerly DR 1-102(D).

**RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER**

**(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:**

**(1) an agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.**

**(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.**

**(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.**

**(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter; and**

**(5) a lawyer may pay the usual charges of a bar-sponsored or operated not-for-profit lawyer referral service, including fees calculated as a percentage of legal fees received by the lawyer from a referral.**

**(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.**

**(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.**

**(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:**

**(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;**

**(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation, except as authorized by law; or**

**(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.**

**(e) A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.**

*Adopted 01/01/05*

*Amended 01/01/13: Paragraph (a)(5) added.*

*Defined Terms (see Rule 1.0):*

*"Firm"*
*"Law firm"*
*"Matter"*
*"Partner"*
*"Reasonable"*

*Comparison to Oregon Code*

Paragraph (a)(1) is the same as DR 3-102(A)(1). Paragraph (a)(2) is similar to DR 3-102(A)(2), except that it addresses the purchase of a deceased, disabled or departed lawyer's practice and payment of an agreed price, rather than only authorizing reasonable compensation for services rendered by a deceased lawyer. Paragraph (a)(3) is identical to DR 3-102(A)(3). Paragraphs (a)(4) and 9a)(5) have no counterpart in the Oregon Code.

Paragraph (b) is identical to DR 3-103.

Paragraph (c) is identical to DR 5-108(B).

Paragraph (d) is essentially identical to DR 5-108(D).

Paragraph (e) is the same as DR 2-105, approved by the Supreme Court in April 2003.

## RULE 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE

**(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.**

**(b) A lawyer who is not admitted to practice in this jurisdiction shall not:**

**(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or**

**(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.**

**(c) A lawyer admitted in another jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:**

**(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;**

**(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;**

**(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternate dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission;**

**(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; or**

**(5) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission.**

**(d) A lawyer admitted in another jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.**

**(e) A lawyer who provides legal services in connection with a pending or potential arbitration proceeding to be held in his jurisdiction under paragraph (c)(3) of this rule must, upon engagement by the client, certify to the Oregon State Bar that:**

**(1) the lawyer is in good standing in every jurisdiction in which the lawyer is admitted to practice; and**

**(2) unless the lawyer is in-house counsel or an employee of a government client in the matter, that the lawyer**

**(i) carries professional liability insurance substantially equivalent to that required of Oregon lawyers, or**

**(ii) has notified the lawyer's client in writing that the lawyer does not have such insurance and that Oregon law requires Oregon lawyers to have such insurance.**

**The certificate must be accompanied by the administrative fee for the appearance established by the Oregon State Bar and proof of service on the arbitrator and other parties to the proceeding.**

*Adopted 01/01/05*

*Amended 01/01/12: Paragraph (e) added.*

*Amended 02/19/15: Phrase "United States" deleted from paragraphs (c) and (d), to allow foreign-licensed lawyers to engage in temporary practice as provided in the rule.*

*Defined Terms (see Rule 1.0):*

*"Matter"*
*"Reasonably"*
*"Tribunal"*

*Comparison to Oregon Code*

Paragraph (a) contains the same prohibitions as DR 3-101(A) and (B).

Paragraph (b), (c), (d) and (e) have no counterpart in the Oregon Code.

**RULE 5.6 RESTRICTIONS ON RIGHT TO PRACTICE**

**A lawyer shall not participate in offering or making:**

**(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or**

**(b) an agreement in which a direct or indirect restriction on the lawyer's right to practice is part of the settlement of a client controversy.**

*Adopted 01/01/05*

*Comparison to Oregon Code*

Paragraph (a) is similar to DR 2-108(A), but in addition to partnership or employment agreements, includes shareholders and operating "or other similar type of agreements," in recognition of the fact that lawyers associate together in organizations other than traditional law firm partnerships.

Paragraph (b) is similar to DR 2-108(B).

**RULE 5.7 [RESERVED]**

*PUBLIC SERVICE*

**RULE 6.1 [RESERVED]**

**RULE 6.2 [RESERVED]**

**RULE 6.3 MEMBERSHIP IN LEGAL SERVICES ORGANIZATION**

**A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:**

**(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or**

**(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Knowingly"*
*"Law firm"*

*Comparison to Oregon Code*

This rule is similar to DR 5-108(C)(10 and (2).

**RULE 6.4 LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS**

**A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration, notwithstanding that the reform may affect the interest of a client of the lawyer. When the lawyer knows that the interest of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Knows"*

*Comparison to Oregon Code*

This rule is similar to DR 5-108(C)(3).

**RULE 6.5 NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES PROGRAMS**

**(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:**

**(1) is subject to Rule 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and**

**(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.**

**(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Knows"*
*"Law firm"*
*"Matter"*

*Comparison to Oregon Code*

This rule has no equivalent in the Oregon Code. It was adopted by the ABA in 2002 to address concerns that strict application of conflict of interest rules might be deterring lawyers from volunteering in programs that provide short-term limited legal services to clients under the auspices of a non-profit or court-annexed program.

## *INFORMATION ABOUT LEGAL SERVICES*

**RULE 7.1 COMMUNICATION CONCERNING A LAWYER'S SERVICES**

**A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.**

*Adopted 01/01/05*

*Amended 12/01/06: Paragraph (a)(5) reworded to conform to former DR 2-101(A)(5).*

*Amended 01/01/14: Model Rule 7.1 language substituted for former RPC 7.1.*

*Comparison to Oregon Code*

The rule retains the essential prohibition against false or misleading communications, but not the specifically enumerated types of communications deemed misleading.

**RULE 7.2 ADVERTISING**

**(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.**

**(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may**

**(1) pay the reasonable costs of advertisements or communications permitted by this Rule;**

**(2) pay the usual charges of a legal service plan or a lawyer referral service;**

**(3) pay for a law practice in accordance with Rule 1.17; and**

**(4) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.**

**(c) Any communication made pursuant to this rule shall include the name and contact information of at least one lawyer or law firm responsible for its content.**

*Adopted 01/01/05*

*Amended 01/01/14: Revised to track more closely Model Rule 7.2 and eliminate redundant language.*

*Amended 01/01/17: Revised to remove "not-for-profit" from (2) and to require listing "contact information" in lieu of "office address."*

*Amended 01/13/20. Revised to add subsection (b)(4) an incorporate exception for giving "nominal gifts."*

*Defined Terms (see Rule 1.0):*

*"Law firm"*

*Comparison to Oregon Code*

This rule retains DR 2-103's permission for advertising in various media, provided the communications are not false or misleading and do not involve improper in-person contact. It retains the prohibition against paying another to recommend or secure employment, with the exception of a legal service plan or not-for-profit lawyer referral service. The rule also continues the requirement that communications contain the name and office address of the lawyer or firm.

**RULE 7.3 SOLICITATION OF CLIENTS**

**A lawyer shall not solicit professional employment by any means when:**

**(a) the lawyer knows or reasonably should know that the physical, emotional or mental state of the subject of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;**

**(b) the person who is the subject of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or**

**(c) the solicitation involves coercion, duress or harassment.**

*Adopted 01/01/05*

*Amended 01/01/14: The title is changed and the phrase "target of the solicitation" or the word "anyone" is substituted for "prospective client" to avoid confusion with the use of the latter term in RPC 1.8. The phrase "Advertising Material" is substituted for "Advertising" in paragraph (c).*

*Amended 01/01/17: Deleting requirement that lawyer place "Advertising Material" on advertising.*

*Amended 01/11/18: Deleting requirements specific to "in-person, telephone or real-time electronic contact" and deleting exception for prepaid and group legal service plans*

*Defined Terms (see Rule 1.0):*

*"Electronic communication"*
*"Known"*
*"Knows"*
*"Matter"*
*"Reasonable"*
*"Reasonably should know"*
*"Written"*

*Comparison to Oregon Code*

This rule incorporates elements of DR 2-101(D) and (H) and DR 2-104.

**RULE 7.4 [RESERVED]**

**RULE 7.5 FIRM NAMES AND LETTERHEADS**

**(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.**

**(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.**

**(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.**

**(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is a fact.**

**(e) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer of the lawyer's firm devotes a substantial amount of professional time in the representation of the client.**

*Adopted 01/01/05*

*Amended 01/01/14: The rule was modified to mirror the ABA Model Rule.*

*Defined Terms (see Rule 1.0):*

*"Firm"*
*"Law firm"*
*"Partner"*
*"Substantial"*

*Comparison to Oregon Code*

This rule retains much of the essential content of DR 2-102.

**RULE 7.6 [RESERVED]**

## *MAINTAINING THE INTEGRITY OF THE PROFESSION*

**RULE 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS**

**(a) An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:**

**(1) knowingly make a false statement of material fact; or**

**(2) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that**

**this rule does not require disclosure of information otherwise protected by Rule 1.6.**

**(b) A lawyer admitted to practice in this state shall, within 30 days after receiving notice thereof, report in writing to the disciplinary counsel of the Oregon State Bar the commencement against the lawyer of any disciplinary proceeding in any other jurisdiction.**

**(c) A lawyer who is the subject of a complaint or referral to the State Lawyers Assistance Committee shall, subject to the exercise of any applicable right or privilege, cooperate with the committee and its designees, including:**

**(1) responding to the initial inquiry of the committee or its designees;**

**(2) furnishing any documents in the lawyer's possession relating to the matter under investigation by the committee or its designees;**

**(3) participating in interviews with the committee or its designees; and**

**(4) participating in and complying with a remedial program established by the committee or its designees.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Knowingly"*
*"Known"*
*"Matter"*
*"Writing"*

*Comparison to Oregon Code*

Paragraph (a) replaces DR 1-101, but is broader because the Oregon rule applies only to misconduct in connection with the lawyer's own or another person's application for admission and this rule applies to any "disciplinary matter." Paragraph (a)(2) replaces DR 1-103(C) but requires only that a lawyer respond rather than "cooperate."

Paragraph (b) is the same as DR 1-103(D). It is placed here because it pertains to the obligations of a lawyer regarding the lawyer's own professional conduct.

Paragraph (c) is the same as DR 1-103(F). It is placed here because it pertains to the obligations of a lawyer regarding the lawyer's own professional conduct.

**RULE 8.2 JUDICIAL AND LEGAL OFFICIALS**

**(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard to its truth or falsity concerning the qualifications or integrity of a judge or adjudicatory officer , or of a candidate for election or appointment to a judicial or other adjudicatory office.**

**(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Knows"*

*Comparison to Oregon Code*

Paragraph (a) is essentially the same as DR 8-102(A) and (B), although the Oregon rule prohibits "accusations" rather than "statements" and applies only to statements about the qualifications of the person.

**RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT**

**(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Oregon State Bar Client Assistance Office.**

**(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.**

**(c) This rule does not require disclosure of information otherwise protected by Rule 1.6 or ORS 9.460(3), or apply to lawyers who obtain such knowledge or evidence while:**

**(1) acting as a member, investigator, agent, employee or as a designee of the State Lawyers Assistance Committee;**

**(2) acting as a board member, employee, investigator, agent or lawyer for or on behalf of the Professional Liability Fund or as a Board of Governors liaison to the Professional Liability Fund; or**

**(3) participating in the loss prevention programs of the Professional Liability Fund, including the Oregon Attorney Assistance Program.**

**(d) This rule does not require disclosure of mediation communications otherwise protected by ORS 36.220.**

*Adopted 01/01/05*

*Amended 1/11/2018 to add subsection "d" relating to mediation communications.*

*Defined Terms (see Rule 1.0):*

*"Knows"*

*"Substantial"*

*Comparison to Oregon Code*

This rule replaces DR 1-103(A) and (E). Paragraph (a) is essentially the same as DR 1-103(A), although the exception for confidential client information is found in paragraph (c). Also, the rule now requires that misconduct be reported to the OSB Client Assistance Office, to conform to changes in the Bar Rules of Procedure that were effective August 1, 2003.

Paragraph (b) has no counterpart in the Oregon Code, although the obligation might be inferred from DR 1-103(A).

Paragraph (c) incorporates the exception for information protected by rule and statute. It also incorporates the exception contained in DR 1-103(E).

**RULE 8.4 MISCONDUCT**

**(a) It is professional misconduct for a lawyer to:**

**(1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;**

**(2) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;**

**(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law;**

**(4) engage in conduct that is prejudicial to the administration of justice; or**

**(5) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law, or**

**(6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.**

**(7) in the course of representing a client, knowingly intimidate or harass a person because of that person's race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability.**

**(b) Notwithstanding paragraphs (a)(1), (3) and (4) and Rule 3.3(a)(1), it shall not be professional misconduct for a lawyer to advise clients or others about or to supervise lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these Rules of Professional Conduct. "Covert activity," as used in this rule, means an effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. "Covert activity" may be commenced by a lawyer or involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.**

**(c) Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from engaging in legitimate advocacy with respect to the bases set forth therein.**

*Adopted 01/01/05*

*Amended 12/01/06: Paragraph (a)(5) added.*

*Amended 02/19/15: Paragraphs (a)(7) and (c) added.*

*Defined Terms (see Rule 1.0):*

*"Believes"*
*"Fraud"*
*"Knowingly"*
*"Reasonable"*

*Comparison to Oregon Code*

This rule is essentially the same as DR 1-102(A).

Paragraph (b) retains DR 1-102(D).

**RULE 8.5 DISCIPLINARY AUTHORITY; CHOICE OF LAW**

**(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.**

**(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the Rules of Professional Conduct to be applied shall be as follows:**

**(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and**

**(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Believes"*
*"Matter"*
*"Reasonably believes"*
*"Tribunal"*

*Comparison to Oregon Code*

This rule has no counterpart in the Oregon Code. A similar version based on *former* ABA Model Rule 8.5 was adopted by the Supreme Court in 1996 as Bar Rule of Procedure 1.4.

BR 1.4(a) specifically provides that the Supreme Court's jurisdiction over a lawyer's conduct continues whether or not the lawyer retains authority to practice law in Oregon and regardless of where the lawyer resides.

BR 1.4(b)(1) is essentially the same as 8.5(b)(1).

BR 1.4(b)(2) applies the Oregon Code if the lawyer is licensed only in Oregon. If the lawyer is licensed in Oregon and another jurisdiction, the rules of the jurisdiction in which the lawyer principally practices apply, or if the conduct has its predominant effect in another jurisdiction in which the lawyer is licensed, then the rules of that jurisdiction will apply.

**RULE 8.6 WRITTEN ADVISORY OPINIONS ON PROFESSIONAL CONDUCT; CONSIDERATION GIVEN IN DISCIPLINARY PROCEEDINGS**

**(a) The Oregon State Bar Board of Governors may issue formal written advisory opinions on questions under these Rules. The Oregon State Bar Legal Ethics Committee and General Counsel's Office may also issue informal written advisory opinions on questions under these Rules. The General Counsel's Office of the Oregon State Bar shall maintain records of both OSB formal and informal written advisory opinions and copies of each shall be available to the Oregon Supreme Court, Disciplinary Board, State Professional Responsibility Board, and Disciplinary Counsel. The General Counsel's Office may also disseminate the bar's advisory opinions as it deems appropriate to its role in educating lawyers about these Rules.**

**(b) In considering alleged violations of these Rules, the Disciplinary Board and Oregon Supreme Court may consider any lawyer's good faith effort to comply with an opinion issued under paragraph (a) of this rule as:**

**(1) a showing of the lawyer's good faith effort to comply with these Rules; and**

**(2) a basis for mitigation of any sanction that may be imposed if the lawyer is found to be in violation of these Rules.**

**(c) This rule is not intended to, and does not, preclude the Disciplinary Board or the Oregon Supreme Court from considering any other evidence of either good faith or basis for mitigation in a bar disciplinary proceeding.**

*Adopted 01/01/05*

*Defined Terms (see Rule 1.0):*

*"Written"*

*Comparison to Oregon Code*

This rule is identical to DR 1-105, amended only to refer to "General Counsel's Office" in the second sentence of paragraph (a), rather than only to "General Counsel," to make it clear that opinions of assistant general counsel are covered by the rule.

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| DR 1-101 | Rule 8.1(a) |
|---|---|
| DR 1-102(A)(1) | Rule 8.4(a)(1) |
| DR 1-102(A)(2) | Rule 8.4(a)(2) |
| DR 1-102(A)(3) | Rule 8.4(a)(3) |
| DR 1-102(A)(4) | Rule 8.4(a)(4) |
| DR 1-102(A)(5) | Rule 7.1(a)(5) |
| DR 1-102(B)(1) | Rule 5.1(c)(1) |
| DR 1-102(B)(2) | Rule 5.1(c)(2) |
| DR 1-102(C) | Rule 5.2(a) |
| DR 1-102(D) | Rule 8.4(b) |
| DR 1-103(A) | Rule 8.3(a) |
| DR 1-103(B) | Rule 8.3(b) |
| DR 1-103(C) | Rule 8.1(a) |
| DR 1-103(D) | Rule 8.1(b) |
| DR 1-103(E) | Rule 8.3(c) |
| DR 1-103(F) | Rule 8.1(c) |
| DR 1-104 | Eliminated |
| DR 1-105 | Rule 8.6 |
| | |
| DR 2-101(A)(1) | Rule 7.1(a)(1) |
| DR 2-101(A)(2) | Rule 7.1(a)(2) |
| DR 2-101(A)(3) | Rule 7.1(a)(3) |
| DR 2-101(A)(4) | Rule 7.1(a)(4) |
| DR 2-101(A)(5) | eliminated |
| DR 2-101(A)(6) | Rule 7.1(a)(6) |
| DR 2-101(A)(7) | Rule 7.1(a)(7) |
| DR 2-101(A)(8) | Rule 7.1(a)(8) |
| DR 2-101(A)(9) | Rule 7.1(a)(9) |
| DR 2-101(A)(10) | Rule 7.1(a)(10) |
| DR 2-101(A)(11) | Rule 7.1(a)(11) |
| DR 2-101(A)(12) | Rule 7.1(a)(12) |
| DR 2-101(B) | eliminated |
| DR 2-101(C) | Rule 7.1(b) |
| DR 2-101(D) | Rule 7.3(b) |

| DR 2-101(E) | Rule 7.1(c) |
|---|---|
| DR 2-101(F) | Rule 7.1(d) |
| DR 2-101(G) | Rule 7.1(e) |
| DR 2-101(H) | Rule 7.3(c) |
| DR 2-102(A) | Rule 7.5(a) |
| DR 2-102(B) | Rule 7.5(b) |
| DR 2-102(C) | Rule 7.5(c) |
| DR 2-102(D) | Rule 7.5(d) |
| DR 2-102(E) | Rule 7.5(e) |
| DR 2-102(F) | Rule 7.5(f) |
| DR 2-103(A) | Rule 7.2(a) |
| DR 2-103(B) | Rule 7.2(b) |
| DR 2-103(C) | Rule 7.2(c) |
| DR 2-104(A)(1) | Rule 7.3(a) |
| DR 2-104(A)(2) | Rule 7.3(a) |
| DR 2-104(A)(3) | Rule 7.3(d) |
| DR 2-104(B) | Eliminated |
| DR 2-105 | Rule 5.4(e) |
| DR 2-106(A) | Rule 1.5(a) |
| DR 2-106(B) | Rule 1.5(b) |
| DR 2-106(C) | Rule 1.5(c) |
| DR 2-107(A) | Rule 1.5(d) |
| DR 2-107(B) | Rule 1.5(e) |
| DR 2-108 | Rule 5.6 |
| DR 2-109 | Rule 3.1 |
| DR 2-110 | Rule 1.16 |
| DR 2-111 | Rule 1.17 |
| | |
| DR 3-101(A) | Rule 5.5(a) |
| DR 3-101(B) | Rule 5.5(a) |
| DR 3-102 | Rule 5.4(a) |
| DR 3-103 | Rule 5.4(b) |
| | |
| DR 4-101(A)-C) | Rule 1.6(a)-(b) |

| DR 4-101(D) | Rule 5.3(b) |
|---|---|
| | |
| DR 5-101(A)(1) | Rule 1.7(a)(2) |
| DR 5-101(A)(2) | Rule 1.7(a)(3) |
| DR 5-101(B) | Rule 1.8(c) |
| DR 5-102 | Rule 3.7 |
| DR 5-103(A) | Rule 1.8(i) |
| DR 5-103(B) | Rule 1.8(e) |
| DR 5-104(A) | Rule 1.8(a) |
| DR 5-104(B) | Rule 1.8(d) |
| DR 5-105(A)(1) | Rule 1.7(b)(3) |
| DR 5-105(B) | Rule 1.0(i) |
| DR 5-105(C) | Rule 1.9(a) |
| DR 5-105(D) | Rule 1.9(a) |
| DR 5-105(E) | Rule 1.7(a) |
| DR 5-105(F) | Rule 1.7(b) |
| DR 5-105(G) | Rule 1.8(k) |
| DR 5-105(H) | Rule 1.9(b) |
| DR 5-105(I) | Rule 1.10(c) |
| DR 5-105(J) | Rule 1.10(b) |
| DR 5-106 | Rule 2.4 |
| DR 5-107 | Rule 1.8(g) |
| DR 5-108(A) | Rule 1.8(f) |
| DR 5-108(B) | Rule 5.4(c) |
| DR 5-109(A) | Rule 1.12(a) |
| DR 5-109(B) | Rule 1.11(a) |
| DR 5-110 | Rule 1.8(j) |
| | |
| DR 6-101(A) | Rule 1.1 |
| DR 6-101(B) | Rule 1.3 |
| DR 6-102(A) | Rule 1.8(h)(1)-(2) |
| DR 6-102(B) | Rule 1.8(h)(3) |
| | |
| DR 7-101(A) | Rule 1.2(a) |

| | |
|---|---|
| **DR 7-101(B)** | **Rule 1.2(a)** |
| **DR 7-101(C)** | **Rule 1.14** |
| **DR 7-101(D)** | **Rule 2.3** |
| **DR 7-102(A)(1)** | **Rule 3.1, 4.4(a)** |
| **DR 7-102(A)(2)** | **Rule 3.1** |
| **DR 7-102(A)(3)** | **Rule 3.3(a)(4)** |
| **DR 7-102(A)(4)** | **Rule 3.3(a)(3)** |
| **DR 7-102(A)(5)** | **Rule 3.3(a)(1)** |
| **DR 7-102(A)(6)** | **Rule 3.4(b)** |
| **DR 7-102(A)(7)** | **Rule 1.2(c)** |
| **DR 7-102(A)(8)** | **eliminated** |
| **DR 7-102(B)** | **Rule 3.3(b)** |
| **DR 7-103** | **Rule 3.8** |
| **DR 7-104(A)(1)** | **Rule 4.2** |
| **DR 7-104(A)(2)** | **Rule 4.3** |
| **DR 7-105** | **Rule 3.4(g)** |
| **DR 7-106(A)** | **Rule 3.4(c)** |
| **DR 7-106(B)(1)** | **Rule 3.3(a)(2)** |
| **DR 7-106(B)(2)** | **eliminated** |
| **DR 7-106(C)(1)** | **Rule 3.4(e)** |
| **DR 7-106(C)(2)** | **eliminated** |
| **DR 7-106(C)(3)** | **Rule 3.4(e)** |
| **DR 7-106(C)(4)** | **Rule 3.4(e)** |
| **DR 7-106(C)(5)** | **eliminated** |
| **DR 7-106(C)(6)** | **Rule 3.5(d)** |
| **DR 7-106(C)(7)** | **Rule 3.4(c)** |
| **DR 7-107(A)** | **Rule 3.6(a)** |
| **DR 7-107(B)** | **Rule 3.6(b)** |
| **DR 7-107(C)** | **Rule 3.6(c)** |
| **DR 7-108(A)** | **Rule 3.5(b)** |
| **DR 7-108(B)** | **Rule 3.5(b)** |
| **DR 7-108(C)** | **eliminated** |
| **DR 7-108(D)** | **Rule 3.5(c)** |
| **DR 7-108(E)** | **Rule 3.5(c)** |

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| **DR 7-108(F)** | **Rule 3.5(c)** |
| **DR 7-108(G)** | **Rule 3.5(e)** |
| **DR 7-109(A)** | **Rule 3.4(a)** |
| **DR 7-109(B)** | **Rule 3.4(f)** |
| **DR 7-110** | **Rule 3.5(b)** |
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| **DR 8-101(A)(1)** | **Rule 1.11(c) & (d)(i)** |
| **DR 8-101(A)(2)** | **Rule 1.11(d)(ii)** |
| **DR 8-101(A)(3)** | **Rule 1.11(d)(iii)** |
| **DR 8-101(A)(4)** | **Rule 1.11(c) & (d)(iv)** |
| **DR 8-101(B)** | **eliminated** |
| **DR 8-101(C)** | **Rule 1.11(e)** |
| **DR 8-101(D)** | **Rule 1.11(f)** |
| **DR 8-102** | **Rule 8.2** |
| **DR 8-103** | **Rule 8.2(b)** |
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| **DR 9-101(A)-(C)** | **Rule 1.15-1(a)-(e)** |
| **DR 9-101(D)(1)** | **Rule 1.15(a)** |
| **DR 9-101(D)(2)-(4)** | **Rule 1.15-2(a)-(h)** |
| **DR 9-102** | **Rule 1.15(i)-(l)** |
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| **DR 10-101** | **Rule 1.0** |

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| Rule 1.0 | DR 10-101 |
| Rule 1.0(i) | DR 5-105(B) |
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| Rule 1.1 | DR 6-101(A) |
| Rule 1.2(a) | DR 7-101(A)&(B) |
| Rule 1.2(c) | DR 7-102(A)(7) |
| Rule 1.3 | DR 6-101(B) |
| Rule 1.5(a) | DR 2-106(A) |
| Rule 1.5(b) | DR 2-106(B) |
| Rule 1.5(c) | DR 2-106(C) |
| Rule 1.5(d) | DR 2-107(A) |
| Rule 1.5(e) | DR 2-107(B) |
| Rule 1.6(a)-(b) | DR 4-101(A)-(C) |
| Rule 1.7(a)(1) | DR 5-105(E) |
| Rule 1.7(a)(2) | DR 5-101(A)(1) |
| Rule 1.7(a)(3) | DR5-101(A)(2) |
| Rule 1.7(b) | DR 5-105(F) |
| Rule 1.7(b)(3) | DR 5-105(A)(1) |
| Rule 1.8(a) | DR 5-104(A) |
| Rule 1.8(b) | DR 4-101(B ) |
| Rule 1.8(c) | DR 5-101(B) |
| Rule 1.8(d) | DR 5-104(B) |
| Rule 1.8(e) | DR 5-103(B) |
| Rule 1.8(f) | DR 5-108(A) |
| Rule 1.8(g) | DR 5-107 |
| Rule 1.8(h)(1)-(2) | DR 6-102(A) |
| Rule 1.8(h)(3) | DR 6-102(B) |
| Rule 1.8(i) | DR 5-103(A) |
| Rule 1.8(j) | DR 5-110 |
| Rule 1.8(k) | DR 5-105(G) |
| Rule 1.9(a) | DR 5-105(C)&(D) |
| Rule 1.9(b) | DR 5-105(H) |
| Rule 1.10(a) | DR 5-105(G) |
| Rule 1.10(b) | DR 5-105(J) |

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| Rule 1.10(c) | DR 5-105(I) |
| Rule 1.11(a) | DR 5-109(B) & 8-101(B) |
| Rule 1.11(b) | DR 5-105(G) |
| Rule 1.11(c) | DR 8-101(A)(4) |
| Rule 1.11(d)(2)(i)-(iv) | DR 8-101(A)(1)-(4) |
| Rule 1.11(e) | DR 8-101(C) |
| Rule 1.11(f) | DR 8-101(D) |
| Rule 1.12(a) | DR 5-109(A) |
| Rule 1.14 | DR 7-101(C) |
| Rule 1.15-1 | DR 9-101(A)-(C) & (D)(1) |
| Rule 1.15-2(a)-(h) | DR 9-101(D)(2)-(4) |
| Rule 1.15-2(i)-(l) | DR 9-102 |
| Rule 1.16 | DR 2-110 |
| Rule 1.17 | DR 2-111 |
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| Rule 2.3 | DR 7-101(D) |
| Rule 2.4 | DR 5-106 |
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| Rule 3.1 | DR 2-109 & 7-102(A)(1) & (2) |
| Rule 3.3(a)(1) | DR 7-102(A)(5) |
| Rule 3.3(a)(2) | DR 7-106(B)(1) |
| Rule 3.3(a)(3) | DR 7-102(A)(4) |
| Rule 3.3(a)(4) | DR 7-102(A)(3) |
| Rule 3.3(a)(5) | DR 7-102((A)(8) |
| Rule 3.3(b) | DR 7-102(B) |
| Rule 3.4(a) | DR 7-109(A) |
| Rule 3.4(b) | DR 7-102(A)(6) & 7-109(B)&(C) |
| Rule 3.4(c) | DR 7-106(A) & (C)(7) |
| Rule 3.4(e) | DR 7-106(C)(1), (3)&(4) |

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| Rule 3.4(f) | DR 7-109(B) |
| Rule 3.4(g) | DR 7-105 |
| Rule 3.5(b) | DR 7-108(A)&(B) & DR 7-110 |
| Rule 3.5(c) | DR 7-108(D)-(F) |
| Rule 3.5(d) | DR 7-106(C)(6) |
| Rule 3.5(e) | DR 7-108(G) |
| Rule 3.6(a) | DR 7-107(A) |
| Rule 3.6(b) | DR 7-107(B) |
| Rule 3.6(c) | DR 7-107(C) |
| Rule 3.7 | DR 5-102 |
| Rule 3.8 | DR 7-103 |
| Rule 4.2 | DR 7-104(A)(1) |
| Rule 4.3 | DR 7-104(A)(2) |
| Rule 4.4(a) | DR 7-102(A)(1) |
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| Rule 5.1(a) | DR 1-102(B)(1) |
| Rule 5.1(b) | DR 1-102(B)(2) |
| Rule 5.2(a) | DR 1-102(C) |
| Rule 5.3(B) | DR 4-101(D) |
| Rule 5.4(a) | DR 3-102 |
| Rule 5.4(b) | DR 3-103 |
| Rule 5.4(c) | DR 5-108(B) |
| Rule 5.4(d) | DR 5-108(D) |
| Rule 5.4(e) | DR 2-105 |
| Rule 5.5(a) | DR 3-101 |
| Rule 5.6 | DR 2-108 |
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| Rule 6.3 | DR 5-108(C)(1)&(2) |
| Rule 6.4 | DR 5-108(C)(3) |
| | |
| Rule 7.1(a)(1) | DR 2-101(A)(1) |
| Rule 7.1(a)(2) | DR 2-101(A)(2) |
| Rule 7.1(a)(3) | DR 2-102(A)(3) |

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| Rule 7.1(a)(4) | DR 2-102(A)(4) |
| Rule 7.1(a)(5) | DR 1-102(A)(5) |
| Rule 7.1(a)(6) | DR 2-101(A)(6) |
| Rule 7.1(a)(7) | DR 2-101(A)(7) |
| Rule 7.1(a)(8) | DR 2-101(A)(8) |
| Rule 7.1(a)(9) | DR 2-101(A)(9) |
| Rule 7.1(a)(10) | DR 2-101(A)(10) |
| Rule 71.(a)(11) | DR 2-101(A)(11) |
| Rule 7.1(a)(12) | DR 2-101(A)(12) |
| Rule 7.1(b) | DR 2-101(C) |
| Rule 7.1(c) | DR 2-101(D) |
| Rule 7.1(d) | DR 2-101(F) |
| Rule 7.1(e) | DR 2-101(G) |

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| Rule 7.2(a) | DR 2-103(A) |
| Rule 7.2(b) | DR 2-103(B) |
| Rule 7.2(c) | DR 2-103(C) |
| Rule 7.3(a) | DR 2-104(A)(1) |
| Rule 7.3(b) | DR 2-101(D) |
| Rule 7.3(c) | DR 2-101(H) |
| Rule 7.3(d) | DR 2-104(A)(3) |
| Rule 7.5(a) | DR 2-102(A) |
| Rule 7.5(b) | DR 2-102(B) |
| Rule 7.5(c) | DR 2-102(C) |
| Rule 7.5(d) | DR 2-102(D) |
| Rule 7.5(e) | DR 2-102(E) |
| Rule 7.5(f) | DR 2-102(F) |

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| Rule 8.1(a) | DR 1-101 & 1-103(C) |
| Rule 8.1(b) | DR 1-103(D) |
| Rule 8.1(c) | DR 1-103(F) |
| Rule 8.2(a) | DR 8-102 |
| Rule 8.2(b) | DR 8-103 |
| Rule 8.3(a) | DR 1-103(A) |
| Rule 8.3(b) | DR 1-103(B) |
| Rule 8.3(c) | DR 1-103(E) |
| Rule 8.4(a)(1)-(4) | DR 1-102(A)(1)-(4) |
| Rule 8.4(b) | DR 1-102(D) |
| Rule 8.6 | DR 1-105 |

# Code of Ethics

**CODE OF ETHICS AND PROFESSIONAL CONDUCT**

As the world's leading professional organization and official certifying body for HR Management profession, the HRMI requires adherence to this Code of Ethics as a condition of membership and certification.

**Overview**

The HR Management Institute's Code of Ethics and Professional Conduct has been adopted to promote and maintain the highest standards of service and conduct for all persons it has recognized membership and certified to use any of its certification marks: CHRP®, CHRM®, CHRD®, and CHRC®. The HR Management Institute's Board determines who is certified and thus authorized to use the marks. Implicit in the acceptance of this authorization is an obligation not only to comply with the mandates and requirements of all applicable laws and regulations but also to take responsibility to act in an ethical and professionally responsible manner. Adherence to these standards is expected from all who hold an HR Management Institute credential and serves to ensure public confidence in the integrity of these individuals.

Those holding an HRMI credential commit to the following:

**PROFESSIONAL RESPONSIBILITY**

As an HR Management Institute certificant, you are responsible for adding value to the organizations you serve and contributing to the ethical success of those organizations. You accept professional responsibility for your individual decisions and actions. You are also an advocate for the HR profession by engaging in activities that enhance its credibility and value. You will:

1. Adhere to the highest standards of ethical and professional behavior.
2. Measure the effectiveness of HR in contributing to or achieving organizational goals.
3. Comply with the law.
4. Work consistently within the values of the profession.
5. Strive to achieve the highest levels of service, performance and social responsibility.
6. Advocate for the appropriate use and appreciation of human beings as employees.
7. Advocate openly and within the established forums for debate in order to influence decision making and results.

**PROFESSIONAL DEVELOPMENT**

As an HR Management Institute certificant you must strive to meet the highest standards of competence and commit to strengthen your competencies on a continuous basis. You will:

1. Commit to continuous learning, skills development and application of new knowledge related to both human resource management and the organizations you serve.
2. Contribute to the body of knowledge, the evolution of the profession and the growth of individuals through teaching, research and dissemination of knowledge.

**ETHICAL LEADERSHIP**

As an HR Management Institute certificant you are expected to exhibit individual leadership as a role model for maintaining the highest standards of ethical conduct. You will:

1. Be ethical and act ethically in every professional interaction.
2. Question pending individual and group actions when necessary to ensure that decisions are ethical and are implemented in an ethical manner.
3. Seek expert guidance if ever in doubt about the ethical propriety of a situation.
4. Through teaching and mentoring, champion the development of others as ethical leaders in the profession and in organizations.

**FAIRNESS AND JUSTICE**

As an HR Management Institute certificant you are ethically responsible for promoting and fostering fairness and justice for all employees and their organizations. You will:

1. Respect the uniqueness and intrinsic worth of every individual.
2. Treat people with dignity, respect and compassion to foster a trusting work environment free of harassment, intimidation and unlawful discrimination.
3. Ensure that everyone has the opportunity to develop their skills and new competencies.
4. Assure an environment of inclusiveness and a commitment to diversity in the organizations you serve.
5. Develop, administer and advocate policies and procedures that foster fair, consistent and equitable treatment for all.
6. Regardless of personal interests, support decisions made by your organizations that are both ethical and legal.
7. Act in a responsible manner and practice sound management in the country or countries in which the organizations you serve operate.

**CONFLICTS OF INTEREST**

As an HR Management Institute certificant you must maintain a high level of trust with our stakeholders. You must protect the interests of those stakeholders as well as your professional integrity and should not engage in activities that create actual, apparent or potential conflicts of interest. You will:

1. Adhere to and advocate the use of published policies on conflicts of interest within your organization.
2. Refrain from using your position for personal, material or financial gain or the appearance of such.
3. Refrain from giving or seeking preferential treatment in the human resources processes.
4. Prioritize your obligations to identify conflicts of interest or the appearance thereof.
5. When conflicts arise; you will disclose them to relevant stakeholders.

**USE OF INFORMATION**

As an HR Management Institute certificant you must consider and protect the rights of individuals, especially in the acquisition and dissemination of information while ensuring truthful communications and facilitating informed decision making. You will:

1. Acquire and disseminate information through ethical and responsible means.
2. Ensure only appropriate information is used in decisions affecting the employment relationship.
3. Investigate the accuracy and source of information before allowing it to be used in employment-related decisions.
4. Maintain current and accurate HR information.
5. Safeguard restricted or confidential information.
6. Take appropriate steps to ensure the accuracy and completeness of all communicated information about HR policies and practices.
7. Take appropriate steps to ensure the accuracy and completeness of all communicated information used in HR-related training.

**Disciplinary Process and Procedures**

The HR Management Institute Board's disciplinary procedures have been devised to ensure a fair and reasonable process for any professional holding one of the HR Management Institute's credentials against whom allegations of Code of Ethical and Personal Responsibility violations are brought.

1. **Process Nature –** These procedures are the only means to resolve all HR Management Institute ethical charges and complaints. The HR Management Institute has the exclusive authority to end any ethics inquiry or case regardless of circumstances. By applying for certification or recertification, HR professionals agree that they will not challenge the authority of the HR Management Institute to apply the Code of Ethical and Personal Responsibility, the Disciplinary Case Procedures or other policies, and will not challenge the results of any HR Management Institute action taken under these policies in a legal or government forum. These disciplinary procedures are not formal legal proceedings, thus many formal rules and practices of a court proceeding are not observed. The rules are intended to afford due process and fairness.
2. **Investigation Request** – Upon receipt of written complaint, the HR Certification Institute staff will review the allegation to determine if further investigation is warranted. No investigation will be made if the individual's certification has expired or the allegation occurred more than 24 months prior to the expiration unless the HR Management Institute determines there is just cause for the complaint to be reviewed.
3. **Investigation –** If staff determines to proceed with an investigation, the accused individual holding one of the HR Certification Institute's credentials will be given written notice of the investigation. That notice will contain the general nature of the allegations. That individual will be given 30 days within which to file a written response. If no response is received within the allotted 30 days, the complaint will be presented to a Staff Review Panel based on the information submitted. The Staff Review Panel made up of senior staff is empowered by the Board of Governors to review the

complaint and make a final decision. If the decision is that no action will be taken, then the accused and the party making the complaint will be notified of the panel's final decision.

4. **Hearing Panel –** If the Staff Review Panel determines that discipline is merited, a hearing will take place before a Hearing Panel. The accused is entitled to appear in person or be represented by counsel at the hearing. After final deliberation by the panel, the accused and the party making the complaint will be notified of the Hearing Panel's final decision.

The panel will be comprised of a minimum of three individuals. At least one member of every

Hearing Panel will be a member of the HR Management Institute Board and at least two members of the panel will hold at least one of the HR Management Institute's credentials. The panel will be appointed by the HR Management Institute's Governance Committee using the same criteria it uses for selection of Board members.

The Hearing Panel will submit its findings and recommendations for action to the full HR Management Institute's Board of Governors which, after considering all of the facts and recommendations will render a final decision.

5. **Resolution –** The accused and the accuser will receive written notification of the panel's decision.

**Forms of Discipline**

If grounds for discipline are deemed warranted, the HR Management Institute Board of Governors may impose any of the forms of discipline below:

1. Private written censure
2. Public letter of admonition
3. Suspension of the right to use the HR Management Institute mark for a specified period of time
4. Permanent revocation of the right to use the HR Management Institute mark

**Discipline Grounds**

1. Any act or omission that violates the criminal laws of any state or country in which that individual resides or is employed.
2. Any act that is the proper basis for suspension of a professional license.
3. Any act or omission that violates the HR Management Institute's rules and procedures for obtaining or maintaining certification or is considered a material violation of this Code of Ethical and Personal Responsibility.
4. Failure to respond to a request for information concerning an ethics violation allegation by the
5. HR Management Institute's Board or the HR Management Institute's Hearing Panel without just cause.
6. Obstruction of the HR Management Institute Hearing Panel's performance of its duties.
7. Any false or misleading statement made to the HR Management Institute Board or the HR Management Institute Hearing Panel.

This list is not exclusive and there may be other acts or omissions amounting to unprofessional conduct that may also constitute grounds for discipline

Government Finance Officers Association

# *Code of Ethics*

We, the government finance officers of the United States and Canada, have a deep and abiding desire to show that we are worthy of the special trust that the communities we serve have placed in us. As a member of my government's finance office, I commit to living the following values to show that I am worthy of that trust.

## INTEGRITY AND HONESTY

Integrity and honesty are the foundation on which trustworthiness is built. It means people can believe what I say, I act in accordance with my deepest values, I put principle ahead of my own ego, and I do the right thing even when it is hard.

## PRODUCING RESULTS FOR MY COMMUNITY

Public finance offices have an important job. Doing that job well honors the trust the public has placed in me.

## TREATING PEOPLE FAIRLY

Local governments depend on trusting relationships. Therefore, I will treat people fairly and develop processes and procedures that are fair.

## DIVERSITY AND INCLUSION

Embracing diversity and fostering inclusiveness helps finance offices cultivate organizations and promote policies that reflect the communities they serve. When people feel included, they see that I am concerned for their wellbeing. That shows I am worthy of their trust.

## RELIABILITY AND CONSISTENCY

When I consistently apply my standards – especially to myself – I honor my commitment to the community I serve and make it easier to do the right thing even when faced with challenging circumstances.

*August 2019*

# Law Enforcement Code of Ethics

*As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.*

*I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.*

*I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.*

*I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.*

*I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.*

*I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession… law enforcement.*

The American Planning Association's Professional Institute
American Institute of Certified Planners
*Making Great Communities Happen*

# AICP Code of Ethics and Professional Conduct

**Adopted March 19, 2005**
**Effective June 1, 2005**
**Revised April 1, 2016**

We, professional planners, who are members of the American Institute of Certified Planners, subscribe to our Institute's Code of Ethics and Professional Conduct. Our Code is divided into five sections:

Section A contains a statement of aspirational principles that constitute the ideals to which we are committed. We shall strive to act in accordance with our stated principles. However, an allegation that we failed to achieve our aspirational principles cannot be the subject of a misconduct charge or be a cause for disciplinary action.

Section B contains rules of conduct to which we are held accountable. If we violate any of these rules, we can be the object of a charge of misconduct and shall have the responsibility of responding to and cooperating with the investigation and enforcement procedures. If we are found to be blameworthy by the AICP Ethics Committee, we shall be subject to the imposition of sanctions that may include loss of our certification.

Section C contains the procedural provisions of the Code that describe how one may obtain either a formal or informal advisory ruling, as well as the requirements for an annual report.

Section D contains the procedural provisions that detail how a complaint of misconduct can be filed, as well as how these complaints are investigated and adjudicated.

Section E contains procedural provisions regarding the forms of disciplinary actions against a planner, including those situations where a planner is convicted of a serious crime or other conduct inconsistent with the responsibilities of a certified planner.

The principles to which we subscribe in Sections A and B of the Code derive from the special responsibility of our profession to serve the public interest with compassion for the welfare of all people and, as professionals, to our obligation to act with high integrity.

As the basic values of society can come into competition with each other, so can the aspirational principles we espouse under this Code. An ethical judgment often requires a conscientious balancing, based on the facts and context of a particular situation and on the precepts of the entire Code.

As Certified Planners, all of us are also members of the American Planning Association and share in the goal of building better, more inclusive communities. We want the public to be aware of the principles by which we practice our profession in the quest of that goal. We

sincerely hope that the public will respect the commitments we make to our employers and clients, our fellow professionals, and all other persons whose interests we affect.

# A: Principles to Which We Aspire

**1. Our Overall Responsibility to the Public**

Our primary obligation is to serve the public interest and we, therefore, owe our allegiance to a conscientiously attained concept of the public interest that is formulated through continuous and open debate. We shall achieve high standards of professional integrity, proficiency, and knowledge. To comply with our obligation to the public, we aspire to the following principles:

a) We shall always be conscious of the rights of others.

b) We shall have special concern for the long-range consequences of present actions.

c) We shall pay special attention to the interrelatedness of decisions.

d) We shall provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers.

e) We shall give people the opportunity to have a meaningful impact on the development of plans and programs that may affect them. Participation should be broad enough to include those who lack formal organization or influence.

f) We shall seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. We shall urge the alteration of policies, institutions, and decisions that oppose such needs.

g) We shall promote excellence of design and endeavor to conserve and preserve the integrity and heritage of the natural and built environment.

h) We shall deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal evenhandedly with all planning process participants.

**2. Our Responsibility to Our Clients and Employers**

We owe diligent, creative, and competent performance of the work we do in pursuit of our client or employer's interest. Such performance, however, shall always be consistent with our faithful service to the public interest.

a) We shall exercise independent professional judgment on behalf of our clients and employers.

b) We shall accept the decisions of our client or employer concerning the objectives and nature of the professional services we perform unless the course of action is illegal or plainly inconsistent with our primary obligation to the public interest.

c) We shall avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.

**3. Our Responsibility to Our Profession and Colleagues**

We shall contribute to the development of, and respect for, our profession by improving knowledge and techniques, making work relevant to solutions of community problems, and increasing public understanding of planning activities.

a) We shall protect and enhance the integrity of our profession.

b) We shall educate the public about planning issues and their relevance to our everyday lives.

c) We shall describe and comment on the work and views of other professionals in a fair and professional manner.

d) We shall share the results of experience and research that contribute to the body of planning knowledge.

e) We shall examine the applicability of planning theories, methods, research and practice and standards to the facts and analysis of each particular situation and shall not accept the applicability of a customary solution without first establishing its appropriateness to the situation.

f) We shall contribute time and resources to the professional development of students, interns, beginning professionals, and other colleagues.

g) We shall increase the opportunities for members of underrepresented groups to become professional planners and help them advance in the profession.

h) We shall continue to enhance our professional education and training.

i) We shall systematically and critically analyze ethical issues in the practice of planning.

j) We shall contribute time and effort to groups lacking in adequate planning resources and to voluntary professional activities.

The American Planning Association's Professional Institute
American Institute of Certified Planners
*Making Great Communities Happen*

# B: Our Rules of Conduct

We adhere to the following Rules of Conduct, and we understand that our Institute will enforce compliance with them. If we fail to adhere to these Rules, we could receive sanctions, the ultimate being the loss of our certification:

1. We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues.

2. We shall not accept an assignment from a client or employer when the services to be performed involve conduct that we know to be illegal or in violation of these rules.

3. We shall not accept an assignment from a client or employer to publicly advocate a position on a planning issue that is indistinguishably adverse to a position we publicly advocated for a previous client or employer within the past three years unless (1) we determine in good faith after consultation with other qualified professionals that our change of position will not cause present detriment to our previous client or employer, and (2) we make full written disclosure of the conflict to our current client or employer and receive written permission to proceed with the assignment.

4. We shall not, as salaried employees, undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure to the employer who furnishes our salary and having received subsequent written permission to undertake additional employment, unless our employer has a written policy which expressly dispenses with a need to obtain such consent.

5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.

6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.

7. We shall not use to our personal advantage, nor that of a subsequent client or employer, information gained in a professional relationship that the client or employer has requested be held inviolate or that we should recognize as confidential because its disclosure could result in embarrassment or other detriment to the client or employer. Nor shall we disclose such confidential information except when (1) required by process of law, or (2) required to prevent a clear violation of law, or (3) required to prevent a substantial injury to the public. Disclosure pursuant to (2) and (3) shall not be made until after we have verified the facts and issues involved and, when practicable, exhausted efforts to obtain reconsideration of the matter and

have sought separate opinions on the issue from other qualified professionals employed by our client or employer.

8. We shall not, as public officials or employees, engage in private communications with planning process participants if the discussions relate to a matter over which we have authority to make a binding, final determination if such private communications are prohibited by law or by agency rules, procedures, or custom.

9. We shall not engage in private discussions with decision makers in the planning process in any manner prohibited by law or by agency rules, procedures, or custom.

10. We shall neither deliberately, nor with reckless indifference, misrepresent the qualifications, views and findings of other professionals.

11. We shall not solicit prospective clients or employment through use of false or misleading claims, harassment, or duress.

12. We shall not misstate our education, experience, training, or any other facts which are relevant to our professional qualifications.

13. We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means.

14. We shall not use the power of any office to seek or obtain a special advantage that is not a matter of public knowledge or is not in the public interest.

15. We shall not accept work beyond our professional competence unless the client or employer understands and agrees that such work will be performed by another professional competent to perform the work and acceptable to the client or employer.

16. We shall not accept work for a fee, or pro bono, that we know cannot be performed with the promptness required by the prospective client, or that is required by the circumstances of the assignment.

17. We shall not use the product of others' efforts to seek professional recognition or acclaim intended for producers of original work.

18. We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence.

19. We shall not fail to disclose the interests of our client or employer when participating in the planning process. Nor shall we participate in an effort to conceal the true interests of our client or employer.

20. We shall not unlawfully discriminate against another person.

21. We shall not withhold cooperation or information from the AICP Ethics Officer or the AICP Ethics Committee if a charge of ethical misconduct has been filed against us.

22. We shall not retaliate or threaten retaliation against a person who has filed a charge of ethical misconduct against us or another planner, or who is cooperating in the Ethics Officer's investigation of an ethics charge.

23. We shall not use the threat of filing an ethics charge in order to gain, or attempt to gain, an advantage in dealings with another planner.

24. We shall not file a frivolous charge of ethical misconduct against another planner.

25. We shall neither deliberately, nor with reckless indifference, commit any wrongful act, whether or not specified in the Rules of Conduct, that reflects adversely on our professional fitness.

26. We shall not fail to immediately notify the Ethics Officer by both receipted Certified and Regular First Class Mail if we are convicted of a "serious crime" as defined in Section E of the Code; nor immediately following such conviction shall we represent ourselves as Certified Planners or Members of AICP until our membership is reinstated by the AICP Ethics Committee pursuant to the procedures in Section E of the Code.

# C: Advisory Opinions

**1. Introduction**

Any person, whether or not an AICP member, may seek informal advice from the Ethics Officer, and any AICP member may seek a formal opinion from the Ethics Committee, on any matter relating to the Code of Ethics and Professional Conduct. In addition, the Ethics Committee may, from time to time, issue opinions applying the Code to ethical matters relating to planning.

**2. Informal Advice**

a) Any person with a question about whether specific conduct conforms to the Code of Ethics and Professional Conduct may seek informal advice from the Ethics Officer. Any such person should contact the Ethics Officer to arrange a time to discuss the issue.
The Ethics Officer will endeavor to schedule a call promptly and to provide the advice promptly.

b) Informal advice will be given orally. However, the Ethics Officer will keep a record of the issue raised and the advice given.

c) Informal advice is intended to assist the person who seeks it, but it is not binding on AICP. Nevertheless, the Ethics Committee will take it into consideration if the Committee is subsequently called upon to consider a charge of misconduct against a Certified Planner who relied on the advice.

**3. Formal Advisory Opinions Requested By A Member**

a) Any AICP member with a question about whether specific conduct conforms to the Code of Ethics and Professional Conduct may seek a formal opinion from the Ethics Committee. Any such member should send a detailed description of the relevant facts and a clear statement of the question to the Ethics Officer.

b) The Ethics Officer shall review each such request and determine whether there is sufficient information to permit a fully informed response or whether additional information is required.

c) The Ethics Committee will not issue an Advisory Opinion if it determines that the request concerns past conduct that may be the subject of a charge of misconduct. It may also decline to issue an Advisory Opinion for any other reason. The Committee may, but is not required to, provide a reason for a decision not to issue an opinion.

d) If the Ethics Committee determines to issue an Advisory Opinion, it will endeavor to do so within ninety (90) days after receiving all information necessary to the provision of the opinion. Every Advisory Opinion will be in writing.

e) Any member who acts in compliance with a formal Advisory Opinion will have a defense to a charge of misconduct that is based on conduct permitted by the Opinion.

f ) The Ethics Committee, in its sole discretion, shall determine whether, and how, to publish any formal Advisory Opinion. If the Committee determines to publish an Advisory Opinion, the published Opinion will not, without appropriate consent, include the name or other identifying information of any person except to the extent that identifying information is helpful in setting forth the issue or in explaining the Committee's decision.

g) Any AICP member who believes that a published formal Advisory Opinion is incorrect or incomplete may write to the Ethics Officer explaining the member's thinking and requesting reconsideration. The Ethics Officer shall transmit all such communications to the Ethics Committee. That Committee shall review such communications and determine what, if any, changes to make. The decision of the Committee shall be final.

**4. Formal Advisory Opinions Issued Without Request of a Member**

a) The Ethics Committee may from time to time issue, without a request from a member, formal Advisory Opinions relating to the Code of Ethics and Professional Conduct when it believes that an Opinion will provide useful guidance to members.

b) All formal Advisory Opinions issued under this paragraph shall be in writing and shall be published to the entire membership.

c) Any AICP member who believes that a formal Advisory Opinion issued under this paragraph is incorrect or incomplete may write to the Ethics Officer explaining the member's thinking and requesting reconsideration. The Ethics Officer shall transmit all such communications to the Ethics Committee. That Committee shall review such communications and determine what, if any, changes to make. The decision of the Committee shall be final.

**5. Annual Report of the Ethics Officer**

a) Prior to January 31 of each year, the Ethics Officer shall provide to the AICP Commission and to the Ethics Committee an Annual Report of all formal Advisory Opinions and all interpretations of the Code issued during the preceding calendar year. That report need not contain the full text of each formal Advisory Opinion and interpretation of the Code.

b) The AICP Commission shall publish an Annual Report on ethics matters to the membership.

# D: Adjudication of Complaints of Misconduct

**1. Filing a Complaint.**

a) Any person, whether or not an AICP member, may file an ethics complaint against a Certified Planner. An ethics complaint shall be sent to the AICP Ethics Officer on a form developed by the Ethics Officer and posted on the AICP website. The complaint must be signed and include contact information so that the Ethics Committee and the Ethics Officer will know with whom to follow up if questions arise or if the situation otherwise requires follow up. The person making the complaint ("the complainant") may request confidentiality. The AICP will attempt to honor that request. However, it cannot guarantee confidentiality and will disclose the identity of the complainant if disclosure is needed in

order to reach an informed result or otherwise to advance the thoughtful consideration of the complaint. The complaint may be accompanied by a brief cover letter.

b) The complaint shall identify the Certified Planner against whom the complaint is brought, describe the conduct at issue, cite the relevant provision(s) of the Code of Ethics and Professional Conduct, and explain the reasons that the conduct is thought to violate the Code.

c) The complaint should be accompanied by all relevant documentation available to the complainant.

d) The Ethics Officer shall determine whether the complaint contains all information necessary to making a fully informed decision. If the complaint does not contain all such information, the Ethics Officer shall contact the complainant to try to obtain the information.

e) The Ethics Officer shall maintain, for use by the Ethics Committee, a log of all complaints against Certified Planners.

**2. Preliminary Review**.

a) The Ethics Officer shall review each complaint, together with any supporting documentation, to make a preliminary determination of whether a violation may have occurred. Before making this determination, the Ethics Officer may request from the complainant any additional information that the Officer deems relevant.

b) Within thirty (30) days after receiving all information that the Ethics Officer deems necessary to make a preliminary determination, the Ethics Officer shall make a preliminary determination whether a violation may have occurred.

c) If the preliminary determination of the Ethics Officer is that it is clear that no violation has occurred, the complaint shall be dismissed. The complainant shall be so notified. The complainant shall have twenty (20) days from the date of notification to appeal the dismissal of the complaint to the Ethics Committee.

d) If the preliminary determination of the Ethics Officer is that a violation may have occurred — or if, on appeal, the Ethics Committee reverses a preliminary dismissal, the Ethics Officer shall, within thirty (30) days, provide the complaint to the Certified Planner against whom the complaint was made ("the respondent"). The Ethics Officer shall request from the respondent a detailed response to the complaint, and any supporting documentation.

**3. Fact Gathering**

a) The respondent shall have thirty (30) days from the date of notification from the Ethics Officer to provide a response to the complaint, as well as any supporting documentation. The Ethics Officer may extend this time, for good cause shown, for a period not to exceed fourteen (14) days.

b) The Ethics Officer shall provide the response of the respondent to the complainant and shall give the complainant an opportunity to comment on the response within fourteen (14) days.

c) If the Ethics Officer determines that additional information is needed from either the complainant or the respondent, the Ethics Officer shall attempt to obtain such information. The parties shall have fifteen (15) days to provide the requested additional information, with up to a fifteen (15) day extension at the discretion of the Ethics Officer if a request is made for additional time.

**4. Exploration of Settlement**

a) At any point in the process, the Ethics Officer may, after consultation with the Ethics Committee, attempt to negotiate a settlement of the complaint in accordance with the Code of Ethics and Professional Conduct.

b) The Ethics Committee shall be notified of — and permitted to comment on — any potential settlement at an early stage. Any settlement must be approved by the Ethics Committee before becoming final. Upon approval by the Ethics Committee, a settlement agreement shall be signed by the respondent and, where appropriate, by the complainant.

c) If a negotiated settlement is approved by the Ethics Committee and is signed in accordance with paragraph 4-b, the matter will be concluded, and no further action will be taken by AICP.

**5. Decision**

a) If neither the Ethics Officer nor the Ethics Committee determines to explore settlement — or if the parties are unwilling to engage in settlement discussions or if a settlement is not reached, the Ethics Officer shall, after considering timely input from the parties, issue a written decision on the complaint. The Ethics Officer, at his or her sole discretion, may determine whether a hearing needs to be held. A hearing will be held by telephone or other electronic means unless all parties and the Ethics Officer agree that it should be held in person. The expenses of each party in connection with any hearing, such as transcripts, travel, and attorneys' fees, will be borne by that party.

b) The Ethics Officer may determine that there is inadequate evidence of an ethics violation and therefore dismiss the complaint. Alternatively, the Ethics Officer may find that there has been an ethics violation. In either situation, the Ethics Officer shall explain the basis for the decision in a written opinion that cites and discusses the relevant provision(s) of the Code of Ethics and Professional Conduct.

c) If the decision is that there has been a violation, the Ethics Officer shall impose such discipline as that Officer deems appropriate. The discipline may be: (1) a confidential letter of admonition, (2) a public reprimand, (3) suspension of AICP membership, or (4) expulsion from AICP. The Ethics Officer shall explain the basis for the discipline imposed and may attach such conditions, *e.g.* requirement to get additional ethics training, as the Officer deems just.

d) The Ethics Officer shall transmit the decision to the Ethics Committee and shall notify the parties of the decision. However, the Ethics Officer may determine not to disclose the remedy to a complainant who is not a member of AICP.

**6. Appeal**

a) Within thirty (30) days after issuance of the written decision of the Ethics Officer, either the complainant or respondent may appeal the decision to the Ethics Committee by filing a timely written notice of appeal with the Ethics Officer.

b) If an appeal is timely filed, the party filing the appeal shall, within fourteen (14) days, provide the Ethics Officer with a written statement as to the basis for the appeal. The Ethics Officer shall, within ten (10) days, transmit that document to the party against whom the appeal is filed. That party shall have thirty (30) days to provide the Ethics Officer with a written statement of his or her position on the appeal. The Ethics Officer shall transmit all written statements of the parties to the Ethics Committee within ten (10) days after the record is complete.

c) After receiving any timely filed statements of the parties, the Ethics Committee shall issue a written decision on the appeal. Before issuing a decision, the Ethics Committee, in its sole discretion, may consult with the Ethics Officer. The Ethics Committee may also, in its sole discretion, determine whether to hold a hearing at which the parties may present their positions and answer questions posed by the Committee. A hearing will be held by telephone or other electronic means unless all parties and the Ethics Committee agree that it should be held in person. The expenses of each party in connection with any hearing, such as transcripts, travel, and attorneys' fees, will be borne by that party.

d) The Ethics Committee may (1) affirm the decision of the Ethics Officer; (2) affirm the decision but impose a different remedy; (3) vacate the decision of the Ethics Officer and return the case to the Ethics Officer for additional investigation, consideration of different Code sections or issues, or any other follow up; or (4) vacate the decision of the Ethics Officer and issue its own decision.

e) A decision to affirm the decision of the Ethics Officer, to impose a different remedy, or to vacate that decision and to issue the Ethics Committee's own decision shall be final.

f) If the decision is to return the case to the Ethics Officer for follow up, the Ethics Officer may seek to explore settlement or may issue a decision consistent with the decision of the Ethics Committee. Before issuing such a decision, the Ethics Officer may seek additional input from the parties in a manner and format consistent with the Code of Ethics and Professional Conduct.

**7. Effect of Dropping of Charges by Complainant or Resignation by Respondent**

a) If charges are dropped by the complainant, the Ethics Committee may, at its sole discretion, either terminate the ethics proceeding or continue the process without the complainant.

b) If the respondent resigns from AICP or lets membership lapse after a complaint is filed but before the case is finalized, the Ethics Committee may, at its sole discretion, either terminate the ethics proceeding or continue the process. As in any situation, the Ethics Committee may also determine to file a complaint with the appropriate law enforcement authority if it believes that a violation of law may have occurred.

**8. Reporting**

a) Any written decision of the Ethics Committee may, at the discretion of the Committee, be published and titled "Opinion of the AICP Ethics Committee".

b) Any written decision of the Ethics Officer shall be referenced in the Annual Report of the Ethics Officer.

# E: Discipline of Members

**1. General**

AICP members are subject to discipline for certain conduct. This conduct includes (a) conviction of a serious crime as defined in paragraph 3; (b) conviction of other crimes as set forth in paragraph 4; (c) a finding by the Ethics Committee or Ethics Officer that the member has

engaged in unethical conduct; (d) loss, suspension, or restriction of state or other governmental professional licensure; (e) failure to make disclosure to AICP of any conviction of a serious crime or adverse professional licensure action; or (f) such other action as the Ethics Committee or the Ethics Officer, in the exercise of reasonable judgment, determines to be inconsistent with the professional responsibilities of a Certified Planner.

**2. Forms of Discipline**

The discipline available under this Policy includes: (a) a confidential letter of admonition, (b) a public letter of censure, (c) suspension of AICP membership, or (d) revocation from AICP. The Ethics Officer or the Ethics Committee may attach conditions to these disciplinary actions, such as the writing of a letter of apology, the correction of a false statement or statements, the taking of an ethics course, the refunding of money, or any other conditions deemed just in light of the conduct in question.

**3. Conviction of a Serious Crime**

a) The membership of a Certified Planner shall be revoked if the Planner has been convicted of a "serious crime". Membership shall be revoked whether the conviction resulted from a plea of guilty or nolo contendere, from a verdict after trial, or otherwise. Membership shall be revoked even if the Planner is appealing a conviction, but it will be reinstated if the conviction is overturned upon appeal.

b) For purposes of this Policy, the term "serious crime" shall mean any crime that, in the judgment of the Ethics Committee or the Ethics Officer, involves false swearing, misrepresentation, fraud, failure to file income tax returns or to pay tax, deceit, bribery, extortion, misappropriation, theft, or physical harm to another.

**4. Conviction of Other Crimes**

a) Discipline may also be imposed if a Certified Planner has been convicted of a crime not included within the definition of "serious crime," including an action determined by the Ethics Committee or the Ethics Officer to be inconsistent with the professional responsibilities of a Certified Planner.

b) Before any discipline is imposed under this section, the member shall have a right to set forth his or her position in writing to the Ethics Officer. The Ethics Officer shall, in that Officer's sole discretion, determine whether or not to give the member a hearing. The Ethics Officer shall notify the member of the decision.

c) A member who has had discipline imposed by the Ethics Officer shall have thirty (30) days from the date of notification of the adverse decision to file an appeal to the Ethics

Committee. The member may do so by filing a timely notice of appeal with the Ethics Officer. The notice shall be accompanied by a statement of the basis for the appeal. The Ethics Officer will transmit any appeal and accompanying notice to the Ethics Committee. That Committee shall determine, in its sole discretion, whether or not to grant a hearing. The Ethics Committee shall, after considering the relevant information, issue a written opinion on the appeal.

**5. Unethical Conduct**

The forms of discipline set forth in paragraph 2 shall apply to any member who is found to have engaged in unethical conduct in accordance with the procedures established in the Policy on Adjudication of Complaints of Misconduct.

**6. Revocation, Suspension, or Restriction of Licensure**

a) The Ethics Committee or Ethics Officer shall impose such discipline as the Committee or Officer regards as just if a state or other governmentally-issued professional license of a Certified Planner has been revoked, suspended, or restricted for any reason relating to improper conduct by the Planner.

b) Before any discipline is imposed under this section, the provisions of section 4 (b) and (c) shall apply.

**7. Duty to Notify Ethics Officer**

a) A member who has been convicted of a serious crime or who has had his or her state or other governmentally-issued professional license revoked, suspended, or restricted for any reason relating to improper conduct by the member shall promptly report the relevant development to the Ethics Officer.

b) Failure of a member to report that he or she has been convicted of a serious crime or has had a professional license revoked, suspended, or restricted for a reason relating to improper conduct by that member may itself result in discipline of that member.

**8. Other Conduct Inconsistent with the Responsibilities of a Certified Planner**

a) The Ethics Officer shall have the right to discipline any member for any conduct not otherwise covered by this Policy that the Officer determines to be inconsistent with the responsibilities of a Certified Planner.

b) Conduct covered by this section shall include, but not be limited to, a finding in a civil case that the member has engaged in defamation or similar unlawful action, has knowingly infringed the copyright or other intellectual property of another, or has engaged in perjury.

c) Before any discipline is imposed under this section, the provisions of section 4-b and 4-c shall apply.

**9. Petition for Reinstatement**

a) Any Certified Planner whose membership or certification is revoked may petition the Ethics Committee for reinstatement no sooner than five years from the time of revocation. The Ethics Committee shall determine, in its sole discretion, whether to afford the petitioner a hearing and/or whether to seek additional information. The Committee shall determine, in its sole judgment, whether reinstatement is appropriate and what, if any, conditions should be applied to any such reinstatement. The Ethics Officer shall transmit the reinstatement determination to the Planner.

b) If the Ethics Committee denies the Petition, that Officer shall advise the Planner of the opportunity to file a subsequent petition after twelve (12) months have elapsed from the date of the determination.

**10. Publication of Disciplinary Actions**

The Ethics Committee, in its sole discretion, may publish the names of members who have had disciplinary action imposed and to state the nature of the discipline that was imposed. The authority to publish shall survive the voluntary or involuntary termination or suspension of AICP membership and certification. The Ethics Committee, in its sole discretion, may also determine not to publish such information or to publish only so much of that information as it deems appropriate.

# Code of Professional Conduct

Our Code of Professional Conduct is an ethical benchmark for our members. These standards bring accountability, responsibility and trust to those whom the safety profession serves.

## Our Commitment to Professionalism

Serve the public, employees, employers, clients, the Society, and the profession with fidelity, honesty and impartiality.

In all professional relationships, treat others with respect, civility, and without discrimination.

Abstain from behavior that will unjustly cause harm to the reputation of the Society, its members and the profession.

Continually improve professional knowledge, skills, competencies, and awareness of relevant new developments through training, education, networking and work experiences.

Consider qualifications before undertaking any professional activity and perform only those services that may be handled competently.

Make informed decisions in the performance of professional duties that adhere to all relevant laws, regulations and recognized standards of practice.

Inform all appropriate parties when professional judgment indicates that there is an unacceptable level of risk of injury, illness, property damage or environmental harm.

Maintain the confidentiality of information acquired through professional practice that is designated or generally recognized as non-public, confidential or privileged.

Accurately represent professional qualifications including education, credentials, designations, affiliations, titles and work experience.

Avoid situations that create actual, potential or perceived conflicts between personal and professional interests, and if a potential conflict of interest arises disclose all applicable facts to potentially affected parties.

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**Approved By | Date:** House of Delegates | June 3, 2012

Our Code of Professional Conduct is an ethical benchmark for our members. These standards bring accountability, responsibility and trust to those whom the safety profession serves. ASSP members are expected to uphold our Code of Professional Conduct.

If you believe an ASSP member has violated the Code of Professional Conduct, we ask that you please review the Code of Professional Conduct (above) and the committee procedures before filing an allegation.

To report the alleged misconduct, please contact Jennifer McNelly, ASSP's CEO, at executive@assp.org using the subject line: Code of Conduct Allegation. The communication must include facts, details, supporting documents and other evidence to support any claims of unprofessional or unethical conduct.

*Approved by the ASCE Board of Direction on October 26, 2020*

# CODE OF ETHICS
# THE AMERICAN SOCIETY OF CIVIL ENGINEERS

## PREAMBLE

Members of The American Society of Civil Engineers conduct themselves with integrity and professionalism, and above all else protect and advance the health, safety, and welfare of the public through the practice of Civil Engineering.

Engineers govern their professional careers on the following fundamental principles:

- create safe, resilient, and sustainable infrastructure;
- treat all persons with respect, dignity, and fairness in a manner that fosters equitable participation without regard to personal identity;
- consider the current and anticipated needs of society; and
- utilize their knowledge and skills to enhance the quality of life for humanity.

All members of The American Society of Civil Engineers, regardless of their membership grade or job description, commit to all of the following ethical responsibilities. In the case of a conflict between ethical responsibilities, the five stakeholders are listed in the order of priority. There is no priority of responsibilities within a given stakeholder group with the exception that 1a. takes precedence over all other responsibilities. [1]

## CODE OF ETHICS

### 1. SOCIETY

Engineers:

a. first and foremost, protect the health, safety, and welfare of the public;
b. enhance the quality of life for humanity;
c. express professional opinions truthfully and only when founded on adequate knowledge and honest conviction;
d. have zero tolerance for bribery, fraud, and corruption in all forms, and report violations to the proper authorities;
e. endeavor to be of service in civic affairs;
f. treat all persons with respect, dignity, and fairness, and reject all forms of discrimination and harassment;
g. acknowledge the diverse historical, social, and cultural needs of the community, and incorporate these considerations in their work;
h. consider the capabilities, limitations, and implications of current and emerging technologies when part of their work; and
i. report misconduct to the appropriate authorities where necessary to protect the health, safety, and welfare of the public.

### 2. NATURAL AND BUILT ENVIRONMENT

Engineers:

a. adhere to the principles of sustainable development;
b. consider and balance societal, environmental, and economic impacts, along with opportunities for improvement, in their work;
c. mitigate adverse societal, environmental, and economic effects; and
d. use resources wisely while minimizing resource depletion.

## 3. PROFESSION

Engineers:

a. uphold the honor, integrity, and dignity of the profession;
b. practice engineering in compliance with all legal requirements in the jurisdiction of practice;
c. represent their professional qualifications and experience truthfully;
d. reject practices of unfair competition;
e. promote mentorship and knowledge-sharing equitably with current and future engineers;
f. educate the public on the role of civil engineering in society; and
g. continue professional development to enhance their technical and non-technical competencies.

## 4. CLIENTS AND EMPLOYERS

Engineers:

a. act as faithful agents of their clients and employers with integrity and professionalism;
b. make clear to clients and employers any real, potential, or perceived conflicts of interest;
c. communicate in a timely manner to clients and employers any risks and limitations related to their work;
d. present clearly and promptly the consequences to clients and employers if their engineering judgment is overruled where health, safety, and welfare of the public may be endangered;
e. keep clients' and employers' identified proprietary information confidential;
f. perform services only in areas of their competence; and
g. approve, sign, or seal only work products that have been prepared or reviewed by them or under their responsible charge.

## 5. PEERS

Engineers:

a. only take credit for professional work they have personally completed;
b. provide attribution for the work of others;
c. foster health and safety in the workplace;
d. promote and exhibit inclusive, equitable, and ethical behavior in all engagements with colleagues;
e. act with honesty and fairness on collaborative work efforts;
f. encourage and enable the education and development of other engineers and prospective members of the profession;
g. supervise equitably and respectfully;
h. comment only in a professional manner on the work, professional reputation, and personal character of other engineers; and
i. report violations of the Code of Ethics to the American Society of Civil Engineers.

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[1]This Code does not establish a standard of care, nor should it be interpreted as such.

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

# Code of Ethics for Engineers

## Preamble

Engineering is an important and learned profession. As members of this profession, engineers are expected to exhibit the highest standards of honesty and integrity. Engineering has a direct and vital impact on the quality of life for all people. Accordingly, the services provided by engineers require honesty, impartiality, fairness, and equity, and must be dedicated to the protection of the public health, safety, and welfare. Engineers must perform under a standard of professional behavior that requires adherence to the highest principles of ethical conduct.

## I. Fundamental Canons

Engineers, in the fulfillment of their professional duties, shall:

1. Hold paramount the safety, health, and welfare of the public.
2. Perform services only in areas of their competence.
3. Issue public statements only in an objective and truthful manner.
4. Act for each employer or client as faithful agents or trustees.
5. Avoid deceptive acts.
6. Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.

## II. Rules of Practice

**1. Engineers shall hold paramount the safety, health, and welfare of the public.**

a. If engineers' judgment is overruled under circumstances that endanger life or property, they shall notify their employer or client and such other authority as may be appropriate.
b. Engineers shall approve only those engineering documents that are in conformity with applicable standards.
c. Engineers shall not reveal facts, data, or information without the prior consent of the client or employer except as authorized or required by law or this Code.
d. Engineers shall not permit the use of their name or associate in business ventures with any person or firm that they believe is engaged in fraudulent or dishonest enterprise.
e. Engineers shall not aid or abet the unlawful practice of engineering by a person or firm.
f. Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.

**2. Engineers shall perform services only in the areas of their competence.**

a. Engineers shall undertake assignments only when qualified by education or experience in the specific technical fields involved.
b. Engineers shall not affix their signatures to any plans or documents dealing with subject matter in which they lack competence, nor to any plan or document not prepared under their direction and control.
c. Engineers may accept assignments and assume responsibility for coordination of an entire project and sign and seal the engineering documents for the entire project, provided that each technical segment is signed and sealed only by the qualified engineers who prepared the segment.

**3. Engineers shall issue public statements only in an objective and truthful manner.**

a. Engineers shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony, which should bear the date indicating when it was current.
b. Engineers may express publicly technical opinions that are founded upon knowledge of the facts and competence in the subject matter.
c. Engineers shall issue no statements, criticisms, or arguments on technical matters that are inspired or paid for by interested parties, unless they have prefaced their comments by explicitly identifying the interested parties on whose behalf they are speaking, and by revealing the existence of any interest the engineers may have in the matters.

**4. Engineers shall act for each employer or client as faithful agents or trustees.**

a. Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.
b. Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.
c. Engineers shall not solicit or accept financial or other valuable consideration, directly or indirectly, from outside agents in connection with the work for which they are responsible.
d. Engineers in public service as members, advisors, or employees of a governmental or quasi-governmental body or department shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.
e. Engineers shall not solicit or accept a contract from a governmental body on which a principal or officer of their organization serves as a member.

**5. Engineers shall avoid deceptive acts.**

a. Engineers shall not falsify their qualifications or permit misrepresentation of their or their associates' qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint venturers, or past accomplishments.
b. Engineers shall not offer, give, solicit, or receive, either directly or indirectly, any contribution to influence the award of a contract by public authority, or which may be reasonably construed by the public as having the effect or intent of influencing the awarding of a contract. They shall not offer any gift or other valuable consideration in order to secure work. They shall not pay a commission, percentage, or brokerage fee in order to secure work, except to a bona fide employee or bona fide established commercial or marketing agencies retained by them.

## III. Professional Obligations

**1. Engineers shall be guided in all their relations by the highest standards of honesty and integrity.**

a. Engineers shall acknowledge their errors and shall not distort or alter the facts.
b. Engineers shall advise their clients or employers when they believe a project will not be successful.
c. Engineers shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering employment, they will notify their employers.
d. Engineers shall not attempt to attract an engineer from another employer by false or misleading pretenses.
e. Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.
f. Engineers shall treat all persons with dignity, respect, fairness, and without discrimination.

**2. Engineers shall at all times strive to serve the public interest.**

a. Engineers are encouraged to participate in civic affairs; career guidance for youths; and work for the advancement of the safety, health, and well-being of their community.
b. Engineers shall not complete, sign, or seal plans and/or specifications that are not in conformity with applicable engineering standards. If the client or employer insists on such unprofessional conduct, they shall notify the proper authorities and withdraw from further service on the project.
c. Engineers are encouraged to extend public knowledge and appreciation of engineering and its achievements.
d. Engineers are encouraged to adhere to the principles of sustainable development[1] in order to protect the environment for future generations.
e. Engineers shall continue their professional development throughout their careers and should keep current in their specialty fields by engaging in professional practice, participating in continuing education courses, reading in the technical literature, and attending professional meetings and seminar.

1420 KING STREET, ALEXANDRIA, VIRGINIA 22314-2794 • 888-285-NSPE (6773) • LEGAL@NSPE.ORG • WWW.NSPE.ORG • PUBLICATION DATE AS REVISED JULY 2019 • PUBLICATION #1102

3. **Engineers shall avoid all conduct or practice that deceives the public.**
   a. Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.
   b. Consistent with the foregoing, engineers may advertise for recruitment of personnel.
   c. Consistent with the foregoing, engineers may prepare articles for the lay or technical press, but such articles shall not imply credit to the author for work performed by others.

4. **Engineers shall not disclose, without consent, confidential information concerning the business affairs or technical processes of any present or former client or employer, or public body on which they serve.**
   a. Engineers shall not, without the consent of all interested parties, promote or arrange for new employment or practice in connection with a specific project for which the engineer has gained particular and specialized knowledge.
   b. Engineers shall not, without the consent of all interested parties, participate in or represent an adversary interest in connection with a specific project or proceeding in which the engineer has gained particular specialized knowledge on behalf of a former client or employer.

5. **Engineers shall not be influenced in their professional duties by conflicting interests.**
   a. Engineers shall not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product.
   b. Engineers shall not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with clients or employers of the engineer in connection with work for which the engineer is responsible.

6. **Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.**
   a. Engineers shall not request, propose, or accept a commission on a contingent basis under circumstances in which their judgment may be compromised.
   b. Engineers in salaried positions shall accept part-time engineering work only to the extent consistent with policies of the employer and in accordance with ethical considerations.
   c. Engineers shall not, without consent, use equipment, supplies, laboratory, or office facilities of an employer to carry on outside private practice.

7. **Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.**
   a. Engineers in private practice shall not review the work of another engineer for the same client, except with the knowledge of such engineer, or unless the connection of such engineer with the work has been terminated.
   b. Engineers in governmental, industrial, or educational employ are entitled to review and evaluate the work of other engineers when so required by their employment duties.
   c. Engineers in sales or industrial employ are entitled to make engineering comparisons of represented products with products of other suppliers.

8. **Engineers shall accept personal responsibility for their professional activities, provided, however, that engineers may seek indemnification for services arising out of their practice for other than gross negligence, where the engineer's interests cannot otherwise be protected.**
   a. Engineers shall conform with state registration laws in the practice of engineering.
   b. Engineers shall not use association with a nonengineer, a corporation, or partnership as a "cloak" for unethical acts.

9. **Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.**
   a. Engineers shall, whenever possible, name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments.
   b. Engineers using designs supplied by a client recognize that the designs remain the property of the client and may not be duplicated by the engineer for others without express permission.
   c. Engineers, before undertaking work for others in connection with which the engineer may make improvements, plans, designs, inventions, or other records that may justify copyrights or patents, should enter into a positive agreement regarding ownership.
   d. Engineers' designs, data, records, and notes referring exclusively to an employer's work are the employer's property. The employer should indemnify the engineer for use of the information for any purpose other than the original purpose.

Footnote 1 "Sustainable development" is the challenge of meeting human needs for natural resources, industrial products, energy, food, transportation, shelter, and effective waste management while conserving and protecting environmental quality and the natural resource base essential for future development.

"By order of the United States District Court for the District of Columbia, former Section 11(c) of the NSPE Code of Ethics prohibiting competitive bidding, and all policy statements, opinions, rulings or other guidelines interpreting its scope, have been rescinded as unlawfully interfering with the legal right of engineers, protected under the antitrust laws, to provide price information to prospective clients; accordingly, nothing contained in the NSPE Code of Ethics, policy statements, opinions, rulings or other guidelines prohibits the submission of price quotations or competitive bids for engineering services at any time or in any amount."

## Statement by NSPE Executive Committee

In order to correct misunderstandings which have been indicated in some instances since the issuance of the Supreme Court decision and the entry of the Final Judgment, it is noted that in its decision of April 25, 1978, the Supreme Court of the United States declared: "The Sherman Act does not require competitive bidding."

It is further noted that as made clear in the Supreme Court decision:

1. Engineers and firms may individually refuse to bid for engineering services.
2. Clients are not required to seek bids for engineering services.
3. Federal, state, and local laws governing procedures to procure engineering services are not affected, and remain in full force and effect.
4. State societies and local chapters are free to actively and aggressively seek legislation for professional selection and negotiation procedures by public agencies.
5. State registration board rules of professional conduct, including rules prohibiting competitive bidding for engineering services, are not affected and remain in full force and effect. State registration boards with authority to adopt rules of professional conduct may adopt rules governing procedures to obtain engineering services.
6. As noted by the Supreme Court, "nothing in the judgment prevents NSPE and its members from attempting to influence governmental action . . ."

Note: In regard to the question of application of the Code to corporations vis-a-vis real persons, business form or type should not negate nor influence conformance of individuals to the Code. The Code deals with professional services, which services must be performed by real persons. Real persons in turn establish and implement policies within business structures. The Code is clearly written to apply to the Engineer, and it is incumbent on members of NSPE to endeavor to live up to its provisions. This applies to all pertinent sections of the Code.

 

# Code of Ethics

- Dedicated to the concepts of continued education, high quality service and professionalism.
- Affirm the dignity and worth of the services rendered. Maintain a constructive, creative and practical attitude and keep a deep sense of social responsibility as a trusted public servant.
- Remain dedicated to ideals of honor and integrity. Insist on performance which will merit the respect and confidence of peers and public.
- Recognize the City Recorders' role as a major representative of government, the direct link between the residents of their municipalities, their government and all local government positions.
- Provide information and assistance as requested and uphold and implement municipal policies adopted by elected officials.
- Make it a duty to improve professional ability and develop competence.
- Emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.
- Handle each problem without discrimination on the basis of principle and justice.
- Seek no favor; believe that personal gain or profit secured by confidential information or misuse of public time is dishonest.

**OAMR 2000 GOALS, OBJECTIVES, MISSION STATEMENT, CODE OF ETHICS**

The Oregon Association of Municipal Recorders was chartered in 1983, with goals, mission statement, and objectives adopted. In January, 2000, the Board of Directors approved updated goals, mission statement, and objectives, and also approved a code of ethics.

# OREGON
# GOVERNMENT ETHICS
# LAW

# A GUIDE FOR PUBLIC OFFICIALS

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## DISCLAIMER

This guide has been approved by the Oregon Government Ethics Commission pursuant to ORS 244.320. ORS 244.320 requires this publication to explain in understandable terms the requirements of Oregon Government Ethics law and the Oregon Government Ethics Commission's interpretation of those requirements. Toward that end, statutes and rules have been summarized and paraphrased in this guide. The discussion in this guide should not be used as a substitute for a review of the specific statutes and rules.

There may be other laws or regulations not within the jurisdiction of the Commission that apply to actions or transactions described in this guide.

A penalty may not be imposed under ORS Chapter 244 for any good faith action taken in reliance on the advice in this guide. "In reliance on" the advice in this guide means that the fact circumstances of the action taken are the same fact circumstances that serve as the basis for advice in this guide.

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# INTRODUCTION

In 1974, voters approved a statewide ballot measure to create the Oregon Government Ethics Commission (Commission). The measure established laws that are contained in Chapter 244 of the Oregon Revised Statutes (ORS).

When the Commission was established, it was given jurisdiction to implement and enforce the provisions in ORS Chapter 244 related to the conduct of public officials. In addition, the Commission has jurisdiction for ORS 171.725 to 171.785 and 171.992, related to lobbying regulations, and ORS 192.660 and 192.685, the executive session provisions of Oregon Public Meetings law.

This Guide for Public Officials includes a discussion of some provisions that may also apply to lobbying activities. This is especially true when a lobbying activity involves paying the expenses for meals, lodging, travel, entertainment or other financial benefits of a legislative or executive official. Under specific circumstances, ORS Chapter 244 allows the payment of such expenses, but the public official may have a reporting requirement under ORS Chapter 244 and the source of the payment may be required to register as a lobbyist or report the expenditure. The Commission publishes a guide for lobbyists and clients or employers of lobbyists regulated under provisions in ORS Chapter 171. If you have questions regarding registering as a lobbyist, lobbying activity or reports for lobbying expenditures, please refer to our Guide to Lobbying in Oregon, which is available on our website.

ORS 192.660 lists the specific criteria a governing body must use when convening an executive session. Under this statutory authority, executive sessions are limited to discussion of specific matters. This guide does not discuss that portion of the Oregon Public Meetings law, but there is a detailed discussion of executive sessions, as set out in ORS 192.660, in the Attorney General's Public Records and Meetings Manual, available on-line at https://www.doj.state.or.us/oregon-department-of-justice/public-records/attorney-generals-public-records-and-meetings-manual/

This guide will discuss how the provisions in ORS Chapter 244 apply to public officials and will summarize Commission procedures. It should be used in conjunction with applicable statutes and rules, but should not be used as a substitute for a review of the statutes and rules. It is intended to be a useful discussion, in understandable terms, of topics and issues that are often the focus of inquiries the Commission receives from public officials and citizens.

You will find links to ORS Chapter 244, ORS Chapter 171.725 to 171.785 and 171.992, ORS 192.660 and ORS 192.685, relevant Oregon Administrative Rules (OAR), and other publications referenced in this guide on the Commission's website at https://www.oregon.gov/ogec/Pages/default.aspx. Questions or comments may be submitted to the Commission by email at ogec.mail@oregon.gov, by telephone to 503-378-5105, or by fax to 503-373-1456.

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# JURISDICTION

The jurisdiction of the Oregon Government Ethics Commission is limited to provisions in ORS Chapter 244, ORS 171.725 to 171.785 and 171.992, and ORS 192.660 and 192.685. Other Oregon statutes may also regulate the activities of elected officials and public employees. Some examples are:

- The Elections Division of the Secretary of State's Office regulates campaign finance and campaign activities.

- Federal, state, or local law enforcement has jurisdiction over alleged criminal activity.

- The Oregon Bureau of Labor and Industries investigates cases involving employment-related sexual harassment or discrimination on the basis of race, religion, disability or gender.

- The initial enforcement of the Public Records law lies with County District Attorneys and the Department of Justice.

- Enforcement of the Oregon Public Meetings law lies with the Oregon Circuit Courts, except that the Commission also has jurisdiction over the execution session provisions in ORS 192.660 and 192.685.

There are occasions when a public official engages in conduct that may be viewed as "unethical," but that conduct may not be governed by Oregon Government Ethics law. The following are some examples of conduct by public officials that may not be within the authority of the Commission to address:

An elected official making promises or claims that are not acted upon.

Public officials mismanaging or exercising poor judgment when administering public money.

Public officials being rude or unmannerly.

A person's private behavior unrelated to their actions as a public official.

While the conduct described above may not be addressed in Oregon Government Ethics law, other statutes and public agency policies may prohibit or redress the behavior. Please contact the Commission staff if you need further clarification regarding how the Oregon Government Ethics law may apply to circumstances you may encounter.

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# PUBLIC OFFICIAL: AN OVERVIEW

The provisions in Oregon Government Ethics law restrict some choices, decisions or actions of a public official. The restrictions placed on public officials are different than those placed on private citizens because service in a public office is a public trust and the provisions in ORS Chapter 244 were enacted to provide one safeguard for that trust.

Public officials must know that they are held personally responsible for complying with the provisions in Oregon Government Ethics law. This means that each public official must make a personal judgment in deciding such matters as the use of official position for financial gain, what gifts are appropriate to accept, when to disclose the nature of conflicts of interest, and the employment of relatives or household members. If a public official fails to comply with the operative statutes, a violation cannot be dismissed by placing the blame on the public official's government employer or the governing body represented by the public official.

One provision, which is the cornerstone of Oregon Government Ethics law, prohibits public officials from using or attempting to use their official positions or offices to obtain a financial benefit for themselves, relatives or businesses with which they are associated if that financial benefit or opportunity for financial gain would not otherwise be available but for the position or office held.

Oregon Government Ethics law limits and restricts public officials and their relatives as to gifts they may solicit or accept. Under specific circumstances, public officials may accept certain gifts. This guide will discuss those provisions. Public officials are allowed to receive salary and reimbursed expenses from their own government agencies.

Another provision that frequently applies to public officials when engaged in official actions is the requirement to disclose the nature of conflicts of interest. This guide will discuss the definition of a conflict of interest, the distinction between actual and potential conflicts of interest, and describe how a public official must disclose and dispose of a conflict of interest.

For some public officials who are elected to offices or hold other select positions, there is a requirement to file an Annual Verified Statement of Economic Interest. This guide will discuss that filing requirement.

It is important for both public officials and members of the general public served by public officials to know that the provisions in Oregon Government Ethics law apply to the actions and conduct of individual public officials and not to the actions of state and local governing bodies or government agencies. Each individual public official is personally responsible for complying with provisions in ORS Chapter 244. Before taking official action, making a decision, participating in an event, or accepting a gift that may raise potential ethics law violations, each public official must make a personal judgment. The Commission staff is available to discuss the issues and offer guidance in making such judgments.

The statutes and rules discussed or illustrated in this guide do not and cannot address every set of circumstances a public official may encounter. Since compliance is the personal responsibility of each public official, public officials need to familiarize themselves with the wide variety of resources that offer information or training on the provisions in Oregon Government Ethics law.

In addition to the statutes in ORS Chapter 244 and the Oregon Administrative Rules (OAR) in Chapter 199, see https://www.oregon.gov/ogec/Pages/default.aspx, the Commission's website, which offers information, training and links to this guide, ORS Chapter 244 and OAR Chapter 199. The Commission offers a variety of free training resources and many government agencies also offer internal training to their employees or the agencies may request training from the Commission's trainers. There are a number of membership organizations, such as The League of Oregon Cities, Association of Oregon Counties, Oregon School Boards Association and the Special Districts Association of Oregon, that provide training to public officials. It is imperative for government agencies or organizations that employ or represent public officials to ensure their public officials receive training in Oregon Government Ethics law. Those that fail to provide this training do a disservice to the public officials who they employ or who represent them.

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# A PUBLIC OFFICIAL

**Are you a public official?**

"Public official" is defined in ORS 244.020 as the First Partner and any person who, when an alleged violation of ORS Chapter 244 occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

There are approximately 200,000 public officials in Oregon. You are a public official if you are:

- The First Partner, defined as the spouse, domestic partner or an individual who primarily has a personal relationship with the Governor.
- Elected or appointed to an office or position with a state, county, regional, or city government.
- Elected or appointed to an office or position with a special district.
- An employee of a state, county, city, intergovernmental agency or special district.
- An unpaid volunteer for a state, county, regional, city, intergovernmental agency, or special district.
- An agent of the State of Oregon or any of its political subdivisions.

The Commission has adopted, by rule, additional language used to clarify the use of "agent" in the definition of "public official." The following clarification is in OAR 199-005-0035(7):

> As defined in ORS 244.020(15), a public official includes the First Person and anyone serving the State of Oregon or any of its political subdivisions or any other public body in any of the listed capacities, including as an "agent." An "agent" means any individual performing governmental functions. Governmental functions are services provided on behalf of the government as distinguished from services provided to the government. This may include private contractors and volunteers, depending on the circumstances. This term shall be interpreted to be consistent with Attorney General Opinion No. 8214 (1990).

**If I am a volunteer, does that make me a public official?**

The Commission recognizes that there are those who volunteer to work without compensation for many state and local government agencies, boards, commissions and special districts. Volunteers may be elected, appointed or selected by the government agency or public body to hold a position or office or to provide services. Among the public officials who volunteer, there are elected or appointed members of state boards or commissions, city councils, planning commissions, fire district boards, school district boards, and many others. There are also many who apply and are selected to perform duties for a government agency, board or commission without compensation, such as firefighters, reserve law enforcement officers, and parks or recreation staff members.

If the position for which you have volunteered serves the State of Oregon or any of its political subdivisions or any other public body, irrespective of whether you are compensated, you are a public official.

**How are relatives and household members of public officials affected by Oregon Government Ethics law?**

Public officials must always comply with state law when participating in official actions that could result in personal financial benefits and also when participating in official actions that could result in financial benefits for a relative or household member. Public officials should also know there may be limits and restrictions on gifts their relatives or household members may accept when offered.

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using or attempting to use official actions of the position held to benefit a relative or household member, limit the value of financial benefits accepted by a relative or household member of the public official, or require the public official to disclose the nature of a conflict of interest when a relative may receive a financial benefit. There are provisions that place restrictions on a public official regarding the employment or supervision of a relative or household member. These provisions are discussed more comprehensively in the use of position or office section starting on page 17, the gifts section starting on page 26, the conflicts of interest section starting on page 11, and the nepotism section starting on page 35.

**Who is a relative?**

Public officials need to know how Oregon Government Ethics law defines a “relative.” In everyday conversation the term “relative” is applied to a spectrum of individuals with “family ties” broader than those defined as relatives in ORS 244.020(16). When a provision in ORS Chapter 244 refers to “relative,” it means one of the following:

- The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official or candidate;
- The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of

the spouse of the public official or candidate;
- Any Individual for whom the public official or candidate has a legal support obligation
- Any Individual for whom the public official provides benefits arising from the public official's public employment
- Any Individual from whom the public official or candidate receives benefits arising from the individual's employment.

For purposes of the last two bulleted items, examples of benefits may include, but is not limited to, elements of an official compensation package such as insurance, tuition or retirement benefits.

**Who is a "member of the household"?**

Public officials need to know how Oregon Government Ethics law defines "member of the household" because there are provisions in ORS Chapter 244 that prohibit a public official from using or attempting to use their official position to financially benefit a member of their household.

A "member of the household" is any person who resides with the public official or candidate. [ORS 244.020] This definition includes any individual who resides in the same dwelling as the public official, regardless of whether that individual pays rent or not, and regardless of whether that individual is a relative or not.

**What is a business with which a person is associated?**

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using their position to benefit a business with which the public official or the public official's relative or household member is associated. Other provisions also require the public official to disclose the nature of a conflict of interest when their official actions would or could financially impact a business with which the official or their relative is associated.

As with the definition of relative, public officials need to know how Oregon Government Ethics law defines what a "business" is and how it defines a "business with which the person is associated." The same sound judgment a public official exercises when participating in actions that could result in a financial benefit to the public official or a relative of the public official should be used when participating in actions that could result in a financial impact to a business with which the public official or the official's relative is associated.

ORS 244.020(2) provides the definition of a **"business"** for the purposes of the application of Oregon Government Ethics law. A "business" is a self-employed individual and any legal entity that has been formed for the purpose of producing economic gain.

- Excluded from this definition are income-producing corporations that are not-for-profit and tax exempt under section 501(c) of the Internal Revenue Code, if a public

official or a relative is associated only as a member, as a member of the board of directors, or in another unpaid position.

> Example: An elected County Commissioner is a member of a credit union that operates without profit and is tax exempt under section 501(c) of the Internal Revenue Code. Because the public official is associated with the credit union only as a member, the credit union is not considered a "business" under the definition in Oregon Government Ethics law.
>
> Example: The son of an elected city councilor is a teller employed by a credit union that operates without profit and is tax exempt under section 501(c) of the Internal Revenue Code. Because the public official's relative is a paid employee of the credit union, the city councilor's association with the credit union does not meet the exclusion above, and the credit union would be considered a "business" under the definition in Oregon Government Ethics law.

- Also excluded from the definition of business are entities, such as state and local governments or special districts, which are not formed for the purpose of producing income.

> Example: An advisory board for the Department of Education awards grants to county, city or other local government entities. The advisory board's members include public officials who are employed by a city police department and by a local fire district. These public officials would not have conflicts of interest when awarding grants to the city or to the fire district, because these government entities do not meet the statutory definition of a "business."

Once a public official determines that an entity qualifies as a "business," the public official must also determine if it is a "business with which the person is associated." In accordance with ORS 244.020(3), a business is a **"business with which the person is associated"** for a public official or the relative or household member of the public official in any of the following circumstances:

- When a person, or their relative is a director, officer, owner, employee or agent of a private business or a closely held corporation.

> Example: The Eugene City Recorder is a public official and her daughter is the president and owner of a private landscaping business. That business would be "a business with which the City Recorder's relative is associated."

- When a person or their relative currently holds, or held during the preceding calendar year, stock, stock options, an equity interest or debt instrument worth $1,000 or more in a ***private business or closely held corporation***.

Example: The Mayor of Seaside's brother currently holds an equity interest of more than $1,000 in a private business owned by a college friend. This would be a "business with which the Mayor's relative is associated."

- When a person or their relative currently owns, or has owned during the preceding calendar year, stock, stock options, an equity interest, or debt instruments of $100,000 or more in a ***publicly held corporation.***

  Example: The procurement officer for the City of Portland recently inherited stock worth $110,000 in Nike, which is a publicly held corporation. Nike is a "business with which the procurement officer is associated."

- When a person or their relative is a director or officer of a ***publicly held corporation***.

  Example: A Planning Commissioner for Washington County is the son of a member of the Board of Directors for Intel, a publicly held corporation. Intel is a "business with which the Planning Commissioner's relative is associated."

- When a public official is required by ORS 244.050 to file an Annual Verified Statement of Economic Interest and the business is required to be listed as a source of household income, per ORS 244.060.

  Example: A Bend city councilor is required to file an Annual Verified Statement of Economic Interest (SEI). A member of the city councilor's household, not a relative, is a paid employee of a private business. The private business which employs the household member would be a "business with which the city councilor is associated" if it provides 10% or more of the councilor's annual household income.

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# CONFLICTS OF INTEREST

**How does a public official know when they are met with a conflict of interest and, if met with one, what must they do?**

Oregon Government Ethics law identifies and defines two types of conflicts of interest. An **actual conflict of interest** is defined in ORS 244.020(1) and a **potential conflict of interest** is defined in ORS 244.020(13). In brief, a public official is met with a conflict of interest when participating in official action which would or could result in a financial benefit or detriment to the public official, a relative of the public official or a business with which either is associated.


The difference between an actual conflict of interest and a potential conflict of interest is determined by the words **"would"** and **"could."** A public official is met with an **actual** conflict of interest when the public official participates in an official action, decision, or recommendation that **would** affect the financial interest of the official, their relative, or a business with which they or their relative is associated. A public official is met with a **potential** conflict of interest when the public official participates in an official action, decision, or recommendation that **could** affect the financial interest of the official, their relative, or a business with which they or their relative is associated. The following hypothetical circumstances are offered to illustrate the difference between actual and potential conflicts of interest and what is <u>not</u> a conflict of interest:

- <u>POTENTIAL CONFLICT OF INTEREST</u>: A school district has decided to construct a new elementary school and the school board is at the stage of developing criteria for the construction bid process. A recently elected school board member's son owns a construction company in town. The school board member would be met with a potential conflict of interest when participating in official actions to develop the bid criteria, because the official actions she takes **<u>could</u>** financially impact her son's construction company, a business with which her relative is associated.

- <u>ACTUAL CONFLICT OF INTEREST</u>: A school district is soliciting bids for the construction of a new elementary school. The bid deadline was last week and the district Superintendent has notified the school board that there are four qualified bids and the school board will be awarding the bid to one of the four bidders at their upcoming meeting. One of the qualified bids was submitted by the construction company owned by a school board member's son. The school board member would be met with an actual conflict of interest when awarding this bid because the effect of her decision **<u>would</u>** have a financial impact (either positive or negative) on her son's construction company, a business with which her relative is associated.

- NO CONFLICT OF INTEREST: A school district is soliciting bids for the construction of a new elementary school. One of the qualified bids was submitted by a construction company owned by a board member's best friend but neither the board member nor any relative are associated with the construction company. The school board member would **not** be met with a conflict of interest when awarding this bid because the effect of her official decision **would not or could not** have a financial impact on herself, a relative, or a business with which she or her relative is associated.

**What if I am met with a conflict of interest?**

A public official must announce or disclose the nature of a conflict of interest. The way the disclosure is made depends on the position held. The following public officials must use the methods described below:

**Legislative Assembly:**

Members must announce the nature of the conflict of interest in a manner pursuant to the rules of the house in which they serve. The Oregon Attorney General has determined that only the Legislative Assembly may investigate and sanction its members for violations of conflict of interest disclosure rules in ORS 244.120. [49 Op. Atty. Gen. 167 (1999) issued on February 24, 1999]

**Judges:**

Judges must remove themselves from cases giving rise to the conflict of interest or advise the parties of the nature of the conflict of interest. [ORS 244.120(1)(b)]

**Public Employees:**

Public officials who are hired as public employees, agents, or who volunteer with their public bodies must provide **written notice** to the person who appointed or employed them (their "appointing authority"). The notice must describe the nature of the conflict of interest with which they are met and request that their appointing authority dispose of the conflict. This written disclosure to the appointing authority satisfies the requirements of ORS 244.120 for the employee. The appointing authority must then designate an alternate person to handle the matter or direct the public official in how to dispose of the matter. [ORS 244.120(1)(c)]

Example of Disclosure and Disposal: A County employee's job includes issuing building permits. An application concerns property owned by the employee's stepfather. The employee would be met with a conflict of interest and would need to make a written disclosure of his conflict to his appointing authority, in this case his department supervisor, and ask that the supervisor dispose of the conflict. Once the employee makes the written disclosure, he has complied with the conflict of interest statute. Upon receipt of a written disclosure from an employee, the supervisor must respond by either delegating an alternative person to handle the matter or directing the public official in how to dispose of the matter. **Note**: If the supervisor directs the public official to dispose of the conflict by handling his

relative's permit the same as any other permit, the supervisor could be asking an employee to take official actions that may violate the prohibited use of position statute, ORS 244.040(1). See page 17.

**Elected Officials or Appointed Members of Boards and Commissions:**

Elected officials (other than legislators) and those appointed to Boards and Commissions must publicly announce the nature of the conflict of interest before participating in any allowable official action on the issue giving rise to the conflict of interest. [ORS 244.120(2)(a) and ORS 244.120(2)(b)] The announcement must be made in a public meeting, or if no public meeting is available, by other means reasonably determined to notify members of the public of the public official's disclosure. For elected officials who do not hold regular public meetings, such as a Sheriff, District Attorney, or the Secretary of State, other means of compliance could be through a press release or by posting the disclosure on the public body's website.

- Potential Conflict of Interest: Following the public announcement of the nature of a potential conflict of interest, elected officials (other than legislators) and those appointed to Boards and Commissions, may participate in official action on the issue that gave rise to the conflict of interest.

  Example: A city has decided to solicit bids to develop a new computer system and the city councilors are developing criteria for the bid process. A city councilor's brother works for an IT firm in town. The councilor would be met with a **potential** conflict of interest when participating in official actions to develop the bid criteria, because the official actions she takes **could** financially impact her brother's employer, a business with which her relative is associated. The councilor should publicly disclose the nature of her conflict of interest at the council meeting when the development of bid criteria comes up for consideration. Following the public disclosure, she may continue to participate in discussions and votes on the issue.

- Actual Conflict of Interest: Following the public announcement of the nature of an actual conflict of interest, the public official must ordinarily refrain from further participation in official action on the issue that gives rise to the conflict of interest. [ORS 244.120(2)(b)(A)]

  Example: The city council is meeting to award a bid for a new IT project. Qualified bidders include a company that employs a city councilor's brother. The city councilor has an **actual** conflict of interest because the effect of her decision **would** have a financial affect, whether positive or negative, on a business with which her brother is associated. The city councilor must publicly announce the nature of her conflict of interest at the meeting and then refrain from any discussion or vote on the matter.

**Exception**: If a public official is met with an actual conflict of interest and the public official's vote is necessary to meet the minimum number of votes required for official action, the public official may vote. The public official must make the required announcement of their conflict of interest and refrain from any discussion or debate, but may participate in the vote required for official action by the governing body. [ORS 244.120(2)(b)(B)]

> Example: In the scenario above, the city councilor would be met with an actual conflict of interest. The city council has 5 members and it takes 3 votes for board action. At the time of this meeting, one seat is vacant, another member is absent, and the member with the actual conflict is present, but conflicted, leaving the city council without the requisite 3 votes to take action. In this instance, following her public disclosure, the conflicted city councilor must refrain from any discussion or debate on the issue, but she may vote in order for the council to take action. Alternatively, the council may choose to delay the vote until a later meeting when more city councilors are present.

**The following circumstances may exempt a public official from the requirement to make a public announcement or give a written notice describing the nature of a conflict of interest:**

- If the conflict of interest arises from a membership or interest held in a particular business, industry, occupation or other class **and** that membership is a prerequisite for holding the public official position. [ORS 244.020(13)(a)]

  > Example: The Oregon Medical Board requires that one Board member must be a practicing physician, any official action taken by the physician board member that affects all physicians to the same degree would be exempt from the conflict of interest requirements. The physician Board member need not disclose a conflict of interest and may participate in taking official action on the issue.

- If the financial impact of the official action would impact the public official, their relative, or a business with which they or their relative is associated, to the same degree as other members of an identifiable group or "class." The Commission has the authority to identify a group or class and determine the minimum size of that "class." [ORS 244.020(13)(b) and ORS 244.290(3)(a)] The number of persons affected **to the same degree** as the public official will help to determine whether this exception applies.

  Only the Commission may determine whether a "class" exemption exists. A written request must be made to the Commission to make that determination in advance. If a public official determines that a "class" exception applies in their situation, without benefit of Commission advice, the Commission may later determine that a "class" exception does not apply to the situation, and could find a violation.

Example: A city council is considering a change to the local transient lodging tax collected and remitted to the city by hotels and motels. One of the city councilors owns a motel. The effect of official actions taken by the city councilor concerning this tax would impact all motel owners within the city. The Commission may determine that the city councilor is part of an identifiable group or "class" of 200 city motel/hotel owners, who would be affected to the same degree and thus exempt from the conflict of interest disclosure and participation restrictions.

Example: A city council is considering a change to the local transient lodging tax collected and remitted to the city by motels. One of the city councilors is a motel owner. The effect of official actions taken by the city councilor concerning this tax would impact all motel owners within the city. The Commission declined to find that the class exemption applies due to the size of the "class" because there are only 3 motels in the city, 2 of which are owned by the councilor. The class exemption would not apply in these circumstances and the councilor must comply with the conflict of interest disclosure and participation restrictions.

Example: A city council is considering a proposal to construct a by-pass route around the city's business district. The city's business district includes many businesses and restaurants, including a coffee shop owned by one of the city councilors and a drive-thru espresso stand owned by another resident. The effect of the by-pass would not affect all business owners in the city to the same degree. The class exemption would not apply in these circumstances and the councilor who owns the coffee shop must comply with the conflict of interest disclosure and participation restrictions.

- If the conflict of interest arises from a directorship on the board of, or membership in, a nonprofit corporation that is tax-exempt under 501(c) of the Internal Revenue Code. [ORS 244.020(13)(c)]

  Example: A city councilor is also a board member of the local YMCA, a tax-exempt 501(c) organization. The decision, as a city councilor, to award a grant to that YMCA would be exempt from the conflict of interest disclosure and participation restrictions. [ORS 244.020(13(c)]

**How is the public announcement or written disclosure of the nature of a conflict of interest recorded?**

- The public body served by the public official is required to record the disclosure of the nature of the conflict of interest in the public body's official records (e.g. personnel file, meeting minutes, audio/video recording). It is to the public official's benefit to ensure their conflict disclosure is recorded in their public body's records. [ORS 244.130(1)]

**Is a public official required to make an announcement of the nature of a conflict of interest each time the issue giving rise to the conflict of interest is discussed or acted upon?**

Each time a public official is met with a conflict of interest, the nature of the conflict must be disclosed.

- For example, an elected member of the city council when met with a conflict of interest would have to make the public announcement one time, but only one time, ***in each meeting*** of the city council when the matter was raised. If the matter giving rise to the conflict of interest is raised at another meeting, the disclosure must be made again at that meeting.

- Public officials who are employees would need to submit separate written notices on each occasion when a conflict of interest arises. As an example, an employee in a city planning department would have to give a separate written notice before each occasion when they needed to take an official action involving property owned by a relative. [ORS 244.120(3)]

**If a public official failed to announce the nature of a conflict of interest and participated in official action, is the official action voided?**

- **No.** Any official action that is taken may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest. [ORS 244.130(2)] Even though the action may not be voided, the public official could face potential personal liability for the violation.



# USE OF POSITION OR OFFICE

**What are the provisions of law that prohibit a public official from using the position or office held for financial gain or avoidance of financial detriment?**

**ORS 244.040(1) prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available <u>but for</u> the position held by the public official.** The prohibited financial benefit can be either an opportunity for personal financial gain or an opportunity to avoid incurring a personal expense.

Not only is a public official prohibited from using the position as a public official to receive personal financial benefits, but the public official is prohibited from using or attempting to use their position as a public official to obtain financial benefits for a relative or a member of the public official's household. Also prohibited is using or attempting to use the public official's position to obtain financial benefits for a business with which the public official, a relative, or a member of the public official's household is associated.

There are a variety of actions that a public official may take or participate in that could constitute the prohibited use or attempted use of the public official's position. The use of a position could be voting in a public meeting, placing a signature on a government agency's document, making a recommendation, making a purchase with government agency funds, or using a government agency's time or resources (computers, vehicles, machinery) to obtain a personal financial benefit or avoid a personal cost.

The following examples are offered to illustrate what may constitute prohibited use or attempted use of office or position. Please note that this is not an exhaustive list:

- The mayor of a city signs a contract obligating the city to pay for janitorial services provided by a business owned by the mayor's relative.
- An executive director of an agency is ordering 10 new laptops for the agency, which qualifies for a bulk purchase discount of $150 per laptop. He adds 2 laptops for his family to the agency's order to personally take advantage of the discount, and then reimburses the agency for the discounted cost of his personal laptops.
- A city billing clerk alters water use records so that the amount billed to the clerk's parents will be less than the actual amount due.
- A volunteer firefighter borrows the fire district's power washer to prepare the exterior of the volunteer's personal residence for painting.
- A county public works employee stores a motor home that is owned by the employee's parents in a county building used for storing heavy equipment.
- An employee of a state agency has a private business and uses the agency's computer to conduct the activities of the private business.

- A county commissioner uses the county's pickup truck to haul his own personal boat to and from his vacation home.
- A school district superintendent hires her sister's consulting business to provide an in-service training to teachers in her district.
- A teacher solicits her students' parents to hire her for paid tutoring services.

**NOTE:** While these examples are offered to illustrate the use of a public official's position prohibited by ORS 244.040(1), the examples illustrate occasions where a public official may also be met with a conflict of interest as defined in ORS 244.020(1) and (13). The provisions in ORS 244.040 apply regardless of whether a public official has properly disclosed a conflict of interest. [ORS 244.040(7)]. For further information, refer to the detailed discussion of conflicts of interest starting on page 11.

There are some additional prohibitions on how current and even former public officials use their offices or positions.

- ORS 244.040(3) prohibits a public official from, directly or indirectly, soliciting or accepting the promise of future employment based on the understanding that the offer is influenced by the public official's vote, official action or judgment.

- Public officials often have access to or manage information that is confidential and not available to members of the general public. ORS 244.040(4) specifically prohibits public officials from using or attempting to use confidential information gained because of the position held to further their own personal gain.

- ORS 244.040(5) prohibits a **former** public official from attempting to use confidential information for **any** person's financial gain if that confidential information was obtained while holding the position as a public official, from which access to the confidential information was obtained.

- ORS 244.040(6) also has a single provision to address circumstances created when public officials, who are members of the governing body of a public body, own or are associated with a specific type of business. The type of business is one that may occasionally send a representative of the business to appear before the governing body on behalf of a client for a fee. Public officials who are members of governing bodies and who own or are employed by businesses, such as a law, engineering, or architectural firm, may encounter circumstances in which this provision may apply.

Example: A member of a city council is an architect. A client developer of the architect's firm has a proposed subdivision to be approved by the city council. The architect/councilor may not appear before the city council on behalf of the client developer. Another person from the architect's firm may represent the client developer before the city council, but not the architect/councilor.

**Aside from ORS 244.040, are there other prohibitions on public officials using their positions to avoid a personal financial detriment?**

**Yes**. ORS 244.049 prohibits a holder of public office or candidates for public office from using public moneys or moneys received from a third party to make payments in connection with a non-disclosure agreement relating to workplace harassment if the alleged harassment occurred when the holder of public office or candidate was acting in that capacity. This prohibition applies to a person holding, or a candidate for, any elected state, county, district, city office or position.

**Are there any circumstances in which a public official may use their position to accept financial benefits that would not otherwise be available but for holding the position as a public official?**

**Yes**. ORS 244.040(2) provides a list of financial benefits that would not otherwise be available to public officials but for holding the position as a public official. The following financial benefits are not prohibited and may be accepted by a public official, and some may also be accepted by a public official's relative or member of the public official's household:

**Not Prohibited**:

- Official Compensation: Public officials may accept any financial benefit that is identified by the public body they serve as part of the "official compensation package" of the public official. If the public body identifies such benefits as salary, health insurance or various paid allowances in the employment agreement or contract of a public official, those financial benefits are part of the "official compensation package." [ORS 244.040(2)(a)]


  OAR 199-005-0035(3) provides a definition of "official compensation package":
  An "official compensation package" means the wages and other benefits provided to the public official. To be part of the public official's "official compensation package", the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials. "Official compensation package" also includes the direct payment of a public official's expenses by the public body, in accordance with the public body's policies.

- Reimbursement of Expenses: A public official may accept payments from the public official's public body as reimbursement for expenses the public official has personally paid while conducting the public body's business. [ORS 244.040(2)(c)]

The “reimbursement of expenses” means the payment by a public body to a public official serving that public body, of expenses incurred in the conduct of official duties on behalf of the public body. Any such repayment must comply with any applicable laws and policies governing the eligibility of such repayment. [OAR 199-005-0035(4)]

If the payment of a public official’s personal expenses does not meet this definition, it may be a financial benefit prohibited or restricted by other provisions in ORS Chapter 244. There are occasions when someone will refer to the payment of a public official’s expenses by a person or entity other than the public official’s public body as a reimbursement of expenses. That is not the reimbursement of expenses as used in ORS 244.040(2)(c) and defined in OAR 199-005-0035(4).

- Honoraria: Most public officials are allowed to accept honoraria by ORS 244.040(2)(b) as defined in ORS 244.020(8). A public official must know how an honorarium is defined because there are many occasions when someone will offer them a financial benefit and call it an honorarium, but it does not meet the definition of honorarium in ORS 244.020(8).


For a payment to be defined as an honorarium, it must be made for a service, like a speech or other service rendered in connection with an event, for which no price is set and for which the public official required no fixed amount to be paid in return for providing the service. A payment or something of economic value given to a public official in exchange for services provided by the public official is an honorarium when the setting of the price has been prevented by custom or propriety.

A public official may not receive an honorarium when performing a service in the course of their duties as a public official. A public official may not accept honoraria if the value exceeds $50, unless the honoraria is received for services performed in relation to the private profession, occupation, avocation, or expertise of the public official or candidate. [ORS 244.042(3)(a) and (b)].

Public officials must be sure, when they are offered a payment or something of economic value and it is referred to as an honorarium, that it does meet the definition in ORS 244.020(8). If it does not meet this definition, it may be a financial benefit prohibited or restricted by other provisions in ORS Chapter 244.

**NOTE:** The Governor, First Partner, Secretary of State, State Treasurer, Attorney General, and Commissioner of the Bureau of Labor and Industries are explicitly prohibited by ORS 244.042(4) from soliciting or receiving an honorarium, money or any other consideration for **any** speaking engagement or presentation.

- Awards for Professional Achievement: Public officials may accept an award, if the public official has not solicited the award, and the award is offered to recognize a professional achievement of the public official. [ORS 244.040(2)(d)]

  Awards for professional achievement should not be confused with awards of appreciation, allowed by ORS 244.020(7)(b)(C), an honorarium allowed by ORS 244.040(2)(b), or gifts that are allowed or restricted by other provisions in ORS Chapter 244.

  Awards for professional achievement are best illustrated by awards that denote national or international recognition of a public official's achievement, such as receipt of the Nobel Prize. These awards may also be offered by public or private organizations in the state that are meant to recognize a public official for a distinguished career, such as Oregon's Teacher of the Year award made by the Oregon Department of Education which includes a monetary prize and travel funds. Professional achievements recognized may be identified as a single accomplishment or an accomplishment achieved during a period of time, such as a calendar year or a public official's career upon retirement.

- Contributions to Legal Expense Trust Fund: There are provisions in ORS 244.209 that allow public officials to establish legal expense trust funds that are approved by the Commission. ORS 244.040(2)(h) allows a public official who has established this trust fund to solicit, accept and be the trustee for contributions to the established fund. This is discussed in a separate section of the Guide p.41.


- Certain Gifts: Public officials may accept some gifts without limitation on the quantity or aggregate value of gifts. Acceptance of these gifts does not constitute a prohibited use of office. See allowable gifts, page 33. [ORS 244.040(2)(e) to (g)]

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# PRIVATE EMPLOYMENT OF PUBLIC OFFICIAL

**Does Oregon Government Ethics law prohibit a public official from owning a private business or working for a private employer while continuing employment with or holding a position with a public body?**

**No**. As mentioned earlier, many public officials are volunteers, meaning there is little or no compensation for the public position. Other public officials may receive compensation from their public bodies, but still choose to seek additional sources of income. Some work for a private business and others establish a private business of their own. **NOTE: This guide does not address other statutes or agency policies that may limit private employment for public officials.**

In general, public officials may obtain employment with a private employer or engage in private income producing activity of their own, but they must keep a separation between their public positions and their outside employment or private business interests. The Commission has created the following guidelines for public officials to follow in order to avoid violating Oregon Government Ethics law when engaged in private employment or a personally owned business.

## GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

1. Public officials must not use their public position to create the opportunity for additional personal income.
2. Public officials may not use a government agency's supplies, facilities, equipment, employees, records or any other public resources to engage in their private employment or business interests.
3. Public officials are not to engage in private business interests or other employment activities on their government agency's time.
4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.

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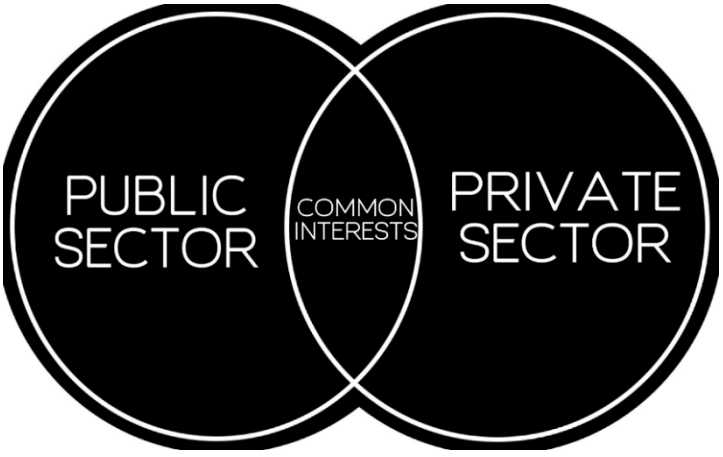

# EMPLOYMENT OF FORMER PUBLIC OFFICIALS

**What are the restrictions on employment after I resign, retire or leave my public official position?**

- ORS 244.040(1) prohibits public officials from using their official positions or offices to create a new employment opportunity; otherwise, most former public officials may enter the private work force with few restrictions.

- ORS 244.040(5) prohibits a former public official from using or attempting to use confidential information for the personal gain of any person if the confidential information was obtained while holding the position as a public official.

- Oregon Government Ethics law restricts the subsequent employment of certain public officials. The restrictions apply to positions listed below:

  ORS 244.045(1) State Agencies:
  Director of the Department of Consumer and Business Services
  Administrator of the Division of Financial Regulation
  Administrator of the Oregon Liquor Control Commission
  Director of the Oregon State Lottery
  Public Utility Commissioner

  1. One year restriction on accepting employment from or gaining financial benefits from a private employer in the activity, occupation or industry that was regulated by the agency for which the public official was the Director, Administrator or Commissioner.

  2. Two year restriction on lobbying, appearing as a representative before the agency, or otherwise attempting to influence the agency for which the public official was the Director, Administrator or Commissioner.

  3. Two year restriction on disclosing confidential information gained as the Director, Administrator or Commissioner for the agency.

  ORS 244.045(2) Department of Justice:
  Deputy Attorney Generals
  Assistant Attorney Generals

  Two year restriction from lobbying or appearing before an agency that they represented while employed by the Department of Justice.

  ORS 244.045(3) Office of the Treasurer:
  State Treasurer
  Deputy State Treasurer

1. One year restriction from accepting employment from or being retained by a private entity with which there was negotiation or contract awarding $25,000 in a single year by the office of the State Treasurer or Oregon Investment Council.

2. One year restriction from accepting employment from or being retained by a private entity with which there was investment of $50,000 in one year by the office of the State Treasurer or Oregon Investment Council.

3. One year restriction from being a lobbyist for an investment institution, manager or consultant, or from representing an investment institution, manager, or consultant, before the office of State Treasurer or Oregon Investment Council.

ORS 244.045(4) Public Officials who invested public funds:

1. Two year restriction from being a lobbyist or appearing before the agency, board or commission for which public funds were invested.

2. Two year restriction from influencing or trying to influence the agency, board or commission.

3. Two year restriction from disclosing confidential information gained through employment.

ORS 244.045(5) Department of State Police:

Member of State Police who has been designated by law and was responsible for supervising, directing or administering programs related to Native American tribal gaming or the Oregon State Lottery

1. One year restriction from accepting employment from or gaining financial benefit related to gaming from the Lottery or a Native American Tribe.

2. One year restriction from gaining financial benefit from a private employer who sells gaming equipment or services.

3. One year restriction from trying to influence the Department of State Police or from disclosing confidential information.

   Exceptions include subsequent employment with the state police, appointment as an Oregon State Lottery Commissioner, Tribal Gaming Commissioner or lottery game retailer, or personal gaming activities.

ORS 244.045(6) Legislative Assembly
Representative
Senator

A person who has been a member of the Legislative Assembly, may not, within one year after ceasing to be a member of the Legislative Assembly, receive money or other consideration for lobbying as defined in ORS 171.725.

**How would Oregon Government Ethics law apply when a former public official is employed by a business that has a contract with the public body previously represented by the former public official?**


In addition to the restrictions on specific positions identified above, the restriction in ORS 244.047 applies to all former public officials. After a public official ceases serving a public body or being employed in a position as a public official, that public official may not have a direct beneficial financial interest in a public contract for two years after the date the contract was authorized by the person acting in their capacity as a public official.

Whether a public official authorizes a contract individually as an employee of a public body, or participated in the authorization of a contract in their official capacity as a member of a board, commission, council, bureau, committee or other governing body, the person is restricted from financially benefiting from that public contract for two years after the date of authorization. [ORS 244.047]

“Authorized by” is defined in OAR 199-005-0035(6) as follows:

> As used in ORS 244.047, a public contract is “authorized by” a public official if the public official performed a significant role in the selection of a contractor or the execution of the contract. A significant role can include recommending approval or signing of the contract, including serving on a selection committee or team, or having the final authorizing authority for the contract.

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# GIFTS

Oregon Government Ethics law establishes restrictions on the value of gifts that can be accepted by a public official. If the source of a gift to a public official has a legislative or administrative interest in the decisions or votes of the public official, the public official can only accept gifts from that source when the aggregate value of gifts from that source does not exceed $50 in a calendar year. [ORS 244.025].

The following framework of conditions applies when public officials, their relatives, or members of their households are offered gifts. To decide if a gift, or "something of value," can be accepted with or without restrictions, the public official must analyze the offer and the source of the offer. As will be apparent in the following discussion, the burden of any decision on accepting a gift rests solely with the individual public official.

**What counts as a "gift"?**

When Oregon Government Ethics law uses the word "gift" it has the meaning in ORS 244.020(7)(a):

> "Gift" means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:
>
> > (A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or
> >
> > (B) For valuable consideration less than that required from others who are not public officials or candidates.

In other words, a "gift" is something of economic value that is offered to:

- A public official or candidate or to relatives or members of the household of a public official or candidate,
- Without cost or at a discount or as a forgiven debt, and,
- The offer is not made or available to members of the general public who are not public officials, candidates, or their relatives or household members on the same terms and conditions.

Example: At a conference exclusively for city and county officials, a public official buys a raffle ticket and wins a big screen television. The television is a gift because the value of the television exceeds the cost of the raffle ticket and the opportunity to enter the raffle and win the television was not available to members of the general public on the same terms and conditions.

Example: Outside of a grocery store, a public official buys a raffle ticket from a local scout troop and wins a big screen television. The television is not a gift because, although the value of the television exceeds the cost of the raffle ticket, the opportunity to enter the raffle and win the television was available to members of the general public on the same terms and conditions.

Once a public official or candidate has determined that an offer is a gift, because it is something of economic value that is not offered to members of the general public who are not public officials or candidates on the same terms and conditions, the public official or candidate must then determine if the value of the gift, combined with any other gifts from the same source during the calendar year, exceeds $50. If so, the public official must then determine if the source of the gift has a legislative or administrative interest.

Any discussion of gifts must begin with the reminder that if the source of a gift to a public official or candidate ***does not*** have a legislative or administrative interest in the decisions or votes of the public official or candidate if elected, the public official or candidate can accept unlimited gifts from that source. [ORS 244.040(2)(f)]

**What is a "Legislative or Administrative Interest"?**


Whether there is a legislative or administrative interest is pivotal to any decision a public official or a candidate, if elected, makes on accepting gifts. It will mean the difference between being allowed to accept gifts without limits, accepting gifts with an annual limit of $50 on the aggregate value, or accepting gifts which are specified exceptions under ORS 244.020(7).

The definition of a legislative or administrative interest is set forth in ORS 244.020(10):

"'Legislative or administrative interest' means an economic interest, distinct from that of the general public, in:

(a) Any matter subject to the decision or vote of the public official acting in the public official's capacity as a public official; or

(b) Any matter that would be subject to the decision or vote of the candidate who, if elected, would be acting in the capacity of a public official."

When analyzing a set of circumstances and applying "legislative or administrative interest," there are several factors to consider:

Source: The Commission adopted a rule that identifies the source of a gift as the person or entity that makes the ultimate and final payment of the gift's expense. OAR 199-005-0030 places two burdens on a public official who accepts gifts. The public official must know the identity of the source and, if applicable, avoid exceeding the limit on the aggregate value of gifts accepted from that source. [OAR 199-005-0030(2)]

Distinct from that of the general public: With regard to gifts, this phrase refers to a distinct economic interest held by the source of a gift. That economic interest is in the financial gain or loss that could result from any votes cast or decisions made by a public official. If the source of a gift would realize a financial gain or detriment from matters subject to the vote or decision of a public official, that source has an economic interest in that public official. That economic interest is "distinct from that of the general public" if the potential financial gain or detriment is distinct from the financial impact that would be realized by members of the general public from the matters subject to votes or decisions of that same public official.

There are decisions or votes that have an economic impact on single individuals or individuals from specific businesses or groups that are distinct from the economic impact on members of the general public. On the other hand, there are many votes or decisions made by public officials that have the same general economic impact on individuals, businesses, organizations and members of the general public. Some examples of decisions or votes that would likely have an economic impact on members of the general public would be those that change water usage rates for residential users, fees for pet licenses, or fines for parking violations.

To illustrate, private contractors have an economic interest in any public official who has the authority to decide or vote to award them contracts. The economic interest of these contractors is distinct from the economic interest held by members of the general public in those decisions or votes.

To further illustrate, real estate developers have an economic interest in any public official who has the authority to decide or vote to approve their land use applications or building permits. The economic interest of these developers is distinct from the economic interest held by members of the general public in those decisions or votes.

Vote: This has the common meaning of to vote as an elected member of a

governing body of a public body or as an appointed member of a committee, commission or board appointed by a governing body, Oregon Legislative Assembly, or the Office of the Governor.

Decision: A public official makes a decision when the public official exercises the authority given to the public official to commit the public body to a particular course of action. [OAR 199-005-0003(2)].

Whether to accept or reject the offer of a gift must be made individually by each public official. There will be some public officials who may accept unlimited gifts from a source and other public officials within the same public body that would have restrictions on gifts have the same authority, responsibilities or duties. Some may vote and make decisions, others may do one but not the other, and many will not vote or make decisions. This means that when gifts are offered to two or more public officials, one public official may be allowed to accept the gift without limits, and another public official may not be able to accept the gift at all, or may only be able to accept it with limits as to value or with other restrictions.

Example: A cellular service provider offers a discounted cell-phone plan for first responders. The discounted plan is available only to first responders who work for state or local governments. Because the discounted cell-phone plan is not available to members of the general public on the same terms and conditions, it is a gift subject to the restrictions and limitations in ORS 244.025. First responders who are in positions to make official decisions for their agencies that could financially affect the cellular service provider, such as Fire Chiefs or board members, could not accept the discounted cell-phone plan since the discount totals more than $50 in a calendar year; however, first responders who are not in positions to make official decisions for their agencies that could financially affect the cellular service provider could accept the discounted cell-phone plan.

**What obligations are placed on the giver of a gift?**

Sources who offer gifts or other financial benefits to public officials must also be aware of the provisions in ORS Chapter 244. While the specific gift of paid expenses may be allowed by ORS 244.020(7)(b)(F), ORS 244.100(1) requires the source of this gift, if over $50, to notify the public official in writing of the aggregate value of the paid expenses. There is also a notice requirement in ORS 244.100(2) for the source of an honorarium when the value exceeds $15. Lobbyists, clients or employers of lobbyists, and others who provide gifts or financial benefits to public officials should also familiarize themselves with the provisions in ORS 171.725 through ORS 171.992 and Divisions 5 and 10 of Chapter 199 in the Oregon Administrative Rules. The Commission has published a “Guide to Lobbying in Oregon” that provides a summary of these regulations and rules.

**What gifts may a public official accept regardless of value?**

While gifts from a source with a legislative or administrative interest in the decisions or

votes of a public official may only be accepted up to the $50 limit, there are some gifts that are excluded from the definition of a "gift," when offered under specific conditions or when prerequisites are met. If the offer of a gift is excluded from the definition of a "gift," the offer may be accepted by a public official, regardless of value.

The value of gifts that are allowed as exclusions does not have to be included when calculating the aggregate value of gifts received from that source in one calendar year. [ORS 244.020(7)(b)] Although some gifts are allowed by these exclusions, it should be remembered that a source may have a notice requirement or there may be reporting requirements for the public official or the source. If you are a public official accepting gifts or a source offering gifts, it is important that you become familiar with the requirements that may apply to you.

ORS 244.020(7)(b) provides a description of the **GIFTS THAT ARE ALLOWED** as exclusions to the definition of a "gift." **NOTE:** Not all of these exclusions apply to gifts offered to candidates. These exclusions include:

- Campaign contributions as defined in ORS 260.005. [ORS 244.020(7)(b)(A)]

- Contributions to a legal expense trust fund established under ORS 244.209. [ORS 244.020(7)(b)(G)]

- Gifts from relatives or members of the household of public officials or candidates. [ORS 244.020(7)(b)(B)]

- Anything of economic value received by a public official or candidate, their relatives or members of their household when:

  The receiving is part of the usual and customary practice of the person's business, employment, or volunteer position with any non-profit or for-profit entity; [ORS 244.020(7)(b)(O)(i)] **and**

  The receiving bears no relationship to the person's holding the official position or public office. [ORS 244.020(7)(b)(O)(ii)]

- Unsolicited gifts with a resale value of less than $25 and in the form of items similar to a token, plaque, trophy and desk or wall mementos. [ORS 244.020(7)(b)(C); OAR199-005-0010]

- Publications, subscriptions or other informational material related to the public official's duties. [ORS 244.020(7)(b)(D)]

- Waivers or discounts for registration fees or materials related to continuing education or to satisfy a professional licensing requirement for a public official or candidate. [ORS 244.020(7)(b)(J)]

- Entertainment for a public official or candidate and their relatives or members of their households when the entertainment is incidental to the main purpose of the event. [ORS 244.020(7)(b)(M); OAR 199-005-0001; OAR 199-005-0025]

- Entertainment for a public official, a relative of the public official or a member of the public official's household when the public official is acting in an official capacity and representing a government agency for a ceremonial purpose. [ORS 244.020(7)(b)(N); OAR 199-005-0025(2)]

- Cost of admission or food and beverage consumed by the public official, a relative of the public official, a member of the public official's household or staff when they are accompanying the public official, who is representing a government agency, at a reception, meal or meeting held by an organization. [ORS 244.020(7)(b)(E); OAR 199-005-0015; OAR 199-005-0001]

- Food or beverage consumed by a public official or candidate at a reception where the food and beverage is an incidental part of the reception and there was no admission charged. [ORS 244.020(7)(b)(L); OAR 199-005-0001(3)]

- When public officials travel together inside the state to an event bearing a relationship to the office held and the public official appears in an official capacity, a public official may accept the travel related expenses paid by the accompanying public official. [ORS 244.020(7)(b)(K)]

- Payment of reasonable expenses if a public official is scheduled to speak, make a presentation, participate on a panel or represent a government agency at a convention, conference, fact-finding trip or other meeting. The paid expenses for this exception can only be accepted from another government agency, Native American Tribe, an organization to which a public body pays membership dues, or not-for-profit organizations that are tax exempt under 501(c)(3). [ORS 244.020(7)(b)(F);OAR 199-005-0020; OAR 199-005-0001]

- Payment of reasonable food, lodging or travel expenses for a public official, an accompanying relative, member of household, or staff, may be accepted when the public official is representing their government agency at one of the following: [ORS 244.020(7)(b)(H);OAR 199-005-0020; OAR 199-005-0001]

    - Officially sanctioned trade promotion or fact-finding mission; [ORS 244.020(7)(b)(H)(i)] **or**

    - Officially designated negotiation or economic development activity when receipt has been approved in advance. [ORS 244.020(7)(b)(H)(ii)]

    [**NOTE:** Who may officially sanction and officially designate these events, and how to do so, is addressed in OAR 199-005-0020(3)(b).]

- Payment to a public school employee of reasonable expenses for accompanying students on an educational trip. [ORS 244.020(7)(b)(P)]

- Food and beverage when acting in an official capacity in the following circumstances: [ORS 244.020(7)(b)(I)]

    - In association with a financial transaction or business agreement between a government agency and another public body or a private entity, including such actions as a review, approval or execution of documents or closing a borrowing or investment transaction; [ORS 244.020(7)(b)(I)(i)]

    - When the office of the Treasurer is engaged in business related to proposed investment or borrowing; [ORS 244.020(7)(b)(I)(ii)]

    - When the office of the Treasurer is meeting with a governance, advisory or policy making body of an entity in which the Treasurer's office has invested money. [ORS 244.020(7)(b)(I)(iii)]

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# GIFTS AS AN EXCEPTION TO THE USE OF OFFICE PROHIBITION IN ORS 244.040

As covered in more detail in the discussion beginning on page 17, public officials are prohibited from using or attempting to use the position they hold to obtain a prohibited financial benefit. [ORS 244.040(1)] As covered in more detail in the discussion beginning on page 26, Oregon Government Ethics law does not prohibit public officials from accepting gifts, but it does place on each individual public official the personal responsibility to understand there are circumstances when the aggregate value of gifts may be restricted. [ORS 244.025] These provisions of Oregon Government Ethics law often converge and require analysis by public officials to determine whether the opportunity to obtain financial benefits represents the use of an official position prohibited by ORS 244.040(1) or a gift addressed with other provisions in ORS Chapter 244 [ORS 244.020(7), ORS 244.025 or ORS 244.040(2)(e),(f) and (g)].

ORS 244.040 was amended in 2007 to make the acceptance of gifts that comply with ORS 244.020(7) and ORS 244.025 exceptions to the prohibition on public officials' use or attempted use of an official position to gain financial benefits. [ORS 244.040(2)(e), (f) and (g)] If a public official, relative, or household member accepts a permissible gift or a financial benefit that qualifies as an exception to the definition of a gift, ORS 244.040(1) does **not** prohibit its acceptance. If a public official, relative, or household member accepts a gift that exceeds the restrictions or limitations set forth in ORS 244.025, then that gift would not qualify under the exceptions set forth in ORS 244.040(e), (f) and (g). Acceptance of that gift could constitute a violation of both ORS 244.025 and ORS 244.040(1).

When the Commission applies Oregon Government Ethics law to "something of economic value" offered to a public official that meets the definition of "gift," it will first be analyzed to determine whether it is a violation of ORS 244.025. If the Commission determines that acceptance of the gift constitutes a violation of ORS 244.025 (unlawful acceptance of a gift), it will then determine if it also constitutes a violation of ORS 244.040(1) (prohibited use of office).

The following are examples to illustrate the Commission's approach:

- The mayor of a town on the Oregon coast was a college roommate with Bob Smith, who now manages a company that owns many golf courses in Oregon and other states. One of the company's golf courses is in the mayor's town. The mayor and

Bob have remained friends ever since college. Recently, Bob invited the mayor to join him at the Masters' Tournament in Augusta, offering to fly him there on Bob's private jet, stay in Bob's condo, and host him at a private booth at the Tournament. The value of this trip exceeds $50, and Bob has a legislative or administrative interest in the mayor's decisions as a public official, as one of Bob's golf courses is in the mayor's town. Since the value of the trip exceeds $50, is not extended to others who are not public officials on the same terms and conditions, and is from a source with a legislative or administrative interest, it is a gift that the mayor cannot accept without violating ORS 244.025(1). It also does not qualify as an exception to ORS 244.040(1). [ORS 244.040(2)(e)]. Bob has been inviting his old college friend on this trip for at least 10 years, long before the friend was elected mayor recently. This and other evidence indicates that the mayor received this offer because he and Bob are friends, not because he is the town's mayor; therefore, the offer of this trip does not represent a financial gain that would not be available to the mayor but for his holding his public office. Thus, if the mayor accepted the gift of this trip, the mayor would violate ORS 244.025(1) (acceptance of an unlawful gift), but would not violate ORS 244.040(1) (prohibited use of office).

- A public works director for B City holds weekly breakfast meetings at a local diner. The public works director invites five main contractors in B City, all of whom do business with the city, to attend these meetings. The contractors take turns picking up the tab for the public works director's breakfast. Because the public works director has the authority to recommend the contractors for projects with the city, the contractors have economic interests distinct from that of the general public in the public works directors' decisions or recommendations. Over the course of a calendar year, each contractor pays for at least ten meals for the public works director, at a total aggregate cost exceeding $50. These meals constitute unlawful gifts to the public works director, as their value exceeds $50, they are not extended to others who are not public officials on the same terms and conditions, and they are from sources with distinct economic interests in the public works director's decisions or recommendations. The contractors would not pay for these meals if he were not the public works director. Thus, in addition to violating ORS 244.025(1), by accepting these meals the public works director also violates ORS 244.040(1).

The responsibility for judgments and decisions made in order to comply with the various provisions in Oregon Government Ethics law rests with the individual public official who faces the circumstances that require a judgment or decision. That is true of questions regarding gifts, use of an official position, announcing the nature of conflicts of interest and the many situations addressed in ORS Chapter 244.

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# NEPOTISM

**Does Oregon Government Ethics law prevent two or more relatives from being employees of the same public body?**

**No**. Public officials who are relatives can be employed by the same public body employer at the same time, or serve at the same time on the same governing body of a public body.

ORS Chapter 244 does, however, does address the issue of "nepotism." The definitions of "member of household" and "relative" found in ORS Chapters 244.020(11) and 244.020(16) apply here: See page 7.

**What are the provisions that address nepotism?**

Public officials are restricted from participating in personnel actions taken by the public agency that would impact the *paid employment* of a relative or member of the public official's household. If a public official has a relative or household member who has applied to be or serves as an *unpaid volunteer,* the public official may participate in any personnel action that involves the relative or member of the household.

Personnel actions addressed by this statute include:

- Appointing, employing or promoting a relative or member of the public official's household; or
- Discharging, firing or demoting a relative or member of the public official's household.

ORS 244.177(1)(a) provides that a public official may not appoint, employ or promote (or discharge, fire or demote) a relative or member of their household from a position with the public body that the public official serves or over which the public official exercises jurisdiction or control, unless the public official complies with the conflict of interest requirements of ORS Chapter 244. Even if the public official discloses a conflict of interest, a public official who takes such a personnel action for a relative or member of their household could still be found in violation of the use of office provisions of ORS 244.040(1).

Separately, ORS 244.177(1)(b) directs that a public official may not participate in any interview, discussion or debate regarding such personnel actions involving a relative or member of the public official's household.

A public official who is assigned duties that include performing "ministerial acts" related

to any stage of a relative's employment is not prohibited from performing such acts. "Ministerial acts" would include mailing or filing forms or correspondence, taking and relaying messages, scheduling appointments or preparing documents and minutes for public meetings. A public official may serve as a reference or provide a recommendation for a relative who has applied for a position of employment, promotion, or is subject to any personnel action.

**Exception:** Public officials may not, however, participate in appointing a relative or member of the household to an unpaid position on the governing body of the public body that the public official serves or over which the public official exercises jurisdiction or control. [ORS 244.177(3)(a) and (b)]

**Can public officials supervise their relatives or members of their households?**


Nepotism also applies to supervision of relatives or members of the public official's household. ORS 244.179(1) prohibits public officials from directly supervising relatives or members of their household in paid positions. The public official may supervise an unpaid volunteer serving the public body, unless the volunteer position is as a member of a governing body of the public body. [ORS 244.179(3)]

Policy Exception: ORS 244.179(4) permits a public body to adopt policies that specify when a public official, acting in an official capacity for the public body, may directly supervise a relative or member of the public official's household in a paid position. OAR 199-005-0080 provides guidance to public bodies in developing such policies. Absent such a policy, a public official may not directly supervise a remunerated person who is a relative or member of the public official's household. [ORS 244.179(1)]

Direct supervision of a paid relative or household member includes official actions that would financially impact their relative or household member, such as:

- Conducting performance reviews
- Approving leave or vacation time
- Recommending or approving pay changes
- Assigning shifts
- Approving overtime
- Authorizing or approving reimbursements or travel expenses
- Authorizing worksite assignments or teleworking

**Exception:** Public officials who are elected members of the Oregon Legislative Assembly are not prohibited from participating in employment actions, including supervision of their relatives or household members on their personal staff [ORS 244.177(2)].

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# ANNUAL VERIFIED STATEMENT OF ECONOMIC INTEREST

There are approximately 5,500 Oregon public officials who must file an **Annual Verified Statement of Economic Interest (SEI)** with the Oregon Government Ethics Commission **by April 15** of each calendar year. The SEIs are now filed electronically through the Commission's Electronic Filing System (EFS).

**ORS 244.050 identifies the public officials who are required to file SEIs.** Please refer to that statute to see if your specific office or position requires you to file an SEI. In general, public officials who hold the following positions are required to file:

- State public officials who hold elected or appointed executive, legislative or judicial positions. This includes those who have been appointed to positions on certain boards or commissions.

- In counties, all elected officials, such as commissioners, assessors, surveyors, treasurers and sheriffs must file. Planning commission members and the county's principal administrator must also file.

- In cities, all elected officials, the city manager or principal administrator, municipal judges and planning commission members must file.

- Administrative and financial officers in school districts, education service districts and community college districts must file.

- Some members of the board of directors for certain special districts must file.

- Candidates for some elected public offices are also required to file.

The Commission staff has identified by jurisdiction the public officials whose position requires them to file the SEI. Each jurisdiction (city, county, executive department, board or commission, etc.) has a person (jurisdictional contact) who acts as the Commission's point of contact for that jurisdiction. [OAR 199-020-0005(1)]

The **jurisdictional contact (JC)** for each jurisdiction has an important role as a liaison between the Commission and the SEI filers in their jurisdiction. It is through the JC that the Commission obtains the current name, address and email address of each public official who is required to file. When there is a change in who holds a position through resignation, appointment or election, the JC periodically updates their jurisdictional records and beginning in January of each year the JC is asked to update and verify the required filers in the EFS system. Any necessary changes or updates in EFS are due by February 15. [OAR 199-020-0005(2)]

As with other provisions in Oregon Government Ethics law, it is each public official's personal responsibility to ensure they comply with the requirement to complete and submit the SEI by April 15. Those public officials who must file an SEI are well served if the JC for their jurisdiction ensures that the Commission has the correct name and email address of the public official. The JC should ensure that each SEI filer has been advised of the reporting requirements. Each filer should also receive information as to the procedures the jurisdiction follows to assist the filer in meeting the SEI filing requirement.

Again, the requirement to file the SEI is the personal responsibility of each public official. Each public official should comply and file timely, as the civil penalties for late filing are $10 for each of the first 14 days after the filing deadline and $50 for each day thereafter until the aggregate penalty reaches the maximum of $5,000. [ORS 244.350(4)(c)]

## SEI Filing

**NOTE: Only public officials who hold a position that is required to file, and who hold that position on April 15 of the year the SEI is due, must file an SEI.**

SEIs are filed online through the Commission's Electronic Filing System (EFS). Notifications and instructions for e-filing will be sent to SEI filers electronically via email addresses initially supplied in EFS by the JC and updated when necessary.

The following is a brief description of the information requested in the SEI electronic filing. The information needed to complete the filing pertains to the previous calendar year.

- Name, address and a brief description of each business in which a position as officer or director was held by the filer or household member. [ORS 244.060(1)]

  Name, address and a brief description of each business through which the filer or household member did business. [ORS 244.060(2)]

  Name, address, and brief **description** of the **sources** (*not amounts*) of income for the filer and household members that represent 10 percent or more of the annual household income. [ORS 244.060(3)]

  > **Example**: An SEI filer resides only with a spouse and their annual household income from the prior year is derived from the spouse's job at Walmart, the spouse's retirement, and the public official's salary as an employee at a public university. The respective "sources" would be: "Walmart", "Social Security" and "XX University"; respective "descriptions" would be "spouse's wages", "spouse's retirement" and "filer's salary".

- Ownership interests held by the filer or household members in real property, **except for their principal residence,** located within the geographic boundaries of the jurisdiction in which the filer holds the position or seeks to hold. [ORS 244.060(4)(a) and (b)] **NOTE: SEI filers who serve statewide and members of the Legislative**

**Assembly must report real property held within the entire state of Oregon. This applies to candidates for statewide office and the Legislative Assembly.**

- Honoraria or other items allowed by ORS 244.042 that exceed $15 in value given to the filer or household members. Include a description of the honoraria or item and the date and time of the event when the item was received. [ORS 244.060(7)] Remember that honorarium cannot exceed $50. [ORS 244.042(3)(a)]

- Name of each lobbyist associated with any business with which the filer or household member is associated, unless the association is through stock held in publicly traded corporations. [ORS 244.090]

- If the public official received over $50 from an entity when participating in a convention, fact-finding mission, trip, or other meeting as allowed by ORS 244.020(7)(b)(F), list the name and address of the entity that paid the expenses. Include the event date, aggregate expenses paid and the purpose for participation. [ORS 244.060(5) and ORS 244.100(1)] [Not required for candidates]

- If the public official received over $50 from an entity when participating in a trade promotion, fact-finding mission, negotiations or economic development activities as allowed by ORS 244.020(7)(b)(H), list the name and address of the person that paid the expenses. Include the event date, aggregate expenses paid and nature of the event. [ORS 244.060(6)] [Not required for candidates]

    - **EXCEPTION**: Expenses paid by the public body to their own public officials need not be reported by the public official under ORS 244.060 [OAR 199-005-0035(4)].

The following is required if the information requested relates to an individual or business that has been doing, is doing or could reasonably be expected to do business with the filer's governmental jurisdiction, has a legislative or administrative interest in the filer's governmental jurisdiction, or over which the filer exercises any authority:

- Name, address and description of each source of income (taxable or not) that exceeds $1,000 for the filer or a household member. [ORS 244.060(8)]

- Name of each person the filer or a household member owes or has owed $1,000 or more in the previous calendar year. Include the date of the loan and the interest rate. Debts on retail contracts or with regulated financial institutions are excluded. [ORS 244.070(1)]

- Name, address and description of nature of each business in which filer or household member has beneficial interest over $1,000 or investment held in stocks or securities over $1,000. Exemptions include mutual funds, blind trusts, deposits in financial institutions, credit union shares and the cash value of life insurance policies. [ORS 244.070(2)]

- Name of each person from whom the filer received a fee of over $1,000 for services, unless disclosure is prohibited by law or a professional code of ethics. [ORS 244.070(3)]

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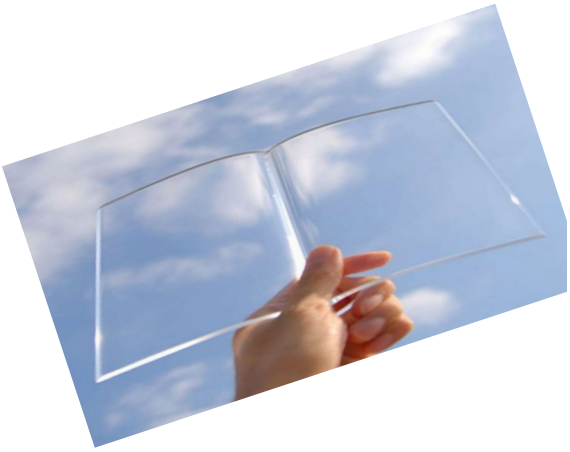

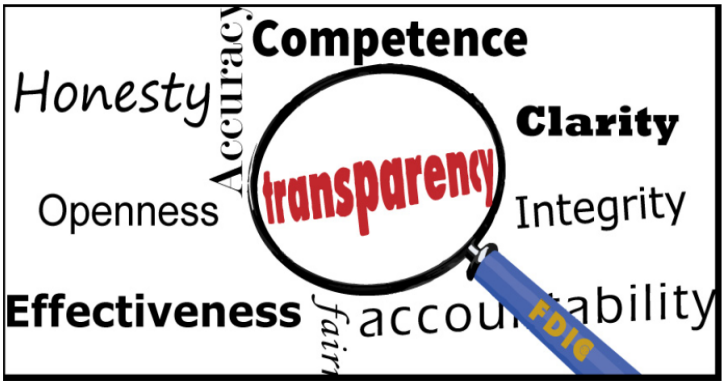

# LEGAL EXPENSE TRUST FUND

The Oregon Government Ethics Commission can authorize a public official to establish a legal expense trust fund to be used to defray expenses incurred for a legal defense in any civil, criminal or other legal proceeding or investigation that relates to or arises from the course and scope of duties of the person as a public official. [ORS 244.205]

The provisions regarding the establishment of this fund are detailed in ORS 244.205 through ORS 244.221. If a public official is considering the need to establish a legal expense trust fund, these provisions should be reviewed. The Commission staff is available to provide guidance on the procedures. The following are some of the significant elements of a legal expense trust fund:

- A public official may only have one trust fund at any one time. [ORS 244.205(4)]
- The application to establish the fund must be submitted to the Commission for review and authorization. ORS 244.209 details what information and documents must accompany the application.
- The public official may act as the public official's fund trustee. [ORS 244.211(2)]
- Once authorized and established, any person may contribute to the fund. [ORS 244.213(1)]
- Contributions from a principal campaign committee are not allowed. [ORS 244.213(3)]
- Funds must be maintained in a single exclusive account [ORS 244.215].
- Quarterly reports of contributions and expenditures from the fund are required. [ORS 244.217]
- The fund may be terminated within six months after the legal proceeding for which the fund was established has been concluded. [ORS 244.219]
- When terminated, remaining funds must be returned to contributors on a pro rata basis. [ORS 244.221(1)]
- If the legal proceeding for which the fund was initiated resulted in any financial award or money judgment in favor of the public official, such moneys shall be distributed in the following order: outstanding legal expenses, to trust fund contributors on a pro rata basis, and to the public official or, if required by the trust agreement, to an organization exempt from taxation under section 501(c)(3) of the IRS Code. [ORS 244.221(2)]

**Once established, can the public official solicit funds in order to pay for the cost of a legal defense?**

**Yes**. An exception to the prohibited use of office provision explicitly allows a public official to solicit and accept funds for the official's legal expense trust fund. [ORS 244.040(2)(h)] Also, contributions to a legal expense trust fund are excluded from the definition of a "gift." [ORS 244.020(7)(b)(G)]

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# OREGON GOVERNMENT ETHICS COMMISSION

The Governor appoints all nine members of the Commission and each appointee is confirmed by the Senate. The commissioners are recommended as follows: [ORS 244.250]

| | |
|---|---|
| 2 | Recommended by the Senate Democratic leadership |
| 2 | Recommended by the Senate Republican leadership |
| 2 | Recommended by the House Democratic leadership |
| 2 | Recommended by the House Republican leadership |
| 1 | Recommended by the Governor |

The Commission members select a chairperson and vice chairperson annually. No more than three commissioners with the same political party affiliation may be appointed to the Commission to serve at the same time. The commissioners are limited to one four-year term, but if an appointee fills an unfinished term they can be reappointed to a subsequent four year term.

The Commission is administered by an executive director, who is selected by the Commission. Legal counsel is provided by the Oregon Department of Justice. Commission staff provide administration, training, guidance, issue written opinions and advice, and conduct investigations when complaints are filed with the Commission.

Training:


The Commission has designated training as one of its highest priorities. It has two staff positions to provide free training to public officials and lobbyists on the laws and regulations under its jurisdiction. Training is provided through presentations at training events, web-based training, informational links on the website, topical handouts and guidance offered when inquiries are received. Contact the Commission to obtain free training through our website at https://www.oregon.gov/ogec/training/Pages/default.aspx

Advice:


Questions regarding the Commission's laws, regulations and procedures are a welcome daily occurrence. Timely and accurate answers are a primary objective of the staff. All members of the Commission staff are cross-trained in the laws and regulations under the Commission's jurisdictions. Guidance and information is provided either informally, over the telephone at 503-378-5105, by e-mail at ogec.mail@oregon.gov, or in the following written formal advice and opinions:

- **Staff Advice:** ORS 244.284 provides for informal staff advice, which may be offered in several forms, such as in person, by telephone, e-mail or letter. In a letter of advice, the proposed, hypothetical or actual facts are restated as presented in

the request, along with the relevant statutes and administrative rules. The advice will discuss how the law applies to the questions asked or raised by the fact circumstances presented in the request.

- **Staff Advisory Opinion:** ORS 244.282 authorizes the executive director to issue a staff advisory opinion upon receipt of a written request. The Commission must respond to any request for a staff advisory opinion within 30 days, unless the executive director extends the deadline by an additional 30 days. The staff advisory opinion is issued in a letter that restates the proposed, hypothetical or actual facts presented in the written request and identifies the relevant statutes and administrative rules. The opinion will discuss how the law applies to the questions asked or raised by the fact circumstances presented in the request.

- **Commission Advisory Opinion:** ORS 244.280 authorizes the Commission to prepare and adopt by vote a Commission Advisory Opinion. Commission advisory opinions are reviewed by legal counsel before being adopted by the Commissioners. The opinion will identify the relevant statutes and administrative rules and will discuss how the law applies to the questions asked or raised by the fact circumstances provided in the request. The Commission must respond to any request for a Commission Advisory Opinion within 60 days, unless the Commission extends the deadline by an additional 60 days.

Public officials who request advice or formal opinions must describe the specific facts and circumstances that provide the basis for questions about how the Oregon Government Ethics law may apply. The facts and circumstances may be hypothetical or actual, but must be prospective, describing a proposed transaction or action, not one that has already occurred. If actual circumstances indicate that a violation may have already occurred, the staff cannot provide advice or an opinion because to do so could compromise the Commission's objectivity if a complaint were to be filed. As described below, whether a public official relied on Commission advice or opinions is relevant to sanctions, in the event a complaint is filed against the public official.

**If a person requests, receives or relies on any of the advice or opinions authorized by ORS 244.280 through ORS 244.284, does that person have what is referred to as "safe harbor"?**

There is no "safe harbor," if the term is understood to mean that any person who relies on any advice or opinions offered by the Commission or the staff is protected from being a respondent to a complaint or from being found in violation of laws within the jurisdiction of the Commission.

There is, however, specific and conditional protection for any person who has requested and relied in good faith upon advice or an opinion from the Commission or its staff. The conditions and protection is as follows:

- The fact circumstances described in the request must not misrepresent, misstate or omit material facts.

- Reliance on the advice or opinion means that the action or transactions of the person were those described or suggested in the advice or opinion.

- The protection applies only during the penalty phase, after the Commission has determined that a violation has occurred. If there was reliance on staff advice or a Staff Advisory Opinion, the Commission may consider the reliance during the penalty phase. If reliance was on a Commission Advisory Opinion, the Commission may not impose a penalty.

The specific protections for the different forms of advice are as follows:

**Staff Advice**: If the Commission makes a finding that a public official violated provisions of law within its jurisdiction, and that public official acted in accordance with staff advice offered under the authority of ORS 244.284, the Commission may consider that information when sanctioning the violation. [ORS 244.284(2)] The Commission is not prevented from finding a violation, but the sanction imposed could be affected.

**Staff Advisory Opinion:** If the Commission determines that a public official violated provisions of law within its jurisdiction, and the public official acted in accordance with a staff advisory opinion under the authority of ORS 244.282, in sanctioning the violation, the Commission may consider whether the public official committed the violation when acting in reliance on the staff advisory opinion. [ORS 244.282(3)] The Commission is not prevented from finding a violation in these circumstances, but any sanction is limited to issuing a written letter of reprimand, explanation, or education, unless it finds that the person omitted or misstated material facts in the request for a staff advisory opinion.

**Commission Advisory Opinion:** The Commission may not impose a penalty on a person for any good faith action taken by the person while relying on a Commission Advisory Opinion, unless it is determined that the person who requested the opinion omitted or misstated material facts in the opinion request. [ORS 244.280(3)] For the Commission Advisory Opinion to be a factor in preventing the imposition of a penalty, it is important to understand that the circumstances described in the request must have been an accurate description of what occurred when the respondent committed the violation, and the actions of the respondent must have been those recommended or described in the Commission Advisory Opinion. The Commission is not prevented from finding a violation in these circumstances, but could be prevented from imposing a sanction.

Any person who has not requested advice or an opinion must be cautious when trying to apply advice or opinions offered to others. The advice and opinions given are based on and tailored to the specific fact circumstances presented in a request. Fact circumstances

vary from one situation to another and they vary from one public official to another. If a person reviews an opinion or advice issued to another for circumstances the person believes similar to those now met and relies on that advice, the person must ensure the similarity is sufficient for the application of law to be the same.

It is important to remember that the provisions of law apply to the individual actions of the person or public official. There are events or occasions when more than one public official may be present and participating in their official capacities. Depending on the circumstances and conditions for an event or transaction, the law may have a different application for one public official than for other public officials.

Published advice that the Commission has issued may be found at https://www.oregon.gov/ogec/public-records/Pages/Advice-and-Opinions.aspx


Compliance:
The Commission has a program manager who oversees the management and administration of the various reports that are filed with the Commission. There are approximately 1,000 lobbyists who must file or renew their lobbying registrations every two years. These lobbyists, and their clients or employers, must also file lobbying activity expense reports every quarter. Additionally, there are approximately 5,500 public officials who must file the Annual Verified Statement of Economic Interest each April 15. The program manager and Commission staff are available by telephone or e-mail to provide assistance and answer questions about registration and filing requirements and procedures.

Complaint Review Procedures:
Investigations are initiated through a complaint procedure. [ORS 244.260 and ORS 171.778] Any person may file a signed, written complaint alleging that there may have been a violation of Oregon Government Ethics law, Lobbying Regulation or the executive session provisions of Oregon Public Meetings law. The complaint must identify the public official believed to have violated the law, and must state the person's reason for believing that a violation may have occurred and include any evidence that supports that belief. The complaint must identify and be signed by the person filing it. Anonymous complaints are not accepted. The executive director reviews the complaint for jurisdiction and sufficiency. If additional information is needed, the complainant is asked to provide that information.

Complaints are filed online via the "Complaint Form" found on the Commission's website homepage at https://www.oregon.gov/ogec/public-records/Pages/Complaints.aspx
All complaints must be signed, either through an e-signature if submitted through the online complaint system, or an inked signature if filed by paper. NOTE: The name of the complainant is furnished to the subject of a complaint.

If there is reason to believe that a violation of laws within the jurisdiction of the Commission may have been committed, a case will be initiated upon receipt of a complaint. The Commission may also initiate a case on its own complaint by motion and vote. Before approving such a motion, the public official against whom the action may be taken is notified and given an opportunity to appear before the Commission at the meeting when the matter is discussed or acted upon.

When a case is initiated, the public official against whom the allegations are made is referred to as the respondent. The respondent is notified of the complaint and provided with the information received in the complaint and the identity of the complainant. Whether based on a complaint or a motion by the Commission, the initial stage of the case is called the preliminary review phase. The time allowed for this phase is limited to 30 days (135 days for lobby cases) and ends when the executive director finalizes the preliminary review report.

A court may enjoin the Commission from continuing its inquiry during the preliminary review phase. Also, if a complaint is made against a candidate within 61 days of an election, the candidate may make a written request for a delay. [ORS 244.260(4)(a)]

During the preliminary review phase, the Commissioners and staff can make no public comment on the matter other than to acknowledge receipt of the complaint. It is maintained as a confidential matter until the Commission meets in executive session to consider whether to dismiss the complaint or find cause to conduct an investigation. Following the Commission's consideration of the preliminary review report in executive session, the case file is subject to public disclosure.

If the Commission votes to dismiss the complaint, the matter is concluded and both the respondent and complainant are notified. If cause is found to investigate, then an investigatory phase begins. The investigatory phase is limited to 180 days. The investigatory phase may be suspended during a pending criminal investigation if the Commission determines that its own investigation cannot be adequately completed until the criminal investigation is complete, or if a court enjoins the Commission from investigation.

During the investigatory phase, Commission investigators will solicit information and documents from the complainant, respondent, and other witnesses and sources that are identified. Before the end of the 180 day investigatory period, an investigation report will be prepared. The investigation report is reviewed by the Commission's legal counsel before being finalized by the executive director. The investigation report is presented to the Commission in the public session portion of its meeting. The Commission will then

consider the results of the investigation and generally will vote to either dismiss the complaint or make a preliminary finding that a violation of law was committed by the respondent. The preliminary finding of a violation is based on what the Commission considers to be a preponderance of evidence sufficient to support such a finding.

If a preliminary finding of violation is made, the respondent will be offered the opportunity to request a contested case hearing. At any time, either during the investigative phase or after a preliminary finding of violation is made, the respondent is encouraged to negotiate a settlement with the executive director, who represents the Commission in such negotiations. Most cases before the Commission are resolved through a negotiated settlement, with the terms of the agreement set forth in a Stipulated Final Order.

The Commission has a variety of sanctions available after making a finding that a violation occurred. Sanctions range from letters of education, reprimand, or explanation, to civil penalties and forfeitures. The maximum civil penalty that can be imposed for each violation of Oregon Government Ethics law is $5,000, except for violations of ORS 244.045 (regulation of subsequent employment) where the maximum penalty is $25,000 and for “willful” violations of ORS 244.040 (the “prohibited use of position or office” provision) where the maximum penalty is $10,000. An additional civil penalty may be assessed equal to twice the financial gain that a respondent realized from a violation. Each violation of the executive session provisions in ORS 192.660 is subject to a maximum fine of $1,000. Any monetary sanctions paid are deposited into the State of Oregon General Fund.

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