City *of* Tigard

Tigard Business Meeting - Agenda

TIGARD CITY COUNCIL and LOCAL CONTRACT REVIEW BOARD

MEETING DATE AND TIME: September 13, 2011 - 6:30 p.m. Study Session; 7:30 p.m. Business Meeting

MEETING LOCATION: City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

PUBLIC NOTICE:
Anyone wishing to speak on an agenda item should sign on the appropriate sign-up sheet(s). If no sheet is available, ask to be recognized by the Mayor at the beginning of that agenda item. Citizen Communication items are asked to be two minutes or less. Longer matters can be set for a future Agenda by contacting either the Mayor or the City Manager.

Times noted are *estimated;* it is recommended that persons interested in testifying be present by 7:15 p.m. to sign in on the testimony sign-in sheet. *Business agenda items can be heard in any order after 7:30 p.m.*

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

SEE ATTACHED AGENDA

VIEW LIVE VIDEO STREAMING ONLINE:

http://www.tvctv.org/government-programming/government-meetings/tigard

CABLE VIEWERS: The regular City Council meeting is shown live on Channel 28 at 7:30 p.m. The meeting will be rebroadcast at the following times on Channel 28:

Thursday	6:00 p.m.	Sunday	11:00 a.m.
Friday	10:00 p.m.	Monday	6:00 a.m.

City *of* Tigard

Tigard Business Meeting - Agenda

TIGARD CITY COUNCIL and LOCAL CONTRACT REVIEW BOARD

MEETING DATE AND TIME: September 13, 2011 - 6:30 p.m. Study Session; 7:30 p.m. Business Meeting

MEETING LOCATION: City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

6:30 PM

- STUDY SESSION

A. BRIEFING ON THE PROPOSED ADDITION OF CHAPTER 12.01, UTILITY SERVICES RULES AND REGULATIONS, TO THE TIGARD MUNICIPAL CODE (TMC)

B. ADMINISTRATIVE ITEMS:

The September 27, 2011, Tigard City Council Business meeting is cancelled.

Council Calendar:

- Friday, September 16, City Manager Assessment Center - Panel Executive Sessions in the Town Hall and the Red Rock Creek Conference Room - 7:45 a.m.
- Saturday, September 17, City Manager Assessment Center - City Council Executive Session in the Red Rock Creek Conference Room -- 8:30 a.m.
- Tuesday, September 20, Tigard City Council Workshop Meeting, Town Hall.
- Tuesday, September 27, Tigard City Council Business Meeting - Cancelled.

- EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

7:30 PM

1. BUSINESS MEETING - SEPTEMBER 13, 2011

A. Call to Order

B. Roll Call

C. Pledge of Allegiance

D. Council Communications & Liaison Reports

E. Call to Council and Staff for Non-Agenda Items

2. CITIZEN COMMUNICATION (Two Minutes or Less, Please) **7:35 p.m. estimated time**

A. Follow-up to Previous Citizen Communication -- None.

B. Tigard High School Student Envoy -- Courtney Bither

C. Tigard Area Chamber of Commerce -- Debi Mollahan

D. Citizen Communication – Sign Up Sheet

3. CONSENT AGENDA: (Tigard City Council and Local Contract Review Board) These items are considered routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. Motion to:

A. Receive and File:

1. Council Calendar
2. Tentative Agenda

B. Approve Council Meeting Minutes

1. July 12, 2011
2. July 19, 2011

- *Consent Agenda - Items Removed for Separate Discussion:* *Any items requested to be removed from the Consent Agenda for separate discussion will be considered immediately after the Council/City Center Development Agency has voted on those items which do not need discussion.*

4. QUASI-JUDICIAL PUBLIC HEARING - COMPREHENSIVE PLAN AMENDMENT, SENSITIVE LANDS REVIEWS AND ADJUSTMENT TO EXTEND WALL STREET TO FIELDS' PROPERTY **(Hearing to be continued to December 13, 2011.) 7:45 p.m. estimated time**

COMPREHENSIVE PLAN AMENDMENT (CPA) 2009-00004/SENSITIVE LANDS REVIEW (SLR) 2009-00004/SENSITIVE LANDS REVIEW (SLR) 2009-00005/ADJUSTMENT (VAR) 2010-00002 - WALL STREET EXTENSION (FIELDS)

REQUEST: The applicant is requesting amendments to the Comprehensive Plan to remove Goal 5 protection from Tigard Significant Wetlands and the riparian corridor surrounding Fanno Creek in order to extend Wall Street across City of Tigard property and Fanno Creek to his property. Sensitive Lands Review is required for proposed work within the 100-year floodplain and wetlands. The applicant is requesting an adjustment to the street improvement standards in order to construct a narrower street section than required by code. Tree removal permits to remove trees within the sensitive lands were submitted under a separate application. LOCATION: No address, Washington County Tax Assessor's Map 2S102DA, Tax Lot 690. No address, Washington County Tax Assessor's Map 2S102DD, Tax Lot 100. 13560 SW Hall Blvd., Washington County Tax Assessor's Map 2S102DD, Tax Lot 200. No address, Washington County Tax Assessor's Map 2S10100, Tax Lot 1200. ZONES: R-12: Medium-Density Residential District. The R-12 zoning district is designed to accommodate a full range of housing types at a minimum lot size of 3,050 square feet. A wide range of civic and institutional uses are also permitted conditionally. R-25: Medium High-Density Residential District. The R-25 zoning district is designed to accommodate existing housing of all types and new attached single-family and multi-family housing units at a minimum lot size of 1,480 square feet. A limited amount of neighborhood commercial uses is permitted outright and a wide range of civic and institutional uses are permitted conditionally.

COMPREHENSIVE PLAN DESIGNATION: Medium Density Residential and Medium-High Density Residential.

APPLICABLE REVIEW CRITERIA: Community Development Code Chapters 18.370, 18.380, 18.390, 18.510, 18.745, 18.775, 18.790 & 18.810; Comprehensive Plan Goals 1, 2, 5, 6, 7, 8, 11 & 12; Tigard Municipal Code Chapter 9; Metro Functional Plan Titles 3, 6 and 13; and Statewide Planning Goals 1, 2, 5, 6, 7, 8, 11 and 12.

- **Open Public Hearing and Continue to December 13, 2011.**

5. DISCUSS AMENDING THE TIGARD MUNICIPAL CODE TO CREATE ADMINISTRATIVE OPTIONS RELATED TO CODE COMPLIANCE **7:50 p.m. estimated time**

- Staff Report
- Council Discussion and Direction to Staff

THE TIGARD CITY COUNCIL WILL CONVENE AS THE LOCAL CONTRACT REVIEW BOARD TO CONSIDER AGENDA ITEM NOS. 6 AND 7.

6. AWARD CONTRACT FOR CITYWIDE COLLECTION SERVICES TO ALLIANCEONE RECEIVABLES MANAGEMENT, INC.
8:35 p.m. estimated time.

- Staff Report
- Board Discussion and Consideration to Award the Contract for Citywide Collection Services to Allianceone Receivables Management, Inc.

7. PUBLIC HEARING TO ADOPT REVISIONS TO TIGARD'S PUBLIC CONTRACTING RULES
8:45 p.m. estimated time

- Open Public Hearing - Chair Dirksen
- Review Hearing Procedures: City Attorney
- Declarations or Challenges: Does any Council member wish to declare or discuss a conflict of interest or abstention.
- Staff Report: Finance and Information Services Department
- Public Testimony
  - o Proponents
  - o Opponents
- Staff Recommendation
- Board Questions
- Close Public Hearing
- Board Consideration: Local Contract Review Board Resolution No. 11-01

LOCAL CONTRACT REVIEW BOARD RESOLUTION NO. 11-01 -- RESOLUTION ADOPTING REVISED PUBLIC CONTRACTING RULES

RECESS THE LOCAL CONTRACT REVIEW BOARD AND RECONVENE THE TIGARD CITY COUNCIL.

8. LEGISLATIVE PUBLIC HEARING TO AMEND THE TIGARD MUNICIPAL CODE TO REMAIN CONSISTENT WITH THE PUBLIC CONTRACTING RULES **9:10 p.m. estimated time**

- Open Public Hearing - Mayor Dirksen
- Review Hearing Procedures: City Attorney
- Declarations or Challenges: Does any Council member wish to declare or discuss a conflict of interest or abstention.
- Staff Report: Finance and Information Services Department
- Public Testimony
  - o Proponents
  - o Opponents
- Staff Recommendation
- Council Questions
- Close Public Hearing
- Council Consideration: Ordinance No. 11-08

ORDINANCE NO. 11-08 -- AN ORDINANCE AMENDING TIGARD MUNICIPAL CODE CHAPTER 2, SECTION 2.46 TO REFLECT REVISIONS IN THE PUBLIC CONTRACTING RULES

9. COUNCIL LIAISON REPORTS

10. NON AGENDA ITEMS

11. EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

12. ADJOURNMENT **9:25 p.m. estimated time**

AIS-514			**Item #: A.**
Business Meeting			
Date:	09/13/2011		
Length (in minutes):	10 Minutes		
Agenda Title:	Briefing on the Proposed Addition of Chapter 12.01, Utility Services Rules and Regulations, to the Tigard Municipal Code (TMC)		
Prepared For:	Dennis Koellermeier	**Submitted By:**	John Goodrich Public Works
Item Type:	Update, Discussion, Direct Staff	**Meeting Type:**	Council Business Mtg - Study Sess.

ISSUE

The council will be briefed on the proposed addition of Chapter 12.01, Utility Services Rules and Regulations, to TMC Title 12, Water and Sewers.

STAFF RECOMMENDATION / ACTION REQUEST

No formal council action is requested; councilors are asked to participate in the briefing and provide staff with their input on the addition of Chapter 12.01.

KEY FACTS AND INFORMATION SUMMARY

TMC Title 12, Water and Sewers, is outdated. Much of this title was copied directly from the Tigard Water District Rules and Regulations in 1994 and has seen only minor updates since that time.

The proposed addition of Chapter 12.01, Utility Services Rules and Regulations:

- Allows for the creation and use of administrative rules within Title 12. The council authorized the use of administrative rules in Ordinance 11-06, passed by unanimous vote on August 23, 2011.
- Establishes consistency by providing definitions that will be applicable throughout Title 12.
- Identifies agreements and establishes authority and responsibility.
- Lays the groundwork to update other chapters within Title 12. These updates will come before council later this year and will enable the city to implement changes regarding water-related business practices and procedures requested by the Intergovernmental Water Board.

This proposed addition to the TMC was reviewed by the city attorney.

OTHER ALTERNATIVES

The council is not being asked to take any formal action at this meeting. However, councilors could:

- Direct staff to proceed with the proposed amendments.
- Suggest changes to the proposed amendments.
- Direct staff not to proceed with the proposed amendments, in which case the existing municipal code would remain in effect.

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

2011 Tigard City Council Goal No. 4, "Advance Methods of Communication."

When compared to the TMC, administrative rules are more accessible and user-friendly. The implementation of administrative rules will improve the city's ability to communicate business practices and procedures to its utility customers.

DATES OF PREVIOUS COUNCIL CONSIDERATION

The Council reviewed and discussed code amendments and/or the use of administrative rules at the following meetings:

- October 19, 2010 workshop meeting
- July 19, 2011 workshop meeting
- August 9, 2011 business meeting
- August 23, 2011 business meeting

Attachments

Proposed Chapter 12.01

New Chapter

Chapter 12.01 UTILITY SERVICES RULES AND REGULATIONS.

Sections:

12.01.010 Definitions.
12.01.020 Purpose.
12.01.030 Clean Water Services; Authority
12.01.035 Tigard Water Service Area; Authority.
12.01.040 Amendments.
12.01.050 Utility Fees and Charges.
12.01.060 Application for Utility Services.
12.01.070 Responsibilities of Property Owners and Tenants.
12.01.080 Utility Services Administrative Rules.

12.01.010 Definitions.

City shall mean the City of Tigard.

City Manager shall mean the City Manager of the City of Tigard or the City Manager's designee.

Clean Water Services is a county service agency organized under ORS 451 with managing authority for the sanitary sewer and surface water management systems within the City of Tigard boundary.

Customer means the person in whose name service is rendered, as evidenced by a request for service, receipt of service, signature on an application for service or by receipt and payment of bills for service.

Managing Authority shall mean the entity assigned authority to manage, set fees and charges, and adopt and enforce practices and procedures. In areas where two or more entities exist with authority to manage, set fees and charges, and adopt and enforce practices and procedures, the Managing Authority shall be designated by agreement between such entities.

Permit means the National Pollutant Discharge Elimination Permit issued to Clean Water Services.

Person means any individual, group or legal entity.

Tigard Water Service Area shall mean the territory within the boundaries of City of Durham, City of King City, Tigard Water District and the portion of the City of Tigard not served by Tualatin Valley Water District.

Utility means sewer, water and surface water management services provided by the City of Tigard.

12.01.020 Purpose.

This chapter provides provisions, rules, and regulations applicable to all other sections within Title 12, Water and Sewer.

12.01.030 Clean Water Services; Authority.

Clean Water Services as the Permit holder is responsible for the management and operation of the public sanitary sewer and the public storm and surface water systems within its boundaries. The City has certain responsibilities for the operation and maintenance of the public sanitary sewer and the public storm and surface water systems within the City limits, as provided through

intergovernmental agreement with Clean Water Services. Clean Water Services, as the Managing Authority may adopt orders, standards, specifications, work programs, reporting requirements, and performance criteria for the proper and effective operation of the sanitary sewer and storm and surface water systems and to meet or comply with state and federal permits, laws and regulation.

12.01.035 Tigard Water Service Area; Authority.

The City is the Managing Authority to provide water service to the Tigard Water Service Area through the adoption of intergovernmental agreements.

All City provisions, rules, regulations, standards, fees, and charges regarding water service provided by the City as Managing Authority shall also apply to all Customers and Persons within the Tigard Water Service Area.

12.01.040 Amendments.

With regard to water facilities and service, the City may at any time amend, change or modify any rule, rate or charge, or make any special rule, rate or contract.

12.01.050 Utility Fees and Charges.

A. Utility fees and charges shall be applied to all persons who use property in a manner which requires city utility facilities or services. If a customer does not put property to a use which requires one or more of the utility facilities or services, the customer shall not be charged for such service.

B. Utility fees and charges shall be established by resolution of the City Council in an amount reasonable and necessary to fund the administration, planning, design, construction, water quality programming, operation, maintenance and repair, and debt service and other revenue requirements as required by bond covenants of the City's Utility systems. The charges shall be based on use of the Utility service.

12.01.060 Application for Utility Services.

Application to use the Utility system shall be made to the City. The application will be made in the format required by the City. The City will require such application to be in writing, or may allow application by telephone or other method. All Persons receiving Utility service but for whom no account exists to pay for such services shall be deemed to be applicants for such service and shall be billed for such service.

12.01.070 Responsibilities of Property Owners and Tenants.

Owners of property served by City Utility facilities and services who are not the Customer shall not be responsible for any delinquent Utility charges which the Customer fails to pay. If service is terminated because of delinquent non-payment, and the Customer vacates the premises leaving an outstanding bill, service shall be restored at the request of the property owner or new tenant without requiring the property owner or new tenant to pay the outstanding bill.

A Customer who is a tenant shall continue to be responsible for delinquent Utility charges until paid regardless of relocation to a premise different from the premise at which the delinquent charges were accrued. The City may refuse to provide service to such tenant at any new address, may add the delinquent charge to the tenant's utility bill, and/or may terminate water service until the delinquent bill is paid. The City may also pursue any action available under the laws of the City or State of Oregon to recover payment.

12.01.080 Utility Services Administrative Rules.

The City Manager is authorized to approve administrative rules related to the provisions of Utility services and consistent with the provisions within Title 12, Water and Sewer. Such rules shall be approved pursuant to TMC 2.04.

AIS-653 **Item #: 3. A.**

Business Meeting

Date: 09/13/2011

Length (in minutes): Consent Item

Agenda Title:

Submitted By: Carol Krager
City Management

Item Type: Motion Requested **Meeting Type:** Council Business Meeting - Main

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ISSUE

N/A

STAFF RECOMMENDATION / ACTION REQUEST

Receive and File

KEY FACTS AND INFORMATION SUMMARY

N/A

OTHER ALTERNATIVES

N/A

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

N/A

DATES OF PREVIOUS COUNCIL CONSIDERATION

N/A

Attachments

Council Calendar

Tentative Agenda

Agenda Item No 3.A.1
For Agenda of September 13, 2011

M E M O R A N D U M

TO: Honorable Mayor & City Council

FROM: Carol A. Krager, Deputy City Recorder

RE: Three-Month Council Meeting Calendar

DATE: September 6, 2011

Regularly scheduled Council meetings are marked with an asterisk (*).

September

13*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall
20*	Tuesday	Council Workshop Meeting – 6:30 p.m., Town Hall
27*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall

October

11*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall
18*	Tuesday	Council Workshop Meeting – 6:30 p.m., Town Hall
25*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall

November

8*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall
15*	Tuesday	Council Special Meeting – 6:30 p.m., Red Rock Creek Conference Room
22*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall

I:\ADM\City Council\Council Calendar\3-month calendar for c mtg 110913.doc

Key:

Meeting Banner		Business Meeting	
Study Session		Special Meeting	
Consent Agenda		Meeting is Full	
Workshop Meeting			

City Council Tentative Agenda
9/6/2011 12:28 PM

Form #	Meeting Date	Submitted By	Meeting Type	----------Title----------	Department	Inbox or Finalized
400	09/20/2011	Carol Krager	AAA	Workshop Meeting		
417	09/20/2011	Greer Gaston	CCWKSHOP	45 Minutes - Joint Meeting with the Park and Recreation Advisory Board 1	Public Works	Gaston G, Conf Executive Asst
618	09/20/2011	Liz Lutz	CCWKSHOP	30 Minutes - Budget Committee Meeting 2	Financial and Information Services	07/28/2011
586	09/20/2011	Darren Wyss	CCWKSHOP	30 Minutes - Update on the 2010 Census Data Release	Community Development	Wyss D, Senior Planner
622	09/20/2011	Greer Gaston	CCWKSHOP	15 Minutes - Sustainability Discussion 4	Public Works	Gaston G, Conf Executive Asst
			Total Time: 120 of 180 Minutes Scheduled			
401	09/27/2011	Carol Krager	AAA	Business Meeting		
645	09/27/2011	Sean Farrelly	ACCSTUDY	20 Minutes - CCDA Executive Session	Community Development	08/23/2011
			Total Time: 20 of 45 Minutes Scheduled			
			Total Time: 0 of 110 Minutes Scheduled - No Business Items			
402	10/11/2011	Carol Krager	AAA	Business Meeting		
649	10/11/2011	Joseph Barrett	ACONSENT	Consent Item - Award a Contract for the Purchase of a Truck-Mounted Heated Asphalt Patching Box	Financial and Information	08/29/2011

Key:

Meeting Banner		Business Meeting	
Study Session		Special Meeting	
Consent Agenda		Meeting is Full	
Workshop Meeting			

City Council Tentative Agenda
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					Services	
650	10/11/2011	Joseph Barrett	ACONSENT	Consent Item - Approve Purchase of a Freightliner m2 106 Chassis	Financial and Information Services	08/29/2011
357	10/11/2011	John Goodrich	CCBSNS	15 Minutes - Consider Amending Tigard Municipal Code Chapter 12, Water and Sewers	Public Works	Gaston G, Conf Executive Asst
617	10/11/2011	Ted Kyle	CCBSNS	15 Minutes - Update on the Capital Improvement Program Projects	Public Works	Gaston G, Conf Executive Asst
620	10/11/2011	Carissa Collins	CCBSNS	15 Minutes - Supplemental Appropriation To Amend The FY 2012 Adopted Budget	Financial and Information Services	Collins C, Sr Mgmt Analyst (Fin Adm)
651	10/11/2011	Kent Wyatt	CCBSNS	Consent Item - Award Contract for Federal Governmental Affairs and Lobbying Services	City Management	
			Total Time: 45 of 110 Minutes Scheduled			
403	10/18/2011	Carol Krager	AAA	Workshop Meeting		
325	10/18/2011	Judith Gray	CCWKSHOP	30 Minutes - HCT Land Use Plan Update	Community Development	
373	10/18/2011	Joanne Bengtson	CCWKSHOP	10 Minutes - 3rd Quarter Update to 2011 Council Goals	City Management	08/05/2011
615	10/18/2011	Ted Kyle	CCWKSHOP	30 Minutes - Discuss Fanno Creek Slope Stabilization -- Design-Build Contracting	Public Works	Gaston G, Conf Executive Asst
616	10/18/2011	Ted Kyle	CCWKSHOP	20 Minutes - Discuss Pavement Management Report and Update 2011 Paving	Public Works	Gaston G, Conf Executive Asst
638	10/18/2011	Greer Gaston	CCWKSHOP	30 Minutes - Discussion of Concept Designs for Pacific Highway/McDonald/Gaarde Intersection Improvements	Public Works	McCarthy M, St/Trans Sr Proj Eng

Key:

Meeting Banner		Business Meeting	
Study Session		Special Meeting	
Consent Agenda		Meeting is Full	
Workshop Meeting			

City Council Tentative Agenda
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646	10/18/2011	Sean Farrelly	CCWKSHOP	60 Minutes - Five-Year Assessment of Urban Renewal	Community Development	Farrelly S, Redev Project Manager
647	10/18/2011	Judith Gray	CCWKSHOP	30 Minutes - Transportation Planning Rule Update	Community Development	Bunch R, CD Director
			Total Time: 210 of 180 Minutes MEETING OVERSCHEDULED			
404	10/25/2011	Carol Krager	AAA	Business Meeting		
648	10/25/2011	Greer Gaston	ACCSTUDY	30 Minutes - Executive Session	Public Works	08/29/2011
			Total Time: 30 of 45 Minutes Scheduled			
634	10/25/2011	Cathy Wheatley	CCBSNS	30 Minutes - Activation and Recreation within Tigard's Downtown for the 21st Century	Administrative Services	
637	10/25/2011	Susan Hartnett	CCBSNS	30 Minutes - Public Hearing to Amend Chapter 1.16 of the Tigard Municipal Code Creating New Title 6 - Nuisance Violations	Community Development	Hartnett S, Asst CD Director
			Total Time: 60 of 110 Minutes Scheduled			
405	11/08/2011	Carol Krager	AAA	Business Meeting		
406	11/15/2011	Carol Krager	AAA	Workshop Meeting		
644	11/15/2011	Sean Farrelly	CCWKSHOP	40 Minutes - Discuss Downtown Organization	Community Development	Farrelly S, Redev Project Manager
			Total Time: 40 of 180 Minutes Scheduled			

Key:
Meeting Banner ☐ Business Meeting ☐
Study Session ☐ Special Meeting ☐
Consent Agenda ☐ Meeting is Full ☐
Workshop Meeting ☐

City Council Tentative Agenda
9/6/2011 12:28 PM

407	11/22/2011	Carol Krager	AAA	Business Meeting		
555	11/22/2011	Kent Wyatt	CCBSNS	30 Minutes - Receive and discuss findings from the 2011 Community Attitudes Survey	Administrative Services	Wyatt K, Management Analyst
			Total Time: 30 of 110 Minutes Scheduled			
619	12/13/2011	Cathy Wheatley	AAA	Business Meeting		
612	12/13/2011	John Goodrich	CCBSNS	15 Minutes - Approve Ordinance to Amend Title 12 - Water and Sewer	Public Works	Gaston G, Conf Executive Asst
630	12/13/2011	Cathy Wheatley	CCBSNS	60 Minutes - Quasi-Judicial Public Hearing: Comprehensive Plan Amendment, Sensitive Lands Reviews and Adjustment to Extend Wall St. to Fields Property	Community Development	Caines C, Assoc Planner
			Total Time: 75 of 110 Minutes Scheduled			
409	12/20/2011	Carol Krager	AAA	Workshop Meeting		
410	12/27/2011	Carol Krager	AAA	Business Meeting		

AIS-654 **Item #: 3. B.**

Business Meeting

Date: 09/13/2011

Length (in minutes): Consent Item

Agenda Title:

Submitted By: Carol Krager
City Management

Item Type: Motion Requested **Meeting Type:** Council Business Meeting - Main

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ISSUE

Approve Council Meeting Minutes

STAFF RECOMMENDATION / ACTION REQUEST

N/A

KEY FACTS AND INFORMATION SUMMARY

N/A

OTHER ALTERNATIVES

N/A

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

N/A

DATES OF PREVIOUS COUNCIL CONSIDERATION

N/A

Attachments

July 12, 2011

July 19, 2011

City *of* Tigard
Tigard Business Meeting – Minutes

TIGARD CITY COUNCIL

MEETING DATE AND TIME:	July 12, 2011, 2011 - 6:30 p.m. Study Session; 7:30 p.m. Business Meeting
MEETING LOCATION:	City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

Mayor Dirksen called the study session to order at 6:30 p.m.

STUDY SESSION

Name	Present	Absent
Mayor Dirksen	✓	
Council President Buehner	✓	
Councilor Henderson	✓	
Councilor Wilson	✓	
Councilor Woodard	✓	

Staff Present: Assistant City Manager Newton, Public Works Director Koellermeier, Assistant Public Works Director Rager, Information Technology Manager Sears, Assistant Finance and IT Director Smith-Wagar, Community Development Director Bunch, City Attorney Ramis and City Recorder Wheatley

A. Briefing on the Replacement of Computerized Maintenance Management System (CMMS) Software

Assistant Public Works Director Rager presented the staff report. Council is being introduced to this topic because staff will be requesting, in the near future, approval of a formal contract to replace the city's computerized maintenance management system (CMMS) software.

Assistant Public Works Director Rager reviewed background information, which is contained in the staff report. The CMMS is used for asset management of city infrastructure valued at about $1.5 billion.

The current system, Hansen, has been used since the 1990's and needs to be replaced as it is outdated and the vendor will eventually discontinue support. Assistant Public Works Director Rager reviewed the benefits of a modern CMMS system. Staff is working

toward better long-term asset management to track the right data so better data-driven decisions are made.

Assistant Public Works Director Rager reviewed the process staff undertook to select new CMMS software. The project manager was Preston Beck from the city's information technology division. Other team members included staff from the finance division, engineering division and public works operations.

Seven formal proposals were received by the city, which were evaluated by the project team. Assistant Public Works Director Rager reviewed the criteria used for evaluation along with the types of questions asked of the software vendors submitting proposals. Staff narrowed the contenders to three.

Staff talked to cities using the software of the three finalists. Assistant Public Works Director Rager described the highlights of staff findings. The top vendor, identified by a unanimous decision of the project team, was MaintStar. Staff is now negotiating a final contract. Assistant Public Works Director Rager said he does not have a final number because estimates are still being completed for data conversion. The city has 20 years of data to be converted into the new system. To obtain a more precise estimate, the city staff decided to enter into a short contract with MaintStar costing $10,000 where the city will provide its data and MaintStar will evaluate whether adjustments will be needed for the data format followed by a more firm number regarding cost for the data conversion. Staff will return to the City Council with a formal contract for about $500,000.

In response to a question from Council President Buehner about support for implementation, Assistant Public Works Director Rager advised staff is comfortable the support level will be sufficient. MaintStar, in checking with other cities that use the software, is well respected by its customers. He described the staff visit with Pleasanton, California, which has used MaintStar for 15 years and reported a very good experience. Pleasanton is comparable to the City of Tigard. At this time Tigard staff is clearly setting forth the scope of services. This is a fully developed system. While the system is customizable, for the most part it is ready to go without a lot of extra technical work.

Councilor Henderson asked about the product's sustainability. Assistant Public Works Director Rager said the scope was to replace the city's current system. Tracking assets and planning for the future is the definition of a sustainable organization. Staff was looking for the system that would give us the best opportunity to monitor identified assets along with reporting and planning features required to make future decisions for determining timing for replacement or retrofit. The MaintStar system has an add-on feature that staff is interested in; it is called the work planning feature. This add-on would enable staff to plan work a year in advance for system maintenance. Staff does this now, but not formally, which is what they want to be able to do in the future for better planning and budgeting. A technician is able to run certain types of reports in the existing Hansen system. This technician will be trained to run the MaintStar system.

Councilor Woodard asked about a workload balance module to determine whether certain maintenance activities can scheduled for the most cost effective frequency; i.e., monthly is not needed bi-monthly is acceptable. Assistant Public Works Director Rager said the work planning feature is designed to do what Councilor Woodard described, which will enable the department to allocate available resources effectively.

Councilor Wilson asked about equipment replacement and whether these types of computerized systems reflect real-world conditions. Assistant Public Works Director Rager said staff is still learning about how to best go about asset management. His vision is for the city, as a whole, to go through a process to understand what is needed. There are nearby cities that have done some of this. He agreed with Councilor Wilson that there is a balance between replacement and doing things to prolong the life of the asset. The human judgment element is still needed and the computers are a tool to indicate what to expect; however, expectations can be exceeded.

Public Works Director Koellermeier explained that we now produce a 150 percent list of what is believed to be needed for maintenance during a year. Staff then does a visual check and reduces the list to a 110 percent. There is a method of checks and balances.

Councilor Woodard noted his support for these types of systems, which can be complicated but allow staff to establish priorities. Through the years, costs on these types of systems have significantly come down and the technology has increased. Assistant Public Works Director Rager described the maintenance package on the MaintStar.

Mayor Dirksen asked if this system could be delayed for a year; that is, would the Hansen system be functional for another year? Assistant Public Works Director Rager said currently the funding is set up to pay for the MaintStar system over two years. After discussion, the consensus of council was that a transition to the MaintStar system should be a cost-effective action.

Council President Buehner and Councilor Woodard had comments regarding the importance of maintaining the personal touch; that is, the system should be monitored on a daily basis to make adjustments and evaluate the data.

Mayor Dirksen said he heard consensus at the table to move ahead with the program. This item will return to a future council consent agenda.

B. Discuss Property Tax Deferral/Abatement within River Terrace Annexation Area and Community Plan Funding Methods

Mayor Dirksen asked if the City Council was familiar this topic and the options for the tax deferral. Assistant City Manager Newton said staff has talked to City Council members individually.

Community Development Director Bunch asked for council direction on whether to consider tax deferral/abatement and identify a means for funding the community plan for

River Terrace (i.e., assessment of the property owners). If staff receives general direction, they can refine information and return to the City Council for consideration. Mr. Bunch said staff's perspective is that it is reasonable to defer or abate taxes because the amount of taxes from the area is currently small. We need to look at ways to assess the benefits that will accrue to property owners when they get the appropriate zoning, public facilities and transportation planning for the area.

Mayor Dirksen commented that the good will the city would gain among the people who now live in the River Terrace area is worth many times what it will cost the city in delayed tax collection in the short term. He supported offering the deferral and leaving zoning as is until development takes place. Council President Buehner noted that development will more than make up for any initial loss of taxes. Community Development Director Bunch pointed out that with an entitlement for zoning and a commitment for providing services, the increase in land value is dramatic.

Councilor Wilson said that the initial amount of property taxes would be small; he said his only concern would be of potential precedent setting for future annexations. Mayor Dirksen said we would make it clear that the precedent in this circumstance is for an undeveloped area. If large areas have already been developed at urban levels, there would be an immediate demand for urban services. Council President Buehner said Area 63 is basically in the same situation. City Attorney Ramis said that, historically, the city has used this authority judicially. The city has considered it in the past several times, but the use has been limited to when it could be shown to be beneficial to the city. A phase-in of taxes was used when the Washington Square area was annexed. A tax phase-in was not implemented at the time of the Walnut Island annexation. Assistant City Manager Newton said that at the time of annexation, the streets in the Walnut Island were in a condition not on par with most of the streets in the City of Tigard. The Walnut Island streets were assigned a high priority in the capital improvement program resulting in an immediate benefit to the area.

Council President Buehner said she agrees with the deferral in general but asked if the property owners should at least pay a small amount. Mayor Dirksen said they would continue to pay property taxes at their current level. Council President Buehner pointed out that the special service district assessments would be charged to these property owners if they remained in the county (law enforcement, roads, and street lighting). Assistant City Manager Newton said staff looked at the services the city would provide initially; i.e., police. The services will be fairly minor; therefore, staff's thinking was that if abatement would get us the connection to an assessment for the planning costs, it would probably be worth it. Mayor Dirksen said the argument supporting the abatement would be that the zoning and land use are not changing until development takes place, so there would not be a significant need for city services to warrant an increase.

Community Development Director Bunch said staff would bring back options for City Council consideration. Deferral would be at the time the property owners either receive urban services, building permits, or the zoning is applied – some kind of trigger. Deferral means that they would pay back taxes and an assessment for community planning.

Abatement would occur at the time the property is brought into the City of Tigard until the property is rezoned and then city taxes would become payable. Mayor Dirksen said he would prefer abatement.

Council President Buehner said PGE has developed its property and asked if they would qualify. Assistant Finance and IT Director Smith-Wagar said they are already paying at the fully developed rate at the county. Most of the property is in farm deferral. Councilor Wilson commented that if the property is in farm deferral, perhaps the city should consider the deferral option rather than abatement. Community Development Director Bunch said staff would bring both the abatement and deferral options to City Council so for an analysis of pros and cons. City Council will also be asked to determine how best to have the property owners pay for their fair share of the community planning. Assistant City Manager Newton pointed out that if the annexation is approved as scheduled, no taxes would be payable to the city until November 2012.

> City Council went into Executive Session at this time:

EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 7:06 p.m. to discuss current and pending litigation with legal counsel under ORS 192.660(2)(h).

Executive session concluded at 7:14 p.m.

C. Discuss Council Meals and Select Option

After discussion, the Council consensus appeared to be that the City Council members who ate a meal before a City Council meeting would have an amount deducted from their stipend to cover the average cost of the meal. Assistant City Manager Newton said she would return with what this would cost.

D. Discuss Interim City Manager Agreement – Discussion on this item took place after the business meeting. (See below.)

E. Administrative Items – Assistant City Manager Newton reviewed the following items with the City Council members:

- Invitation for a ride-along from Tualatin Valley Fire & Rescue Battalion Chief Leonard Damian.

- Rail-Volution 2011 Conference Registration is now open. City Council members received an email announcing the Washington DC conference, which will be held Sunday, October 16 - Wednesday, October 19, 2011.

- Council Calendar:
  - July 19 6:30 p.m. Workshop Meeting
  - July 26 6:30 p.m. Business Meeting
  - August 9 6:30 p.m. Business Meeting
  - August 16 -- Workshop Meeting Cancelled
  - August 23 6:30 p.m. Business Meeting

Study Session concluded at 7:29 p.m.

1. BUSINESS MEETING - TIGARD CITY COUNCIL - JULY 12, 2011

A. Call to Order: Mayor Dirksen called the meeting to order at 7:34 p.m.

B. Roll Call:

Name	Present	Absent
Mayor Dirksen	✓	
Council President Buehner	✓	
Councilor Henderson	✓	
Councilor Wilson	✓	
Councilor Woodard	✓	

C. Pledge of Allegiance

D. Council Communications & Liaison Reports: None

E. Call to Council and Staff for Non-Agenda Items

2. CITIZEN COMMUNICATION

A. Follow-up to Previous Citizen Communication. None

B. Tigard Area Chamber of Commerce - Executive Director Debi Mollahan

Ms. Mollahan updated the City Council on activities at the Chamber. Highlights of her report are on file with the packet information.

C. Citizen Communication – Sign Up Sheet

Chris Garsteck, 11774 SW 125th Court, Tigard, Oregon 97223, volunteer with Tigard dog parks, spoke to the City Council about dog parks. She thanked the City Council for its support with the dog parks. She read comments from dog park users expressing appreciation for the expanded hours at Potso Dog Park.

She thanked the parks division for their work in the dog parks. She announced Dog Days of Tigard at Potso Park on July 16.

Ms. Garstek referenced a list of questions for which she is expecting answers from Parks Facilities Manager Martin.

Councilor Wilson acknowledged Ms. Garstek and the support of dog park users. He noted that some of the projects related to the dog parks were the result of the park bond approved by voters.

Mayor Dirksen reviewed the Consent Agenda:

3. CONSENT AGENDA: (Tigard City Council)
   A. Receive and File:

      1. Council Calendar
      2. Tentative Agenda

   Motion by Councilor Wilson, seconded by Council President Buehner to approve the Consent Agenda.

   The motion was approved by a unanimous vote of City Council present.

Mayor Dirksen	Yes
Council President Buehner	Yes
Councilor Henderson	Yes
Councilor Wilson	Yes
Councilor Woodard	Yes

4. QUASI-JUDICIAL PUBLIC HEARING - COMPREHENSIVE PLAN AMENDMENT, SENSITIVE LANDS REVIEWS AND ADJUSTMENT TO EXTEND WALL STREET TO FIELDS' PROPERTY

   Mayor Dirksen announced the hearing will be continued to September 13, 2011.

   COMPREHENSIVE PLAN AMENDMENT (CPA) 2009-00004/SENSITIVE LANDS REVIEW (SLR) 2009-00004/SENSITIVE LANDS REVIEW (SLR) 2009-00005/ADJUSTMENT (VAR) 2010-00002 - WALL STREET EXTENSION (FIELDS)

5. UPDATE ON TIGARD TRIANGLE DISTRICT PLAN

Assistant Community Development Director Hartnett introduced this agenda item. Staff is working with the Planning Commission on the Council Goal to make substantial progress on the Tigard Triangle Master Plan. Ms. Hartnett introduced Marcy McInelly, architect and president of Urbsworks. Ms. McInelly is also a member of the consultant team working with Senior Transportation Planner Gray and other staff members on the High Capacity Transit Land Use Plan. Ms. Hartnett also introduced Matt Brown, a planner and real estate developer who is a member of a consultant team working with the Planning Commission on its upcoming Tigard Triangle visioning activity.

Ms. Hartnett said this evening the City Council would receive an overview of the planning activities on Council Goal 1A, which is to implement the Comprehensive Plan by making progress on the Tigard Triangle Master Plan. The Community Development Department's workplan to address the goal focuses on a number of activities associated with other projects; i.e., the High Capacity Transit (HCT) Land Use Plan, the Transportation Planning Rule, and working on an infrastructure funding mechanism.

Ms. Hartnett described an upcoming visioning activity with the Planning Commission for later this summer or in the fall. The outcome will help define and refine a work scope and schedule for the Master Plan.

The HCT project is well underway. In late May, design workshops were conducted and produced alternative land use approaches for seven potential station areas. This work served to kick off staff's work with the Planning Commission. On June 6, the Planning Commission held a mini-workshop, looking at the land use alternatives specifically pertaining to the Tigard Triangle station locations. The Planning Commission discussed how to prepare to move into the next stage of the visioning activity.

Ms. Hartnett advised that Councilor Woodard, in his role as the liaison to the Planning Commission attended the mini-workshop meeting and asked staff to provide an overview of the event for the City Council, which is the presentation this evening.

The goals for the Planning Commission workshop were threefold:

1. Provide a detailed presentation that covered the station location selection process.
2. Review the land use typology and how it was used to develop alternatives.
3. Discuss in detail, the three alternatives developed for the Tigard Triangle.

The Planning Commission then engaged in a discussion with each other and the consultant team members to evaluate the three alternatives and determine preferences.

The Planning Commission discussed the kinds of outcomes they expected from the visioning activity.

For the small group discussion on alternatives, staff asked the Planning Commission to focus on three questions:

1. What feels "about right" or is a "good fit" for the Tigard Triangle?
2. What feels like it might be a "bit too much" or is likely to "scare" the community?
3. Are there missed opportunities or pitfalls to be aware of?

Ms. Hartnett said that after the presentation by Ms. McInelly, Mr. Brown will talk to the City Council of the desired outcomes for the Tigard Triangle visioning activity.

Consultant Marcy McInelly reviewed a PowerPoint presentation highlighting some of the information reviewed by the Planning Commission. This presentation, HCT Land use Plan Locations and Typologies, is on file with the meeting packet material.

City Council discussion followed Ms. McInelly's presentation:

- The floor area ratio (FAR) of 1 seemed low to Councilor Wilson. He said he would like to see the density more focused and go closer to the stations.
- Council President Buehner advised she was somewhat disappointed. Tigard made a commitment to take a tremendous amount of density between downtown and the Triangle. She agreed with Councilor Wilson that there is a need for higher FAR and focus on tall buildings. The city's population is aging and we need to provide tight circles around wherever the stations are located. It will be important to come up with station sites very soon so we can develop high-density land uses around them. She expressed doubt that the exercise accomplished anything.
- Mayor Dirksen said he, Council President Buehner and Councilor Wilson have been thinking about the Triangle area for a long time and are probably farther along with the vision than anyone else. What was shown to the City Council tonight was tailored more to the initial steps for people who have not thought much about this yet. He had more specificity in mind.
- Council President Buehner said the city made a commitment to Metro as the basis upon which we established our recommendations for the urban growth areas. This was a discussion held two years ago. While she can understand needing to take "baby steps," the city has had many meetings with the public. She said, "We need to move on more quickly, because the timing is very tight to get done what we need to get done."
- Mayor Dirksen said he was unsure whether effort would be made to capture the work recently done to translate to density and development. Assistant Community Development Director Hartnett said this presentation was a snapshot in time, which at

this point is almost two months old. In the meantime, the HCT project is moving ahead. The consultant has just completed their preliminary analysis of the Tigard Triangle alternatives and the other locations. Assistant Community Development Director Hartnett said Senior Transportation Planner Gray would be presenting additional information to the City Council on the HCT project at an upcoming meeting. She said it is important the City Council and community continue to hold dialogue on these projects; it was helpful for the Planning Commission to look at the Triangle at a high level of detail.

- Councilor Woodard commented about the Planning Commission activity and acknowledged there were City Council members who had been involved for much longer than he has. He said it was interesting to see by the end of the discussions how different teams responded to the exercises. He said it appears that there needs to be some type of mix to be able to develop more densely. Councilor Woodard reported that there was discussion on high capacity transit alignment; however, there was uncertainty about its location. There was consideration of potential mixed uses when contemplating community stations. From a rudimentary aspect, he said these activities were useful for engaging in discussion and identifying direction.

Consultant Matt Brown said his firm's charge was to help the Planning Commission and staff through a visioning exercise on the Triangle later this summer/early fall. His firm was involved in the HCT workshops and the Planning Commission workshop. He reviewed highlights of the discussion held July 6:

- Exercise facilitated an energetic discussion.
- Recognition that there is great potential for the Triangle.
- Identified common themes that were heading in the right direction:
    - Commercial and office located in the southern and eastern portion of the Triangle are uses that could and should continue.
    - 72nd Avenue as a north/south connection could be an important organizing element.
    - The whole area should not be dedicated to office and commercial. The goal for the area is for it to be active for 18 hours a day, so other uses are required to create this type of atmosphere.
    - Connections are critical. Exercise participants tended to want to talk about where transit would be placed because of the importance for future success of the Triangle.
    - Participants looked at connections to the north, across Pacific Highway and to the west into the downtown (Highway 217). These were identified as critical to the Triangle's success. Connecting the Triangle area to the downtown to create synergy between these two areas was seen as important.
    - Participants discussed balance; that is, how do you create or build upon an open space network through this area. There are some natural resources in the area that are worth preserving and building upon as well as the notion of creating open space connections through the area.

    - One of the groups identified open space as a factor and began to suggest a comprehensive open space network.
- Challenges identified by the participants:
    - Transportation access was at the top of the list. While on paper it appears that the area has great access, the reality is that it is highly constrained.
    - Constraints include the Transportation Planning Rule as it affects planning for increased density in the area.
    - Participants considered feasibility of pushing the density north of Pacific Highway into established neighborhoods and acknowledged this would represent a challenge. Therefore, consideration must be given to how increased densities would be received by existing neighborhoods and what kind of process would be needed.
    - Difficult market conditions exist now. Participants considered what that means for how this area is planned, i.e., what are the short- and long-term opportunities.
    - There is a lot of information that is needed to proceed with a comprehensive, informed effort in this area. Some of the information is available, some is not.
- Desired outcomes of the visioning exercise included:
    - At a high level, explore the possibilities for the area – economic development, regional transit/transportation, creating the next great neighborhood.
    - Develop a vision or the guiding principles for the area, which will be critical for focusing the effort.
    - Explore the connections from the Triangle to the downtown and adjacent neighborhoods.
    - Finding the right balance in the area; i.e., balance of the uses; between the built and natural environment; local access; and regional mobility.

Mr. Brown said it would be helpful, as part of tonight's council discussion tonight, for council members to share their ideas or outcomes that the Planning Commission should consider.

Assistant Community Development Director Hartnett reiterated that staff and the consultants will begin putting together the visioning exercise. The HCT preliminary analysis is done, but this visioning process should wait until there is more work ready to be used as part of the information provided to the Planning Commission.

Council discussion included:

- Councilor Woodard said he was interested in the transition from the downtown to the Triangle. He said he did not know how this connectivity would occur; however, it is something of interest and would be important for increased density.
- Councilor Wilson said it sounds as if the Planning Commission and the Council are "on the same page." He participated in the HCT workshop at the time the typologies were discussed. He explained he was taken aback with tonight's presentation because he thought that one of the typologies would be selected rather than mixing in all of them. There will be a limited number of stations, the area already has a certain character and a particular market demand. Councilor Wilson said we have to recognize that there will

only be so much demand for neighborhoods like Hawthorne, Bridgeport Village, etc. He said he thought much of the Triangle would have to stay similar to what it is now simply because there is a demand for big-box stores that can be repurposed for a variety of businesses. His inclination is to let part of the Triangle remain as is. Some of the more interesting areas might become much denser and focused rather than allowing it to be developed on a first-come basis. His vision is to have compact density around the stations.

- Councilor Wilson said he envisioned one of the connections would come to forefront because there are three million square-feet of office space across the freeway on Kruse Way and there are two million square-feet of office space already in the Triangle (for the most part between I-5 and 72nd Avenue). It is difficult to travel between these two areas, requiring travel on a congested 72nd Avenue to briefly connect to the freeway, and then crossing over lanes of traffic to connect to Kruse Way. It would be very useful if 68th, which turns into a park way to the east and dead-ends at I-5, could cross I-5 and connect with a flyover to the dead-end at Meadows Street. Councilor Wilson suggested there could be a couple of stations in the area with TriMet providing bus service to these office spaces along with bicycle and pedestrian traffic. It would make sense to open up the Triangle while at the same time providing access to the interchange from the other side.
- Council President Buehner said her thoughts were similar to Councilor Wilson's. She referred to a comment about the area possibly developing into mini-Pearl district around the transit center, with tall buildings up to 15 stories so there would be a lot of residential density close to transit and somehow get a flyover. In terms of getting the connection to downtown, it might require a flyover from the Triangle because Pacific Highway cannot be widened effectively. In addition to employment and retail, the Planning Commission needs to consider how many residences are required for the area.
- Mayor Dirksen said Council President Buehner makes a good point insofar as when doing a visioning exercise, it is important to understand the capacity that will be required and how it will be distributed – if not in the Triangle, then in existing Tigard neighborhoods.
- Mayor Dirksen said in looking at the alternatives, he was pleased and struck by the amount of time that was spent considering connectivity and the street layout. He said Councilor Wilson's idea of providing a direct connection to the Lake Oswego side is something he had not considered, but it makes sense. He liked the commonality of linking to Tigard's downtown across 217, which he thinks will be a necessity. In looking at the Triangle, the Mayor said we are going to need to consider whether it would be primarily, if not completely, either commercial or mixed use, with little or no single-family residential neighborhood. Tigard has considerable single-family housing stock in the existing city and as we look forward to the future and the capacity demand, if we are going to maintain the existing neighborhoods, then we will need to find greater density elsewhere. The Triangle offers this opportunity. He noted it looks, from review of the proposed alternatives, that greater density was considered, but it appears as if the solution was to expand with infill development in a large, existing neighborhood. The human and political impact might not have been taken into account. It would be much easier to place density into a new area.

- Councilor Woodard reported there was another option considered, which was accessing Lake Oswego from Pacific Highway. Assistant Community Development Director Hartnett said notes from the meeting will be reviewed to include this option for further review.
- Council President Buehner commented that the Oregon Department of Transportation (ODOT), some years ago, closed a lot of the back roads off of Pacific Highway. These roads made it possible to avoid Pacific Highway when traveling through the area. She said we should make sure when going through this visioning process to keep the thought in mind that the city might want to reopen some of these closed roads.
- Councilor Henderson inquired about topography when considering placing residential uses within an area and whether it made a difference if the area was hilly or flat. Mr. Brown said it depends on the use and the density. He said he is working on projects now where the topography is a huge advantage when considering multi-story projects with structured parking. The advantage is to use the topography to "tuck the parking" in a fairly efficient way. If you are smart about how you plan the area, you can make use of the topography to provide an economic advantage to the development. Assistant Community Development Director Hartnett said there is also the opportunity to take advantage of views.

6. DISCUSS URBAN FOREST PROGRAM

Associate Planner/Arborist Prager presented the staff report. He said the discussion tonight will be in two parts.

Part 1 – Staff requests the City Council provide direction on developing strategies for the long-term, big-picture urban forestry program.

Part 2 – Staff requests the City Council provide direction on a list of tree-planting projects for this fiscal year.

Part 1 – Strategies for the Program -- Associate Planner/Arborist Prager gave some background information:

- In December 2010, City Council directed staff and the Tree Board to develop a proposal for a sustainable tree and urban forest enhancement program. Work on this is in the early stages. The Tree Board has generally identified that the Urban Forest Program consist of five main components:

  1. Planting
  2. Preservation
  3. Maintenance
  4. Education/Outreach
  5. Planning/Enforcement

- Tree planting efforts have focused on public properties. The emerging desire is to expand the tree planting projects onto private property for willing property owners – more private/public partnerships.
- Regulatory efforts have been the main focus for preserving trees and tree groves. The emerging direction is for preservation to occur through financial incentives and more flexible development standards.
- Tree maintenance has not received funding for any long-term tree or urban forest maintenance. There is an emerging desire to have some funding focused on some higher profile roads, along the city's collector and arterial roadways.
- The city currently has a robust program for education/outreach. The direction is to continue the city's education/outreach efforts, but have the Tree Board directly involved in the outreach to the community about urban forestry.
- For planning/enforcement, there has been limited information for making good planning decisions. The direction is to develop more organized, complete information on the urban forest so good planning and management decisions are made. Enforcement has been inconsistent in the past as it was administered through two departments and a variety of code provisions. With the code revision project, there will be an effort to consolidate the provisions and have the enforcement be the responsibility of one department.

- Councilor Wilson said Associate Planner/Arborist Prager's assessment is in line with previous City Council direction. He said he did not believe the council members were asking for a change in the direction. Councilor Wilson said he is interested in specific projects.

Part 2 – Council direction on projects for this fiscal year. Associate Planner/Arborist Prager gave the following background:

- In June, staff presented to City Council a list of tree planting projects for this year's capital improvement program.
- Council decided to delay adopting the full list of projects until there was a more detailed discussion regarding how the projects fit into the bigger-picture/goals.
- The current trend and the proposed projects continued the momentum of planting in the more visible parts of the urban forest; i.e., along streets, highways and public schools. Planting efforts in the past were focused on city property in natural areas that were less visible.
- Staff recognizes that City Council and the Tree Board are interested in expanding planting efforts on private property and having more public/private partnerships. Staff recommends going that direction once the urban forestry code revisions project is complete. The proposed list of projects does not contain any public/private partnerships because no parameters for such a program have been developed.

Council discussion followed:

- Mayor Dirksen said he agrees with Councilor Wilson regarding Part 1 for the long-term, big-picture urban forestry program insofar as the staff has articulated City Council's position very well. With regard to the replacement projects, Mayor Dirksen said that in his opinion

there is a glaring omission – addressing large commercial parking lots to replace tree canopy. He referred to the staff attachment (June 17, 2011 memorandum) submitted in the council packet. The first three projects should go forward; however, he would not limit the partnership to just Tigard High School and suggested working on the Tigard school district properties in general for tree canopy replacement/enhancement.

- Mayor Dirksen said a higher priority for tree planting in medians or on state highway facilities, would be to address commercial parking lots. Progress might be difficult, noting that the city would need to acquire property owners' buy-in and this will take time. Tree-planting in rights of way can be accomplished while we are waiting for other things to move forward. Focus is needed on the difficult project of replacing the tree canopy on private properties such as the commercial parking lots. He suggested considering code language to allow some variance so replacement of landscaping in areas that have failed would also be enhanced and could result in loss of parking spaces. Reconsideration of parking requirements and latitude in the code (city initiated) might be advisable.
- Councilor Wilson commented that many places have more parking than what is needed; however, businesses are reluctant to give up parking spaces. This would require the city to work with people on this concept.
- Council President Buehner agreed with the comments on parking lots. She said we also need to look at the types of trees planted in parking lots. Many parking lots have trees that have not grown substantially since being planted more than ten years ago – either because of the type of tree or improper soil preparation.
- Councilor Wilson submitted that an even bigger picture could be considered. Rather than focus only on the urban "forest," to think more like an "urban naturalist"; that is, part landscape architect/designer but also "wear the hat of a local resident." Councilor Wilson noted the value of appreciating green open space. He referred to the list of proposed projects including the Tigard High School parking lot, which pre-dates the current landscaping code provisions. There are only a few trees and this would be an easier project to approach since it is owned by a government agency. On the opposite end of the scale is the 217/Pacific Highway loop, and from his perspective, those big greenspaces can have a certain picturesque value as they now exist – to see the seasons expressed. He suggested rather than plant trees, consider planting a wheat field at this location – making it both useful and picturesque.
- Councilor Wilson commented about his recent thoughts when driving south through the valley when he noted how beautiful the Willamette Valley is. This caused him to wonder about the tree canopy density for the Willamette Valley. He referred to "Amercianforest.org" and a study, "Regional Eco System Analysis for the Willamette Lower Columbia Region…" He quoted that the Willamette Valley currently has 24 percent canopy cover – the City of Tigard has 25 percent, which is more canopy than the farmland. He said he thinks it is important to see the sun and he disagrees with the concept for a 40 percent canopy cover. Councilor Wilson said he would like the city to concentrate on the areas of Tigard that are unattractive because they are devoid of trees. He acknowledged these areas are the "tough" ones since it is easier to plant trees year after year on land we already own. He referred to one commercial area that has a good number of trees and the property owner wants to remove some of the trees because people cannot see the business. Councilor Wilson questioned whether the quality of tenants at a business might be more important. It

will be a lot of work to convince property owners to plant trees because of visibility arguments. He said he would like to see the city do that work. A long-term project might be to place trees behind a building so eventually they grow to be visible on the property. He suggested there might be other ways to work with owners that do not harm their business and, over the longer run, are helpful.

- Councilor Wilson said that some things are best viewed with a perspective; i.e., a foreground. (Hence, the saying "…can't see the forest for the trees.") If properties are walled off with trees, it is difficult to appreciate their beauty. He suggested using a designer's eye to make aesthetic decisions about the best places for plantings – with open space in front and tree groves in the background. He urged the city to do its work in a carefully crafted way.
- Council President Buehner asked if Councilor Wilson would consider this an opportunity to consider community garden projects for some of the open space areas. Councilor Wilson said this might be a different issue because the fund can only be used for certain things. He said he would not oppose this idea and said he believes we are doing some of these types of projects. He pointed out the city now has a sum of money greater than we have ever had and he does not want for us to "blow it." Some of the plans for planting seemed to be randomly selected and he advocated for more care. For example, along Durham Road there is a band of right of way that could use some beautification. While there are trees along this road, they are located on the west end. If a design is created using these same types of trees all along Durham Road, there is an opportunity to present a strong visual impact if a consistent, unifying idea is implemented.
- Councilor Wilson said that the city conducted a survey where most people said the amount of canopy is acceptable. There are certain places that are glaringly lacking because they are difficult to address.
- Mayor Dirksen disagreed with Councilor Wilson regarding the adequacy of the canopy density. The percentage needs to be higher than what we have; however, he appreciated Councilor Wilson's comments that just blanketing an area with trees will not accomplish what we want. For example, covering the area at 217/Pacific Highway would not be as good as leaving it largely open with a few copses of trees as accents to offset the open space – and it would look more natural.
- Councilor Wilson said there are many types of biomes and all are important. People appreciate the variety in nature – meadows, woodlands, plains, prairies and wetlands. It is important to bring all of these into the city. A variety of biomes have ecological benefits in an urban area. For example, wetlands sequester more carbon than any other biome type. He said that grasslands are higher, in terms of carbon sequestration, than temperate forests.

Associate Planner/Arborist Prager responded to the City Council discussion and noted frustration with restrictions allowing only for tree plantings. He said some of the projects might look awkward when finished – they look like something is missing. Sometimes it is tempting to plant more trees to fill empty spaces and if staff had a complete palette of choices, they could fund plantings of grasses, flowers, shrubs and ground cover creating multiple layers and greater aesthetics. He said he would pass along the comments from the City Council and work with the landscape architect for project design, taking these other perspectives into account.

Associate Planner/Arborist Prager referenced parking lots. One possibility might be for a program similar to the façade grant program. Flexibility in parking standards is part of the discussion draft currently being developed as is creating a list of appropriate parking lot trees and guidelines for planting conditions.

Council President Buehner asked Associate Planner/Arborist Prager for an update, in the near future, on the hazardous tree section of the code

Councilor Wilson asked Associate Planner/Arborist Prager whether he had had experience transplanting a really large tree, 18-24" caliper, noting the potential for an immediate impact. Mayor Dirksen and Council President Buehner referred to large tree transplanting projects they were aware of and the cost was tremendous -- $50,000. Councilor Wilson said he asked only because he would like for all possibilities to be considered.

Councilor Henderson asked about situations requiring the city to work with Oregon Department of Transportation (ODOT). Associate Planner/Arborist Prager noted while it has been frustrating to work with ODOT in the past, they are starting to move toward being open to planting in ODOT rights of way. The institutional history is to prescribe that trees next to highways are unsafe. Associate Planner/Arborist Prager said there has been recent research to show this might not necessarily be true for trees can induce slower traffic and help drivers gauge their speed. One of the challenges is that ODOT does not have a clear process for permit approval, in his experience. Multiple players review plans, creating a number of redesigns. Original proposals for Pacific Highway areas are now completely different because of the number of iterations caused by various ODOT requirements.

Councilor Henderson asked if the staff message is that it is not worth the city's time to try to work with ODOT. Associate Planner/Arborist Prager referred to the advantage of the recent work by the City Council to establish relationship principles for a clear framework of understanding to work with them on projects. Doing the work on the principles would be more important than moving ahead with specific projects at this time. The projects are on the list and should there be some breakthrough, we could move on them. Mayor Dirksen commented on the good amount of progress the city has made with ODOT over the last five years; however, more effort in this area is needed.

Associate Planner/Arborist Prager referred to the canopy comments made earlier this evening. He said staff might have highlighted the canopy aspect of the program a little too much; he pointed out that this is an easy concept for people to understand over some of the other aspects of plantings and urban forestry. He said most of the existing neighborhoods provide the amount of canopy adequate for what we are seeking in our community. The larger increases in canopy citywide would be in parking lots and commercial areas and this would greatly contribute to achieving the goal as outlined in the master plan.

City Attorney Ramis commented on the regulatory side concerning parking lots and landscaping compliance. He said in our area there are essentially two paradigms for achievement:

1. Voluntary – communities encourage existing parking lot owners to do something (those that were built before modern landscape standards). Success has not been great.

2. Portland's approach – requires upgrades of parking lots and landscaping when certain tenant improvements are proposed at a certain expenditure level. The objection of the property owners is that the entirety of the expense is on the property owner, so it might not be worth it for a property owner to change tenants if they lose parking spaces and are required to upgrade the parking lot.

City Attorney Ramis said one could envision some middle ground alternatives such as the grant program mentioned or a hybrid that involves something similar to the Portland approach combined with a grant program. Mayor Dirksen said he could picture a situation where the city would approach the property owner saying the city would like to redo the parking lot landscape.

Assistant Community Development Director Hartnett said in the recently approved budget, there is money available in the Community Development Department to hire a consultant to work on the non-conforming situations chapter and this is where the trigger for parking lot landscaping is located in the Portland code. She said she was hoping for an opportunity to review and discuss this with the City Council.

Assistant Community Development Director Hartnett requested council direction on the projects in the proposed list for this fiscal year. Council response included:

- Mayor Dirksen said, if we are going to shift gears and reevaluate priorities, then he would support a year's hiatus on the project list.
- Councilor Wilson noted he would prefer to wait as suggested by Mayor Dirksen.

Assistant Community Development Director Hartnett said the only problem she could see would be the loss of momentum with ODOT. She said there was one project in particular where the city is working to bring CWS and ODOT together to do tree plantings and create a storm water swale along Pacific Highway. This project is identified as the "Pacific Highway Median from Durham to Bull Mountain Road."

Councilor Wilson said he would not want to jeopardize developing relationships and said he would be inclined to agree to move ahead on this project. Mayor Dirksen agreed. Councilor Wilson added that he preferred for the city to have an opportunity to develop its own vision and having our own vision is helpful when working with other agencies.

Council President Buehner said she was hearing the consensus from the City Council discussion was that if the "Pacific Highway Median from Durham to Bull Mountain Road" project gels, then the City Council authorizes staff to move ahead. Council also agreed with the

Tigard High School Project. Assistant Community Development Director Hartnett said staff could add the proviso that if the planting palette needed to be broadened, staff would bring to the City Council a resolution authorizing staff to do this using the tree replacement fund.

Staff will bring back a list of those projects agreed upon by the City Council for final approval on a future Consent Agenda.

Associate Planner/Arborist Prager asked for clarification on the annual free street-tree program. Consensus was that staff could proceed. Mayor Dirksen said the whole idea of street tree plantings along major city streets is a good idea.

Council President Buehner asked about instances where property owners have trees planted that are too close; i.e., perhaps intended as Christmas trees at one time. Some might be dangerous. It might now be difficult for a homeowner to bear the cost of clearing these. She asked if the City Council might want to consider incentives for this type of situation.

7. COUNCIL LIAISON REPORTS

Councilor Woodard said he attended the Park and Recreation Advisory Board meeting yesterday. He presented a recreation steering committee formation/visualization concept stemming from Comprehensive Plan Goal 8.3, Policies 1 and 2. Policy 1 states the city shall endeavor to establish a comprehensive recreation program. The city shall identify funding to provide a broad range of recreational opportunities. The PRAB has formed into two groups. Recreation programs and planning have been a continuous effort. The board was excited that the work on the budget is done and they have completed a prioritized list of potential park acquisitions.

During the joint City Council/PRAB meeting, there will be time for discussions about what type of committee could be formed to start discussions regarding a comprehensive recreation program. Councilor Woodard said there was overwhelming consensus by the PRAB to proceed and then present their recommendations to the City Council.

Tigard's recreation program is extensive per Councilor Woodard. Tigard has a lot of events with the organization decentralized. A comprehensive program could bring together policy that would centralize the efforts identifying and better utilizing resources.

Mayor Dirksen noted the PRAB has reviewed this before with adjustments made over time. He said he will be interested to see the updated proposal.

8. NON AGENDA ITEMS

Report from City Manager Prosser – City of Beaverton City Council meeting: City Manager Prosser reported he attended tonight's Beaverton City Council meeting where the first hearing required for the withdrawal of territory along the Barrows Road right of way was conducted. This would make it possible for the City of Tigard to consider annexation of property requested by property owners in the River Terrace area (former UGB expansion area 64). One of the Beaverton City Council members commented that this was a very good example of two cities working together to achieve a common good and working to resolve some long-standing problems. The Beaverton City Council voted unanimously to move this to a second hearing on August 9, 2011.

9. EXECUTIVE SESSION: No executive session held at this point in the agenda.

10. ADJOURMENT (of the business meeting):

Motion by Council President Buehner, seconded by Councilor Wilson, to adjourn the business meeting at 9:44 p.m.

The motion was approved by a unanimous vote of City Council present.

Mayor Dirksen	Yes
Council President Buehner	Yes
Councilor Henderson	Yes
Councilor Wilson	Yes
Councilor Woodard	Yes

✓ Council met in a study session meeting at 9:49 p.m., after the business meeting.

- Study Session Topic: Discuss Interim City Manager Agreement

City Attorney Ramis reviewed the draft agreement with the City Council and the discussions among Assistant City Manager Newton, Human Resources Director Zodrow, and himself regarding the agreement's provisions. A copy of the draft agreement was sent to the City Council for review in the council packet. Among the provisions, two were especially important to Ms. Newton:

1. Increase the severance package to six months.
2. The six-month severance package clause will survive the interim agreement and be applicable when Ms. Newton returns to her position as Assistant City Manager.

After discussion, the City Council was in agreement with the draft agreement as proposed.

The study session concluded at 10:00 p.m.

_____
Catherine Wheatley, City Recorder

Attest:

_____
Mayor, City of Tigard

Date:_____

I/ADM/CATHY/CCM/2011/Final/July/110712

City *of* Tigard
Tigard Workshop Meeting - Minutes

TIGARD CITY COUNCIL & CCDA
MEETING DATE/TIME: July 19, 2011 – 6:30 p.m. – Workshop Meeting
MEETING LOCATION: City of Tigard – Town Hall, 13125 SW Hall Blvd., Tigard, OR 97223

1. WORKSHOP MEETING

   A. At 6:33 p.m. Mayor Dirksen called the workshop meeting to order.

   B. Deputy Recorder Krager called the roll:

	Present	Absent
Mayor Dirksen	x	
Councilor Henderson	x	
Councilor Woodard	x	
Councilor Wilson	x	
Council President Buehner	x	

   C. Pledge of Allegiance

   D. Council Communications & Liaison Reports- Mayor Dirksen said he received some interesting information relating to potential federal funding at the JPACT meeting and asked the City Recorder to make copies for council. Council President Buehner mentioned a presentation she and Mayor Dirksen attended regarding the Lake Oswego/Tigard Water Partnership and suggested putting it on a council agenda in September. Mayor Dirksen said City Engineer Kyle gave a very interesting report on construction contracts, change orders and levels of risk involved. He said it would be good for both city councils to hear this information and would like this to be scheduled.

   E. Call to Council and Staff for Non-Agenda Items - City Manager Prosser said to allow time for an executive session at the end of the meeting, the second quarter goal update was rescheduled to the July 26, 2011 business meeting.

2. JOINT MEETING WITH CCAC FOR DOWNTOWN MARKETING AND REVITALIZATION PRESENTATION

CCAC Members present were Alice Ellis Gaut, Elise Shearer, Tom Murphy, Alexander Craghead, Peter Louw, and Linli Pao.

Redevelopment Project Manager Farrelly introduced Consultant Michelle Reeves. He said he was very impressed with a presentation she gave at Metro last fall on revitalizing downtowns. When he heard that Metro had contracted with her to offer services to regional cities, he asked for her assistance. He said Ms. Reeves organized some field trips and very well-attended meetings. Her presentation tonight is a summary of what she has presented to Main Street and downtown business and property owners. He said no decisions were being asked of Council tonight, just general feedback. Staff will be returning to council to request some decisions and recommended actions once the CCAC has reviewed them.

Consultant Reeves thanked the CCAC members and acknowledged CCDA Directors Henderson and Woodard for their enthusiastic participation. She said it was a great message to stakeholders to see them "rolling up their sleeves" and working alongside everyone else.

Ms. Reeves said her first presentation to those interested in revitalizing downtown Tigard was an **overview of the fundamentals of revitalization**. She said districts are initially graded within a series of three stages to show where they are and what help is needed.

- **Emerging** – Many buildings have not been redeveloped, blanks, inward facing uses on the ground floor, no continuity, no identity within the neighborhood.
- **Transition -** there are more redeveloped buildings, fewer blanks, a lot of activity on the street level, successful events are held, and they are typically starting to develop an identity both locally and within the region. The district has functioning organizations.
- **Mature –** great walking districts, not a lot of blanks, lots of connectivity, high level of retail sophistication, higher level of uses on the ground floor, higher commercial and residential density.

Downtown Characteristics. Consultant Reeves reviewed the characteristics of successful downtown areas. She said a key point is that they are not like arterial development, which is car-centric. Downtowns do not have the land to enable arterial-style development form. Top performing main streets and downtowns are great places for people but not necessarily for cars. She said the main key is that functioning downtowns are attractive pedestrian environments. Successful foot-traffic districts can rival or even exceed automobile retail districts but there needs to be a critical mass of active, ground-floor users. People want to participate in the human experience in a downtown area. They don't expect to park, immediately walk into a store and then leave. A successful and economically thriving downtown is a destination in and of itself.

Consultant Reeves said the next step was a **recommendations analysis and presentation**, which is a snapshot of where Tigard's downtown is now and what strengths could be leveraged more effectively.

She listed some of downtown Tigard's positives:

- Infrastructure; there is a good stock of buildings which are interconnected.
- The nature of Main Street is charming. Although it is located right next to the highway, it has a meandering, curving feel. She said this makes it easy to control the environment and what people experience and see on the street.
- Funding is in place to improve the street and make it more appealing to pedestrians (Main Street/Green Street).
- Connectivity to Fanno Creek; this brand of physical beauty can be reflected in the street, which can become a respite to busy Pacific Highway.
- Large, locally owned anchor businesses are a huge boon.
- One of the largest ballroom dance floors in the country is located in downtown Tigard.

Ms. Reeves introduced a slide showing a ground floor map to illustrate how Tigard can leverage what is already in the downtown. She said the ground floor businesses show the businesses visitors the personality and identity of a district. Inactive ground floor space makes the street look vacant because people are not being engaged. She referred to the perception that there is a vacancy problem in downtown Tigard and said there is not a huge vacancy problem but there are a fair amount of inactive buildings. She said, "We talk about downtown Tigard, but right now you are really a main street…a downtown is going to be a larger, interconnected grid of buildings that are outward facing and more retail oriented, which you don't have right now. If you take this main street environment and build off of it, your plans are really attainable." She said private developers do not want to build a catalyst project or build the project that changes a downtown; they like to build on the edge of desirable areas. She said Tigard has the capacity to build on Main Street and if the downtown is revitalized, it will spread to Pacific Highway.

She said retail environments are built around nodes and Tigard's Main Street has two nodes – north and south, divided by the rail line. The northern node has more of a suburban feel and higher parking ratios. There are reasons to come into the node such as Rite Aid, Value Village, Frame Central, Crown Carpets, and the post office, but people do not find a reason to stay there.

Consultant Reeves used the metaphor of a store. She said downtowns function a lot like stores and questions to ask are: Where is the front door? How do people come into your store? Once they are inside, how do you keep them there? How do you leverage your best products? She said the "front doors" for Tigard's downtown are its two nodes: North Main Street and South Main Street.

She said Tigard's "store" is hidden and it is not obvious from Pacific Highway that just a right or left turn off the highway will put you in a completely different environment. She said she is aware that the city has plans to improve its gateways and reiterated their importance as the Tigard downtown's front doors.

Consultant Reeves said the next thing to consider is the "aisles," which are the streets and sidewalks. She suggested that these public spaces need to be activated. She said Tigard is doing a great job improving them through the Main Street/Green Street program.
She said Tigard has another aisle - the downtown rail corridor. She said this is more of a problem because it is a very big aisle, well-travelled at certain times of the day, yet has "products" for people to see. It creates a dead spot in the downtown.

Ms. Reeves said the next thing to consider is, "What is on your shelves?" The products on the shelves are the buildings and businesses. She said Tigard has many great buildings downtown and her number one recommendation is to think about how transformative color would be. She said almost all of the buildings in the current downtown are beige. She suggested making the buildings stand out by using three and four-color paint designs. "Embrace color," she advised. She said buildings also look great without moldy canvas awnings. She said if you want your downtown district to be vibrant and exciting, make the buildings vibrant and exciting. She said this would jumpstart tenancy and immediately change people's perception of what downtown could look like.

Consultant Reeves said the third step was a **tour of Portland's North Mississippi Avenue.** She said the district is short (only six blocks long), like Tigard's Main Street. Similarly, there is a highway dividing it and an industrial area nearby. She showed before-and-after slides of North Mississippi Avenue and asked what lessons Tigard could learn and apply. She noted that the vibrant and active businesses are on the ground floor and while this may not bring in as much money, it builds value for a district and increases sales per square foot. She said tenanting for value increases property values overall and business productivity in the long run. Several private developers built their buildings on private land and recessed the street floor to create public space.

The fourth step was the **marketing and public relations workshop**. Consultant Reeves said everything from land use policy and economic development to marketing should be consistent with a downtown's identity. She said every city and downtown tells a story, but most do not do it coherently and intentionally. She said a workshop was conducted to get a clear picture of downtown's identity and story. She used a story framework - CORE (Characterization, Objective, Relationship and Environment) and asked participants questions relating to each category.

- **Characterization** – The part of a story told through the physical presence of a character. For a city it is all communications, including brochures, print ads, billboards, buildings, homes, yards, parks, lighting, signs, etc. A huge part of a story is told through characterization.

    - Downtown stakeholders want downtown to be seen as fun, friendly, lively and a prosperous destination for the entire community.

- **Objective** – We are always evaluating what people's objectives are and we feel most comfortable in places where we know what the stakeholders want us to feel and what the businesses are passionate about. She asked participants the question,

"If downtown Tigard was a person, based on how it looks, acts, promotes itself and the experiences it provides, how does (it) feel?"

- Participants used words such as retired, getting older, inactivity, and isolation.

Consultant Reeves said it was obviously not Tigard's goal to portray an aging, decaying downtown, and she asked, "What does downtown Tigard want to feel?"

- Participants used words such as community (mentioned many times), fun, prosperous, energetic and connected, connecting with the Fanno Creek Trail and nature.

- **Relationship** – Ms. Reeves said much can be told about a person by the relationships they maintain and this can also be applied to cities. She asked what the most beloved relationships that existed in downtown were.

  - Participants used post office as the most common word. It seemed like Tigard is a place to run errands. There were also references to businesses such as Café Allegro and the dry cleaners. The relationship between the commuter rail and downtown was mentioned. The tree lighting ceremony was the most fondly mentioned event but it was clear that event planning has waned significantly in the last few years.

- **Environment – Context is everything**. Consultant Reeves said downtown Tigard is a main street environment located in the heart of a suburban community that is very auto-accommodating and next to a state highway. It is in a place where the focus has been on "new." It is not a city that celebrates and restores its past, especially in terms of infrastructure.

  - Participants were asked what appealed to them about downtown. They mentioned things related to shopping and going to restaurants. Live Laugh Love Glass was mentioned although that business had just opened at the time of the workshop. It was already creating a buzz. The ballroom was mentioned.

  - When asked what places were analogous or related to downtown Tigard, stakeholders said Multnomah Village, McMinnville and Sherwood. Places such as Alberta Street or Mississippi Avenue were mentioned but when asked if people wanted downtown to feel young and hip, responses were universal that downtown should feel family-friendly, comfortable and safe.

Consultant Reeves said the next step in the process of building the CORE story framework is to identify conflicts. Conflicts make interesting stories and identities and are often where roadblocks to revitalization are discovered. She and her associate reviewed tensions and the one they found was: safety vs. edginess. On the one hand, participants said they want downtown to be family-friendly, quaint and the center of the community. On the other hand, there were many mentions of wanting it to be more vibrant and alive and interesting.

"Vibrant and fun" can be at odds with "safe and secure." She said, "This is neither good nor bad but it is important to understand that this conflict is here and look at how it impacts revitalization. Look at how you can leverage this conflict."

Consultant Reeves said if she were to develop a character from words that people used to describe downtown Tigard now, it might be an older, isolated lady, perhaps in a rocking chair. She said if she characterized how people said they want downtown Tigard to be it would be the character of Tim Taylor from the television show Home Improvement – a handyman, devoted to his family, doesn't live his life to achieve perfection; his life revolves around love of family, home and his car.

Recommendations

Consultant Reeves said there is currently a great mix of businesses and a scale of infrastructure that should contribute to a high sense of vitality. All of the building blocks exist. What is missing is the relationship part. She said, "If you want a place that is fun and exciting and vibrant, it comes down to people and relationships. Tigard needs to focus efforts on the relationship part of the story framework."

1. **Form a Downtown Association -** The association needs enough seed capital to hire an employee. This person should receive technical assistance to build membership, plan events and become self-sufficient within three to four years. This is the single most important recommendation. Emerging business districts do not have the capital, time or expertise to do the kind of marketing and promotion work that needs to happen. The vibrancy everyone mentions is only going to happen in the downtown if it becomes the sole responsibility of an experienced professional who can talk to the press, hold events, bring people together and build community. It is not just a business association; it must include all stakeholders – public and private, business and residential.

2. **Leverage Themes and Strengthen Connections to the Community** – Three main themes were noted: DIY/Design, Food, and Automotive. Consultant Reeves said Tigard's Main Street is man-friendly and is a place where both men and women could enjoy shopping. She said the downtown manager position needs to showcase the deep level of knowledge and passion that only local business owners have. She said this is a huge selling point. She suggested do-it-yourself classes be rotated throughout the different businesses so there is a connection and the area can see how local shops are a resource.

   Another theme is food. Food creates community and builds relationships. She said there is already a fabulous assortment of restaurants in downtown Tigard and yet almost nothing is being done to leverage them. The first change she recommends immediately is adding outdoor tables. She said visible outdoor tables let people driving through town know that there is a variety of food options available. She said downtown Tigard is missing some important food service concepts that will help build community, such as a coffee shop, breakfast place, production bakery and non-chain pizza place. These will attract people downtown and make them want to stay longer.

Automotive Theme – Consultant Reeves said Tigard should own this part of the downtown. There is a carwash in the center of downtown so make it the "coolest carwash" by offering a coffee cart, outdoor music, landscaping in front, Ping-Pong, and activities for people who have nothing to do while waiting to get their car washed. There are auto parts stores and other car-related services in the industrial area. She suggested parking a classic car in front of them or offering classes to women or kids who want to fix up vintage cars. She had an idea of a car-related game day where people are timed to see how long they take to change a tire, etc. Making this part of a car show would leverage the strengths that Tigard already has in its downtown.

3. **Improve Beloved Events and Connections to Places** – The Halloween and tree lighting ceremony events need to be built back up again. They meant a lot to the people in the community. Also, Tigard should strengthen ties to the Fanno Creek Trail. Downtown Tigard could become the place where parents bring their kids to rent roller blades or bikes, have lunch and then head out on the trail for family fun.

4. **Increase Storefront Improvement Program** – Forming relationships is how to get this program implemented. The Downtown Manager should be out on the street talking to property owners about why this program is so great and encouraging participation. She said it would be the single most important thing to transform downtown – making the buildings look different and reflecting their character. She said just introducing color and upgrading or removing awnings would dramatically change what downtown looks like and tell a different story.

Consultant Reeves asked if CCDA and CCAC members had any questions.

CCDA Chair Dirksen asked if forming a downtown association is something the city would do and Consultant Reeves responded that a city needs to participate but there needs to be a collaborative process between a city and its stakeholders, a public and private venture. The city would usually provide support and a seed fund to hire the employee and get them started. She referred to the CCAC Members present and suggested they meet and discuss whether to form a downtown association or go with another option such as the Main Street Program. She said Oregon has a Main Street Program that works well and provides some technical assistance and training. She said these programs work best when there is a list of attainable goals, "low hanging fruit" such as the recommendations she gave tonight. She said the public sector should always be involved, and it is never handed off entirely to the business owners.

CCAC Member Murphy asked what the Mississippi district has in the form of a business association. Consultant Reeves responded that they have a business association which she participated in early on. She said it was supported by the APNBA (Alliance of Portland Neighborhood Business Associations) who gave assistance in formation, getting non-profit

status and technical assistance in starting the Mississippi Street Fair. Cooperation was also received from non-profit organizations, property owners, schools, and business owners.

CCDA Director Wilson referred to the Hawthorne area in Portland where he lived as a child. He said the buildings were older and tired and fewer young people lived there. He noted that most of the older buildings are still there but the demographics changed. He asked Consultant Reeves about demographic changes, noting that in trendy areas such as Hawthorne, Mississippi and Belmont, what happened first was different people moved in. Consultant Reeves agreed and said it is very typical for there to be a demographic shift or a new wave of property ownership to stimulate revitalization. She said she calls it "fresh eyes" when buildings are viewed by people who see possibilities. She said Tigard has all of the building blocks and what it needs are "fresh eyes" to see its potential. CCDA Director Wilson suggested that Tigard's demographics include older, busy, larger families and fewer single, trendy people. Consultant Reeves countered that they are not trying to turn downtown into a hip and trendy place, but rather, have it reflect the values of Tigard, increase the connectivity between businesses and increase the downtown's relevance to the rest of the community. She said no matter what the values are, no one wants to spend time in a district with buildings that have peeling paint. People want to be someplace that is pleasant, attractive and where there are active uses on the ground floor. She said suburbs are hungry for pedestrian-friendly neighborhoods where one can have a cup of coffee and spend time.

CCAC Member Shearer said the city is forming an arts commission and asked how focused they should be on creating events rather than sculpture installation. Consultant Reeves said the arts are key to revitalizing downtown areas because art events give people a reason to congregate, eat dinner and look at art together. She suggested a sculpture walk on the north end of downtown. But she cautioned against just saying it will become an arts district overnight. She suggested building off the arts connections with existing businesses. Redevelopment Project Manager Farrelly clarified that the city is forming a committee to look at art as part of the Main Street/Green Street project, rather than an arts commission.

CCAC Member Pao asked what Tigard's next step in actively telling its story is. Consultant Reeves said it is to hire a person whose job it is to focus on downtown, get classes going, put events together and tell the story to the press.

Community Development Director Bunch drew a distinction between the Urban Renewal Agency lead and the downtown manager. He said it was his experience that each has a different role. Consultant Reeves said revitalization is first and foremost about people and she can tell a lot about the relationship of the stakeholders by the way the infrastructure looks. At the first downtown social she found it interesting how few people in this small downtown knew each other. The role of the downtown manager is to get business owners talking. It is about getting restaurant owners together talking about a "sip and stroll" event, for example. Those things will not happen without it being the focus of someone's job. She agreed that this is outside of the city's Urban Renewal Agency's responsibilities but they should be supportive.

CCDA Director Henderson thanked Consultant Reeves for her perspective and "fresh eyes" and said, "You've done an incredible job. I look forward to the next phase." He said he hoped she could help unite the downtown community. Consultant Reeves responded that she enjoyed working with Tigard.

Redevelopment Project Manager Farrelly said he will schedule a future discussion with council on the recommendations. He said he will be meeting with a core group of business and property owners who are interested in discussing these ideas.

CCDA Chair Dirksen said all of the recommendations made sense and the city should move forward with implementing each of them. He asked the CCAC to create an implementation plan.

3. HIGH-CAPACITY TRANSIT (HCT) LAND USE PLAN UPDATE

Senior Transportation Planner Gray gave council a quarterly update on progress of the high-capacity transit land use plan. She distributed a revised public workshop report that is on file in the meeting packet. She gave an update on the larger, regional project of the Southwest Corridor Plan, noting that the Multi-modal Transportation Plan is merging with the Alternatives Analysis so it becomes the transit chapter of the Transportation Plan. She said a regional level, formal steering committee will be created in September and their first items of business will be forming a project charter to establish the relationships among the various agencies. She said work is also being done related to developing alternative mobility standards and to assist with loosening land use restrictions along Pacific Highway.

Councilor Henderson asked if this process was new. Senior Transportation Planner Gray said, "We are doing something very different. The idea of starting off with a land use plan before developing alignments for transit is very, very new." She said this comes about partly because there is not an obvious alignment but also because experience has shown that while a lot of investment can be put into transit, it does not ensure success absent the correct land use area types or access. She said planning done now will help ensure that the transit investments will be successful and also that the kinds of development needed fit the desired character for Tigard.

Councilor Henderson asked if this has been a fatal flaw in the past. Mayor Dirksen said he would not call it a fatal flaw but Tigard is looking at what others wish they had done in the past in other transit corridors. Council President Buehner disagreed, saying it has been a fatal flaw. She said there was so much focus on transit and traffic flow in the past, the rest of the community was lost.

Senior Transportation Planner Gray said major tasks completed include establishing groundwork and developing "Tigard Typologies." These include Town Center/Main Street, Employment/Retail, Transit Corridor, and Transit Neighborhood.

She said they identified several potential Station Community Alternatives which will inform the alignment choices. She said they are generally one mile in diameter, or a twenty-minute walk. Councilor Wilson said he attended a light rail seminar and learned that there are different standard distances that people will walk for residential areas than for commercial areas. People will walk ten minutes to a stop in an office area for example, but will walk twenty minutes when coming from home. Senior Transportation Planner Gray said what is commonly used in this region is that one-quarter mile is a reasonable walking distance for

standard bus service and one-half mile is a reasonable walking distance for more frequent or high-capacity transit.

Councilor Wilson referred to the council discussion from the July 12, 2011 council meeting regarding the Tigard Triangle. He said the tallest building in the Triangle now is six stories and across I-5 there is one that is eight-stories. He said it is disturbing that the previous discussion painted the entire Triangle with the same density and suggested focus on greater density and floor-area ratios (FAR's) near station areas. Senior Transportation Planner Gray said his and other feedback is welcome as they are in the development stage. She said the Citizen's Advisory Committee will receive these comments and it will be their role to determine the best way to address this. She said at this point it was appropriate to use a broad brush but to identify that flexibility be allowed for certain goals.

Community Development Director Bunch said staff discussed council's July 12 comments at length and take them very seriously. He used the example of higher density residential areas near stations and said they will be talking to the consultant and the CAC about developing sub-classes of typologies and adjusted FAR's.

Council President Buehner asked for clarification on the Triangle station location, as it had always been planned for the far north area of the Triangle. Senior Transportation Planner Gray said the Triangle was included as one area because one station, no matter where it is placed, will serve the entire Triangle area. Mayor Dirksen said there will be areas where station locations are more easily apparent than in others. It is too early to commit to individual spots. Councilor Wilson said what needs to be done is to identify places where transit-oriented development will be most supported and find a route that strings them together.

Councilor Woodard was thinking about the timelines and whether there will be the money five or ten years down to road to do these things. He expressed concerns about staff resources working too hard at this point. Senior Transportation Planner Gray said part of the transition of going between the HCT land use plan to the Southwest Corridor Plan is pulling the focus from HCT to the overall corridor and all modes. She said the timeline is only 13 years out, but in the interim we need to think about land development, pedestrian connections, and congestion and policy issues.

Council President Buehner said the issue she raised earlier with her question on the Triangle station location was that, "There is a transportation nightmare at 72nd Avenue in the Triangle. I don't want us to even consider putting a station there. I don't see us having the money to fix it." She said this is why she favors putting a station at the other end of the Triangle.

City Manager Prosser said it is very important for a community to be able to imagine what could be better than what exists now. He said the timeline is quite long but if we don't do the work now we have no chance of getting what we want in the future. He said the time Senior Transportation Planner Gray and Redevelopment Project Manager Farrelly and others spend on these projects is time well spent. He agreed that it is important to keep current problems in mind but options should remain open. He said if, after going through

this process we decide to place a station more towards the southern end of the Triangle, then we have a lot of time to look at how we can solve existing problems and do so in a way that supports the future use.

Senior Transportation Planner Gray mentioned that what is being done now is the evaluation of alternatives of the different concepts and the discussion is still at a very high level. She said the process integrates other plans, such as the Transportation System Plan.

Senior Transportation Planner Gray highlighted the next steps which include a presentation to CAC and TTAC in August and meetings in September. Another open house is scheduled for September 28, 2011. She said individual elements from each alternative, along with any new elements or typologies, will be carried forward into a refined set.

Mayer Dirksen referred to the map showing seven potential locations and wanted everyone to realize that this map did not mean that there would be a station in each location. These are identified alternatives to be considered in the future.

Council President Buehner said she again wanted to request that the Planning Commission be included in these council workshop discussions. She said this would encourage communication, prevent misinterpretation and ensure everyone is on the same page. Community Development Director Bunch said that would be done.

4. URBAN FORESTRY CODE REVISIONS PROJECT UPDATE

Associate Planner/Arborist Prager presented this item. He discussed the history and process for upgrading the Urban Forestry Code. He gave a detailed view of what the committees have been working on as the project moves into the final phases. He said the main objectives are clean, equitable standards and sound science. He discussed tangible economic benefits of trees, especially mature trees. He presented a PowerPoint to illustrate provisions of the urban forestry code.

The four main code provisions are:

1. **Urban Forestry Standards for Development**, including tiered canopy targets based on zoning. Incentives are provided for maximizing street trees, a shift from the current code, which urges planting many trees rather than quality trees. Standards for tree planting in parking lots will be improved. He showed examples of how developers can meet canopy requirements. Councilor Wilson asked if different species require more soil. Arborist Prager said they do and it would have to be demonstrated that soil volume requirements were met to receive street tree credit.

   Councilor Henderson asked about overlapping trees. Arborist Prager said as long as a developer meets the spacing requirement for planted trees, the overlap can be counted.

   For preserved trees, the standard is to delineate the canopy edge but you might not get credit for overlap in that case. In response to a question from Councilor Wilson about setback requirements, Arborist Prager said they depended on the stature of the tree and

gave some examples. Councilor Wilson said for large commercial buildings shorter setbacks should be allowed. Trees are adaptable to their conditions and grow towards the light. He suggested that downtown Portland has some very large trees close to buildings. Arborist Prager said his committee considered large trees next to a one-story home as undesirable. He said he would discuss the commercial building setbacks further with the committee.

Council President Buehner asked about street trees tearing up the sidewalks or streets and if that is being addressed. Arborist Prager said that is addressed in a few ways, with a refined street tree list of species with less of a history for infrastructure problems, and also by requiring soil volume that allows trees a deeper place to grow. He said the planter strip requirement has changed so there is more spreading room for roots. Root barriers are referenced in the standards as a method to help direct root growth.

Councilor Wilson reminded Arborist Prager to keep in mind parking lot lighting as it is often designed to be in the exact places as the trees.

Council President Buehner asked if having more trees makes the environment less safe by creating places for people to hide. Arborist Prager said there was a local study that examined the relationship between crime and trees and found that areas with larger, higher stature trees have less crime than those with no trees. Hedges do create more hiding places however, so Tigard is striving for high canopy, spreading trees in parking lots.

2. **Tree Grove Preservation Incentives** – Based on council and planning commission direction, staff identified 70 large groves of native trees that cover 544 acres in Tigard. There are 130 acres on buildable lands and are vulnerable to development. These are the focus of preservation incentives, which include waivers or minimum density requirements, density transfers, and additional building height for commercial/industrial buildings. These are all contingent on permanent protection of the grove through easements or other protective instruments.

3. **Tree Permit Requirements** – The focus was not to add more regulation, but to improve the consistency, clarity and scientific basis for decision making. The requirements are consolidated into a new Title 8 and have a two-track decision making process (city manager decisions or city board or commission decisions). Currently scattered throughout the code, tree permit requirements will now be consolidated and easier to locate. At present there are no fees associated with tree permitting decisions except for those on sensitive lands. The CAC consensus is to continue subsidizing costs associated with tree permitting decisions but this will be brought to council for consideration. In response to a question from Councilor Henderson, Arborist Prager said Title 8 was an unused code chapter.

4. **Hazard Trees** – Clarifies the city's role in hazardous tree situations on private property and revises the definition of a hazardous tree. Neighbors will have to prove that they have tried to work things out among themselves before the city will get involved. If the city does become involved, a third-party arborist will be hired and will need some

compensation, but there is lack of CAC agreement as to whether the arborist should receive some city subsidization.

He said these revisions are consistent with overall Urban Forestry Program Direction.

Council President Buehner asked if the code language provides an opportunity for homeowner associations to use it to address a hazardous tree issue. Arborist Prager said the committee talked at length about who should have standing in this situation. It must be shown that the tree is indeed a threat. The CAC was worried about someone going around pointing out trees that don't really affect them personally. Arborist Prager said there is language that an association could make a claim.

Councilor Woodard expressed concern about dense housing around trees and problems with roots damaging foundations and pipes. Arborist Prager said you couldn't remove it under the current code but the draft code has more criteria, including damage to infrastructure. Councilor Woodard asked if there was a way to mitigate for root damage. Arborist Prager said it is the city's view that this is a civil issue for neighbors to work out themselves.

Councilor Woodard asked if it was a city issue if a tree overhangs the public right of way. Removing the one branch would be abatement and you would not be required to remove the entire tree. Arborist Prager said if the tree is in a protected category the city is involved, but otherwise it is a private matter. Citizens are encouraged to talk to their neighbors and work it out without the involvement of the city.

Councilor Henderson asked how the public will be informed of the changes to the code. Arborist Prager said an open house will be held, and all property owners will be contacted. Councilor Wilson said he agreed with the work staff completed, saying it is hard to translate concept into code. He requested that it be kept simple.

5. DISCUSS POTENTIAL ADMINISTRATIVE RULEMAKING MUNICIPAL CODE AMENDMENTS

Assistant Community Development Director Hartnett introduced this item regarding potential amendments to the Tigard Municipal Code that will authorize, define and limit the use of administrative rules. They would also provide a process for administrative rulemaking which would be followed any time the Council authorizes the use of administrative rules. She said while there are several references to administrative rules in the code, it is not defined and even though one chapter details the process it only pertains to that chapter. There is also no clear public appeal process.

Assistant Community Development Director Hartnett said there are also sections of the TMC where day-to-day activities are codified. When there is a need to change them, as program objectives shift or technology changes, a public hearing is required because they were codified. Staff suggests that administrative rulemaking will allow greater flexibility as program changes are made.

She mentioned several efforts underway where staff would like to use administrative rules, including the tree code update, code compliance (tying administrative abatement and administrative fees to administrative rules), and Chapter 12 - Water and Sewers, which the Public Works Department is currently working on. Assistant Community Development Director Hartnett said there needs to be a central place within the code where administrative rules are defined, limited and the public appeal process listed.

Ms. Hartnett said the packet included some draft language for council review. A public hearing is tentatively scheduled for August 9, 2011 for consideration of the administrative rulemaking changes.

Ms. Hartnett discussed the process. During the 14-day review period council can ask for additional discussion if desired. She said notices will be placed in newspapers. Written protest could also go to the council. All administrative rules would be on file with the city recorder.

Mayor Dirksen asked if there is a procedure for challenging an existing administrative rule. Assistant Community Development Director Hartnett said there was not.

City Attorney Hall said potential challenges would be limited to whether or not it exceeds the authority given to staff. Councilor Wilson expressed concern and said it is important that elected officials have authority over changing rules. He said there is a tendency for experts to make rules with blinders on. He said, "Most people don't really pay attention to rulemaking until they are subject to them. There is danger in assembling a panel of experts without having things vetted through regular people." He said he wants to ensure that issues are thoroughly considered and receive adequate feedback from citizens. Mayor Dirksen agreed it is important that Council reviews these for the reasons Councilor Wilson mentioned.

City Manager Prosser said one issue about rulemaking is the whole idea of mission creep. He said, "What we are envisioning today is that there are a lot of things we need to guide us that don't rise to the level of law. Council will have a discussion on any subject matter and whether it is beyond the bounds of what was envisioned. If we do our job right up front there will be less of an issue."

Assistant Community Development Director Hartnett will schedule a public hearing for an upcoming council meeting.

~~6. SECOND QUARTER COUNCIL GOAL UPDATE~~ Moved to July 26, 2011 Council Meeting

7. COUNCIL LIAISON REPORTS

Mayor Dirksen said there is currently in process the creation of a SW Corridor policy steering committee that would include an elected official from each of the jurisdictions along the route. Mayor Dirksen offered to be Tigard's representative but wanted input from the council. There was agreement that he should be the representative. He asked the City

Manager to talk to King City and ask if they want to be involved directly or have Tigard be their designated representative.

8. NON AGENDA ITEMS

9. EXECUTIVE SESSION - At 9:23 p.m. City Manager Prosser announced that Council would enter into an executive session and adjourn immediately after. He said the executive session was called under ORS 192.660 (2) (h) to consult with counsel regarding pending litigation or litigation likely to be filed. The executive session ended at 10:11 p.m.

10. ADJOURNMENT

At 10:12 p.m. Councilor Wilson moved for adjournment and Councilor Woodard seconded the motion. All voted in favor.

	Yes	No
Mayor Dirksen	x	
Councilor Henderson	x	
Councilor Woodard	x	
Councilor Wilson	x	
Council President Buehner	(left meeting at 9:34 p.m.)	

_____
Carol A. Krager, Deputy City Recorder

Attest:

_____
Mayor, City of Tigard

Date:_____

I/ADM/CATHY/CCM/2011/Final/July/110719

AIS-591 **Item #: 4.**

Business Meeting

Date:	09/13/2011		
Length (in minutes):	5 Minutes		
Agenda Title:	Fields - Wall Street Extension Comprehensive Plan Amendment		
Submitted By:	Cheryl Caines Community Development		
Item Type:	Ordinance Public Hearing - Legislative	**Meeting Type:**	Council Business Meeting - Main

ISSUE

Consider the Planning Commission's recommendation to deny a proposed Comprehensive Plan Amendment, Sensitive Lands Reviews, and an Adjustment to extend Wall Street across Fanno Creek to the Fred Fields property that lies east of the library and southwest of the railroad tracks.

The applicant (Fred Fields) has proposed an extension of Wall Street across Fanno Creek. To construct the improvements requires 1) a Comprehensive Plan Amendment to remove the Goal 5 protection from Tigard Significant Wetlands found on the site; 2) two Sensitive Lands Reviews for work within the floodplain and wetlands (fill and bridge/road construction); and 3) an Adjustment to the street standards in order to construct a narrower street section than required by code. The proposed narrower section eliminates planter strips/street trees and is proposed for the bridge portion of the road extension.

STAFF RECOMMENDATION / ACTION REQUEST

The Planning Commission recommends the City Council deny all four application requests (Comprehensive Plan Amendment, Sensitive Lands Review - wetlands, Sensitive Lands Review - floodplain, and Adjustment) based on its findings and pursuant to the staff report and subsequent addendum contained in the record.

KEY FACTS AND INFORMATION SUMMARY

The applicant is requesting a Type IV Comprehensive Plan Map Amendment to remove Goal 5 protection from Tigard Significant Wetlands and surrounding riparian corridor in order to extend Wall Street across City of Tigard property and Fanno Creek. The extension of Wall Street is proposed to provide access to the applicant's property that lies west of the railroad tracks. This property is not currently served by a public street or improved access.

A Type III Sensitive Lands Review is required for proposed work within the 100-year floodplain/floodway and Type II Sensitive Lands Review for the wetlands. The applicant is requesting a Type II adjustment to the street improvement standards in order to construct a narrower street section than required by code. This Adjustment would apply only to the bridge portion of the street. Because the sensitive lands and adjustment were requested in conjunction with the Comp Plan Amendment, each review follows the Type IV review process.

Two public hearings were held on August 16, 2010 and October 18, 2010 with the Tigard Planning Commission. Testimony was taken at both hearings. After deliberations, the Commission voted 7-0 to recommend that City Council deny all four applications. The Commissioners stated that the applicant had not provided evidence or enough detailed information to approve this proposal. The Commission's findings and recommendation are included in an attached memo to City Council (Attachment 1 - Exhibit A), along with a brief application history, list of key findings from the staff report, and a list of items included in the attachments.

This item was originally scheduled for December 14, 2010. On December 9, 2010 the applicant requested in writing that the hearing be continued until February 22, 2011. The public hearing was opened on December 14th and immediately continued to the February 22nd date as requested. The applicant requested a second continuance to May 24, 2011. Again the public hearing was opened on February 22nd and continued until May 24th. A third written request continued the hearing to July 12, 2011 to pursue a second application for the bridge known as the

"Pivot Road" application. The applicant has received approval with conditions from the Hearing's Officer for the Pivot Road application. The applicant requested again to continue the public hearing for this application until September 13, 2011 to accommodate possible appeals of the Pivot Road application. The application was not appealed but requires approval of construction plans and permits from other state agencies; therefore, the applicant has again requested a continuance of the hearing until December 13, 2011. The continuance request is attached (Attachment 1).

While this number of continuances is not typical, the code does not speak to the number of, or time limit on, continuances of actions being processed as Type IV applications. However, the applicant has indicated that the continuances are to allow adequate time for the Pivot Road application to be decided. Once that occurs, hearings will either proceed for this application, or the application will be withdrawn.

OTHER ALTERNATIVES

If the City Council does not accept the Planning Commission's recommendation to deny, then the application could be:

1) Approved - The City Council may find that the applicant has satisfied the applicable review criteria and met the burden of proof necessary to approve the request; or
2) Approved with Conditions - The City Council may find that the applicant can satisfy the applicable review criteria if certain non-discretionary items are conditioned to be submitted to the record.

Both alternatives would require that findings be developed to support the decision.

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

The city has an on-going obligation to establish transportation priorities to be consistent with current circumstances and anticipated trends. The 2002 Tigard Transportation System Plan (TSP), which was in effect at the time this application was made, shows an east-west, Hall to Hunziker connection via Wall Street. This connection is shown to extend across the Fields property and the abutting Portland Western Railroad right-of-way. However, implementation of the Hall-Hunziker connection is not guaranteed by its being identified in the 2002 TSP.

DATES OF PREVIOUS COUNCIL CONSIDERATION

Per the applicant's request, this is a continuance of the hearing scheduled for September 13, 2011. Previous continuance dates are December 14, 2010, February 22, 2011, May 24, 2011, and July 12, 2011.

Fiscal Impact

Cost:	unknown
Budgeted (yes or no):	yes/no
Where Budgeted (department/program):	Comm Dev/Pub Works

Additional Fiscal Notes:

If the request is denied: the applicant may appeal the decision. If appealed, there will be staff time dedicated to the case and attorney costs to defend the decision. While the staff time is budgeted, use of the time for the appeal will detract from other tasks and priorities.

If the request is approved: Wall Street is a public street. Once the street and bridge are constructed, the maintenance and repairs would be the City's responsibility. The cost is unknown at this time.

Attachments

Attachment 1 - Exhibit A Continuance Request

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August 3, 2011

BY FIRST-CLASS MAIL AND ELECTRONIC MAIL

Ms. Cheryl Caines
Associate Planner
City of Tigard
13125 S.W. Hall Boulevard
Tigard, Oregon 97223

Subject: Fields: Wall Street Extension Original Application (CPA 2009-00004, SLR 2009-00004, SLR 2009-00005, VAR 2010-00002)

Dear Cheryl:

I am writing on behalf of the applicant to request that the City Council hearing in the above-captioned matter be continued to December 13, 2011. The purpose of this continuance request is to allow the applicant to pursue permitting and construction of the Pivot Road option before the City takes further action on the original alignment.

Very truly yours,

William L. Rasmussen

cc: Mr. Fred Fields
Mr. Phillip E. Grillo

PDXDOCS:1939542.1
196080-0005

AIS-222 **Item #: 5.**

Business Meeting

Date:	09/13/2011		
Length (in minutes):	45 Minutes		
Agenda Title:	Discuss Amending the Tigard Municipal Code to Create Administrative Options Related to Code Compliance		
Submitted By:	Susan Hartnett Community Development		
Item Type:	Update, Discussion, Direct Staff	**Meeting Type:**	Council Business Meeting - Main

ISSUE

A public hearing to consider amendments to the Tigard Municipal Code (TMC) related to code compliance actions is scheduled for October 25, 2011. Staff will brief the Council on this proposed package, which will add administrative actions and fees, and authority for Administrative Rulemaking under Chapter 2.04 to implement specific aspects of the proposed code provisions.

STAFF RECOMMENDATION / ACTION REQUEST

Receive information, discuss options, and direct staff regarding the proposed package.

KEY FACTS AND INFORMATION SUMMARY

During the July 27, 2010 meeting, City Council received an update on changes that were underway in the Code Compliance Program as the result of earlier budget reductions. Staff proposed, and council discussed, adding administrative non-judicial options for certain code enforcement actions. City Council directed staff to investigate administrative enforcement and abatement options that can be used to enhance delivery of code compliance activities, particularly regarding nuisance complaints. Council also requested that staff provide information about potential fees related to non-compliance and mechanisms to collect those fees, including real property liens.

During the February 15, 2011 meeting, City Council received information on the use of administrative enforcement, abatement and fees in other Oregon cities. Staff recommended, and council discussed, adding such administrative provisions to the Tigard Municipal Code (TMC). At the conclusion of the discussion, council directed staff to proceed with this work and present a package of amendments.

During the August 23, 2011 meeting, staff briefed council on the status of this work and described the anticipated next steps to finalize, review and adopt the code amendments.

The draft package of legislation will include several main components:

1. Consolidation of nuisance citations from multiple locations in the TMC into a new Title 6;
2. Establishment of administrative remedies in Chapter 1.16 to augment the existing judicial and emergency remedies;
3. Establishment of an administrative fee in Chapter 1.16, and addition of this fee to the Master Fees and Charges Schedule; and
4. Authority to create administrative rules under TMC Chapter 2.04 for specified purposes.

Attachment 1 is a preliminary draft of the proposed revised Table of Contents for Chapter 1.16, Civil Infractions. These revisions will establish Administrative Enforcement provisions in addition to the existing Judicial Enforcement provisions. Specific procedures for implementing these administrative enforcement and abatement provisions will be established through administrative rules pursuant to the recently adopted rulemaking process in Chapter 2.04, City Manager. Attachment 2 provides example text comparing one aspect of the the judicial and administrative processes. Attachment 3 is the Administrative Rules authority proposed as section 1.16.105. As a package, these administrative enforcement and abatement options will provide an efficient, more cost-effective, and

less formal means to gain voluntary compliance. Using administrative rules to implement specific aspects of the code provisions will allow flexibility over time as the program matures.

Attachment 4 is the Table of Contents for a proposed new Title 6, Nuisance Violations, which incorporates various nuisances that currently appear in different titles, including Titles 7, 11, 12, 15, and 18. Consolidating these regulations into a single title will make public access to a list of infractions easier and more convenient, and will facilitate efficient administration of the code compliance function by staff. Attachment 5 provides example language from this new title and includes two sections - 6.02.120 and 6.02.130 - to show how nuisance elements that currently reside in the Development Code (Title 18) are proposed to be incorporated into this consolidated title. Attachment 6 provides the existing Development Code language that is cross referenced in the two sections above. Attachment 7 shows the proposed modifications to the existing language on graffiti violations, which will make graffiti violations consistent with other nuisance violations.

Based on council's earlier direction, the package includes an administrative fee that can be assessed up to a set amount, where the calculation of the fee is based on a set of discretionary criteria. Council expressed interest in applying an administrative fee in situations where resolution takes longer or requires more staff effort than typical or where repeated instances of the same violation occur. Council also indicated interest in having the degree of cooperation and amount of effort demonstrated by the violator reflected in the amount levied. Staff found that the City of Eugene was using a similar system; the draft fee calculation is based on Eugene's approach and council's directives.

Attachment 8 is a draft administrative rule that would implement the calculation of the proposed administrative fee. Attachment 9 is the proposed Administrative Fee Schedule for calculating and applying administrative fees in nuisance enforcement cases. The administrative rule and calculation sheet in combination should make it easy for staff to consistently set fees at an appropriate level for individual situations that are based on similar sets of facts. Additional administrative rules will be developed to address notification of a fee being levied, collection of an unpaid fee, appeal of a fee, and other related topics.

Staff seeks council's specific direction on the following questions:

1. Have we approached the placement of the administrative options appropriately in Chapter 1.16?
2. Does the proposed administrative rulemaking authority provide the right level of specificity? Are there elements of the program implementation that are missing and should be included as administrative rules?
3. Does consolidation of nuisances into a new Title 6 make sense?
4. Are we on the right track with the conversion of Title 18 provisions into nuisance violations? Are there specific sections from Title 18 proposed to be included in new Title 6 that need more detailed discussion?
5. Are the proposed changes to graffiti regulations appropriate?
6. Does the example administrative rule for calculation of the fee provide sufficient detail? Are we capturing the right elements in the fee calculation sheet?

Staff also seeks council's general direction on whether to proceed to a public hearing on October 25, 2011.

OTHER ALTERNATIVES

1. Do not proceed with amendments to Ch. 1.16 adding administrative enforcement, abatement and fees.
2. Do not proceed with consolidation of nuisance violations into a new Title 6 or limit the consolidation.

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

Goal #1. Implement Comprehensive Plan: The Code Compliance Program contributes to many of the Comprehensive Plan's goals and policies related to the community's livability and vitality.

Goal #4. Advance Methods of Communication: Consolidating nuisance citations in a single title will improve and simplify communication with the public on code violations. The addition of an administrative enforcement process will allow for less formal and less threatening communication with alleged violators.

DATES OF PREVIOUS COUNCIL CONSIDERATION

July 27, 2010; February 15, 2011; August 23, 2011.

Attachments

Power Point Presentation

Attachment 1 - TOC for Chapter 1.16

Attachment 2 - Comparison of Administrative and Judicial Processes

Attachment 3 - Proposed Administrative Rulemaking Authority

Attachment 4 - TOC for new Title 6

Attachment 5 - Example Text from New Title 6

Attachment 6 - Existing Text from Title 18

Attachment 7 - Proposed Amendments to Existing Graffiti Regulations

Attachment 8 - Draft Administrative Rule on Calculation of Administrative Fee

Attachment 9 - Proposed Administrative Fee Calculation Sheet

City
of
Tigard

Respect and Care | Do the Right Thing | Get it Done

Achieving Compliance: Process Changes and Code Revisions

Presented to Tigard City Council

September 13, 2011

TIGARD

Presentation Outline

- Brief review of past practices and program changes
- Overview of proposed amendments to Tigard Municipal Code
- Revisions to Chapter 1.16 – Civil Infractions
- Consolidation of nuisance violations into new Title 6 – Nuisance Violations and clarification of nuisance violations in Title 18 – Community Development Code
- Administrative rules

Tigard's History & Practices

- Livability Approach
- Past Practices
  - Intake via phone, email, counter visit, letters
  - Site visits to verify violation/compliance
  - Significant personal contact with complainant and violator
  - Summons to Court only enforcement "stick"
  - Compliance rate nearly 100% when pursued
  - Limited resources required some case selection/prioritization

Review of Recent Program Changes

- Initiated as response to budget cuts and staff reductions in July 2010
- Compliance priority lowered
- Focus on efficiency improvements:
  - Streamlined/automated complaint intake and case management processes
  - Significant reduction in field observations by staff
  - Add administrative remedies to TMC; augment judicial option

Review of Recent Program Changes

- Intake and case management process improvements
  - Online intake system, started in July 2010, transfers portion of case management to the public
  - System automatically opens case in permit software and stores information on case
  - Auto generates letters to violators and complainant(s)
- Do the "best we can" until dedicated resources restored
  - Assignment spread among staff with other primary duties
  - Some improvements achieved in FY 2011-12 budget

Proposed Code Amendments

- Revision of Chapter 1.16 – Civil Infractions to add Administrative Process to existing Judicial Process
- Consolidation of Nuisance Violations from five titles into one new title: Title 6
- Utilize Administrative Rules to implement specific procedures and fees

Cases		Situational Condition	
		Simple	**Complex**
Respondent's Attitude	**Cooperative**	Case Type 1 = 50% •Online Complaint •Template Letters •Phone Call/Meeting •Site Visit •(Verbal Agreement) (Administrative Abatement) •(Notice of Violation) •(Summons)	Case Type 2 = 20% •Online Complaint •Template Letters •Phone Call/Meeting •Site Visit •Verbal Agreement •Administrative Abatement •(Notice of Violation) •(Summons)
	Uncooperative	Case Type 3 = 20% •Online Complaint •Template letters •Phone Call/Meeting •Site Visit •Formal Agreement •Administrative Abatement •(Notice of Violation) •(Summons)	Case Type 4 = 10% •Online Complaint •Template letters •Phone Call/Meeting •Site Visit •Formal Agreement •(Notice of Violation) •(Summons) •(Administrative Abatement)

Revision of Chapter 1.16 – Civil Infractions

- Addition of Administrative Enforcement Process to Existing Judicial Process
  - Attachment #1: Proposed revised table of contents for Chapter 1.16
  - Attachment #2: Comparison of similar but different provisions in Judicial and Administrative Processes for first notifications to respondents

Revision of Chapter 1.16 – Civil Infractions (Cont.)

- Provision Authorizing use of Administrative Rules
  - Attachment #3: Authorization provision
- Codifying Procedures for Obtaining Investigation and Abatement Warrants

Title 6 – Nuisance Violations

- Consolidation of Nuisance Violations from:
  - Attachment #4: Table of contents for Title 6, highlighted to show original titles for citations
  - Chapter 7.40 – 29 sections (yellow)
  - Title 11 – 3 sections (teal)
  - Title 12 – 1 section (gray)
  - Title 15 – 2 sections (green)
  - Title 18 – 8 sections (red)

Title 6 – Nuisance Violations (Cont.)

- Attachment #5: Sample page showing citations referring to Title 18
- Attachment #6: Existing text in Title 18
- Attachment #7: Strikethroughs showing proposed changes to graffiti provisions

Administrative Rules

- Used to provide specific instructions to staff regarding implementation of code provisions
  - Attachment #8: Draft Administrative Rule for determining Administrative Fees
  - Attachment #9: Excel Spreadsheet for calculating Administrative Fees

Specific Questions for Council Consideration

- Have we approached the placement of the administrative options appropriately in Chapter 1.16?
- Does the proposed administrative rulemaking authority provide the right level of specificity? Are there elements of the program implementation that are missing and should be included as administrative rules?
- Does consolidation of nuisances into a new Title 6 make sense?

Specific Questions, Contd.

- Are we on the right track with the conversion of Title 18 provisions into nuisance violations? Are there specific sections from Title 18 proposed to be included in new Title 6 that need more detailed discussion?
- Are the proposed changes to graffiti regulations appropriate?
- Does the example administrative rule for calculation of the fee provide sufficient detail? Are we capturing the right elements in the fee calculation sheet?

City
of
Tigard

Respect and Care | Do the Right Thing | Get it Done

Achieving Compliance: Process Changes and Code Revisions

Presented to Tigard City Council

September 13, 2011

TIGARD

Chapter 1.16 CIVIL INFRACTIONS

Sections:

Article I. General Provisions

1.16.010 Title for Provisions
1.16.020 Establishment and Purpose
1.16.030 Definitions
1.16.040 Use of Language
1.16.050 Reference to State Law
1.16.060 Culpability, Not Exclusive, Remedies Cumulative
1.16.070 Effect of This Chapter
1.16.080 Severability
1.16.090 Reports of Infractions
1.16.100 Assessment
1.16.105 Administrative Rules
1.16.110 Right of Entry - Investigation Warrants
1.16.115 Right of Entry - Abatement Warrants

Article II. Judicial Enforcement

1.16.120 Notice – Notice of Violation
1.16.140 Time to Remedy Infraction After Notice
1.16.150 Immediate Remedial Action Required When
1.16.160 Notice - Methods
1.16.170 Notice - Computation of Time Period
1.16.180 Notice - Information
1.16.190 Failure to Respond to Notice
1.16.200 Voluntary Compliance Agreement
1.16.210 Civil Infraction Summons and Complaint - Timing
1.16.220 Civil Infraction Summons and Complaint - Process Requirements
1.16.230 Civil Infraction Summons and Complaint - Service - Failure to Receive - Default
1.16.240 Civil Infraction Summons and Complaint - Respondent's Response Required
1.16.250 No Right to Jury
1.16.260 Representation by Counsel
1.16.270 Opportunity to be Heard - Cross-Examination
1.16.280 Witnesses
1.16.290 Hearing - Admissible Evidence
1.16.300 Hearing - Decision by Hearings Officer
1.16.305 Civil Penalty - Order to Abate
1.16.310 Civil Penalty - Assessment of Fees
1.16.320 Hearing - Records
1.16.330 Finality of Decision - Appeals
1.16.340 Remedial Action by City - Summary Abatement
1.16.350 Default Judgment
1.16.370 Lien Filing and Docketing

Article III. Penalties and Fees

1.16.380 Continuous Infractions

1.16.385 Failure to Comply With Judgment Order
1.16.390 Penalties and Fees - Payment Due When
1.16.400 Penalties and Fees - Classifications
1.16.410 Penalties and Fees - Assessment
1.16.415 Penalties and Fees - Repeat Violations
1.16.420 Penalties and Fees - Prior to First Appearance
1.16.425 Delinquent Civil Penalties and Fees

Article IV. Administrative Enforcement

1.16.500 Notice – Letter of Complaint
1.16.510 Order to Abate
1.16.520 Abatement by the Responsible Party
1.16.530 Abatement by the City
1.16.540 Assessment of Costs
1.16.550 Liability
1.16.560 Remedial Action by City - Summary Abatement
1.16.570 Judicial Review

Yellow Highlighted Items are new.

Definitions, Proposed Chapter 1.16.

H. "Letter of complaint" means a letter of notification to a responsible party that the city has received a complaint indicating that a violation may exist on the party's property. A letter of complaint is a required first step in the administrative enforcement process.

I. "Notice of violation" means a formal letter or form notifying a responsible party that the city has reasonable cause to believe that a violation has been found to exist on the party's property. A notice of violation is an optional first step in the judicial enforcement process.

****

Existing Text: Judicial Process.

1.16.120 Notice - Notice of Violation

A notice of violation for the alleged infraction may be given to the respondent before a civil infraction summons and complaint is issued for an infraction. It is not a prerequisite to the issuance of the summons and complaint, and the giving of notice is at the sole discretion of the code enforcement officer.

****

New Text: Administrative Process

1.16.500 Notice - Letter of Complaint

Upon receiving a report or complaint of a violation of this chapter, the code enforcement officer may cause a letter of complaint to be mailed to the owner and each other known responsible party, for the property containing the alleged civil infraction.

1.16.105 Administrative Rules

The city manager is authorized to draft and adopt administrative rules to provide a process for the city to work with letter of complaint recipients toward abatement of all civil infractions, and which may result in the mailing of an order to abate to any responsible party that is not responsive or cooperative. Such administrative rules and regulations shall be adopted pursuant with the provisions of TMC 2.04 and shall include the following:

A. specific form documents or templates for all written communications referenced in this section, to ensure that communications from the city are uniform.

B. procedures for the preparation and execution of notices of mailing and posting of an order to abate.

C. procedures for calculating penalties and administrative fees.

D. standards for whether anonymous reporting should be allowed, and if allowed, prescribe the circumstances in which anonymous reporting is allowed.

Title 6:
NUISANCE VIOLATIONS

Sections:

Chapter 6.01
GENERAL PROVISIONS AND PENALTIES

6.01.010	Short Title
6.01.020	Definitions
6.01.030	Violation of Title Prohibited
6.01.040	Penalty for Violation of This Title
6.01.050	Nuisances Designated—Class I Civil Infraction

Chapter 6.02
NUISANCES AFFECTING PUBLIC HEALTH, SAFETY AND PEACE

Article I. General Nuisances

6.02.010	Common Nuisances
6.02.020	Noxious Vegetation
6.02.030	Trees & Bushes
6.02.040	Greenway Maintenance
6.02.050	Attractive Nuisances
6.02.060	Graffiti
6.02.080	Livestock/Poultry

Article II. Property Development and Maintenance Requirements

6.02.110	Conditions of Approval
6.02.120	Visual Clearance Requirements
6.02.130	Fences and Walls
6.02.140	Accessory Structures
6.02.150	Insects and Rodents
6.02.160	Signs
6.02.170	Storage in Front Yards

Article III. Junk, Garbage and Putrescible Waste

6.02.210	Vehicles Not to Drop Material on Streets
6.02.220	Open Storage of Junk
6.02.230	Scattering Rubbish
6.02.240	Garbage and Putrescible Waste
6.02.250	Offensive Wastes Prohibited
6.02.260	Unauthorized Deposits Prohibited

Article IV. Streets and Sidewalks

6.02.310	Streets and Sidewalks
6.02.320	Maintenance/Repair of Public Sidewalks
6.02.330	Sidewalks, Curbs and Planter Strips

6.02.340 Encroachment into Public Easement

Article V. Noise Nuisances

6.02.410 Prohibition on Excessive Noise
6.02.420 Noise Limits
6.02.430 Prohibited Noises
6.02.440 Exceptions to Noise Limits
6.02.450 Maximum Noise Limits for Certain Activities
6.02.460 Evidence of Noise Violation

Article VI. Water Service and Meters

6.02.510 Service Connection Maintenance

Chapter 6.03
PROPERTY IN THE RIGHT OF WAY

6.03.010 Signs in the Right of Way
6.03.020 Abandoned Personal Property in the Right of Way
6.03.030 City Authority to Remove
6.03.040 Notice Requirements
6.03.050 Exemption from Notice Requirements
6.03.060 Reclamation of Confiscated Personal Property and Signs
6.03.070 Disposal of Personal Property, Signs and Junk
6.03.080 Appeal of Confiscation
6.03.090 Exemption for Criminal Investigation
6.03.100 Enforcement – Minimum Requirements

Items without highlights are new or drawn from all other Titles.
Items highlighted in Yellow are from Title 7.
Items highlighted in Red are from Title 18.
Items highlighted in Blue are from Title 11.
Items highlighted in Green are from Title 15.
Items highlighted in Red are from Title 12.

6.02.060 Graffiti

A. Any property location in the City of Tigard that becomes a graffiti nuisance property is in violation of this title and is subject to its remedies.

B. Every responsible party who permits a property to become a graffiti nuisance property is in violation of this title and subject to its remedies.

6.02.070 Livestock/Poultry

No poultry or livestock, other than normal household pets, may be kept unless housed or retained within a fenced run at least 100 feet from any nearby residence except a dwelling on the same lot.

Article II. Property Development and Maintenance Requirements

6.02.110 Conditions of Approval

A failure to maintain a property in compliance with a condition of approval issued pursuant to the Community Development Code is declared to be a public nuisance in violation of this title.

6.02.120 Visual Clearance Requirements

All property within the city shall be maintained in compliance with the Visual Clearance Requirements of Section 18.795.030.

6.02.130 Fences and Walls

No fence or wall shall be erected except as in compliance with Section 18.745.050.C.

6.02.140 Accessory Structures

Constructing, placing, or maintaining an accessory structure in violation of the provisions of 18.510.060 is declared to be a public nuisance in violation of this title.

6.02.150 Insects and Rodents

It is prohibited to store any materials including wastes or maintain any grounds in a manner which may attract or aid the propagation of insects or rodents or create a health hazard.

6.02.160 Signs

Constructing, placing, or maintaining a sign in violation of the provisions of 18.780 is declared to be a public nuisance in violation of this title.

6.02.170 Storage in Front Yards

It is prohibited to store any boats, trailers, campers, camper bodies, house trailers, recreation vehicles or commercial vehicles in excess of ¾ ton capacity in a required front yard in a residential zone in violation of the provisions of 18.730.050.A.

18.795.030 Visual Clearance Requirements

A. At corners. Except within the CBD zoning district a visual clearance area shall be maintained on the corners of all property adjacent to the intersection of two streets, a street and a railroad, or a driveway providing access to a public or private street.

B. Obstructions prohibited. A clear vision area shall contain no vehicle, hedge, planting, fence, wall structure or temporary or permanent obstruction (except for an occasional utility pole or tree), exceeding three feet in height, measured from the top of the curb, or where no curb exists, from the street center line grade, except that trees exceeding this height may be located in this area, provided all branches below eight feet are removed.

C. Additional topographical constraints. Where the crest of a hill or vertical curve conditions contribute to the obstruction of clear vision areas at a street or driveway intersection, hedges, plantings, fences, walls, wall structures and temporary or permanent obstructions shall be further reduced in height or eliminated to comply with the intent of the required clear vision area.

****

18.745.050 Buffering and Screening

B. Buffering and screening requirements.

8. Fences and Walls.

a. Fences and walls shall be constructed of any materials commonly used in the construction of fences and walls such as wood, stone, rock or brick, or otherwise acceptable by the Director;

b. Such fence or wall construction shall be in compliance with other City regulations;

c. Walls shall be a minimum of six inches thick; and

d. Chain link fences with slats shall qualify for screening. However, chain link fences without slats shall require the planting of a continuous evergreen hedge to be considered screening.

****

6.07.40.125 Graffiti

A. Graffiti Nuisance Property

1. Any property location in the City of Tigard that becomes a graffiti nuisance property is in violation of this ~~section~~ chapter and is subject to its remedies.

2. Every responsible party who permits a property to become a graffiti nuisance property is in violation of this ~~section~~ chapter and subject to its remedies.

~~B. Graffiti Removal; Notice and Procedures~~

~~1. This subsection sets out procedures to be used in processing an infraction of Section 7.40.125, notwithstanding Subsections 7.40.030.C and 1.16.060.2 of this Code. Except as provided herein, other applicable provisions of Chapter 1.16 shall remain in effect.~~

~~2. The owner or occupant of any property within the City of Tigard shall remove any graffiti from that property within 14 days of the graffiti's appearance.~~

~~3. Whenever the Manager determines that graffiti exists on any property in the City, the Manager may issue an abatement notice. The owner or occupant shall have 14 days after the date of service of the notice to remove the graffiti.~~

~~4. The notice shall be served by addressing the notice to the owner or occupant and delivering it by personal service or by mailing it as certified mail. Service may also be accomplished by posting the notice in a clearly visible location on the subject property.~~

~~5. If the person who was served the notice is unable to remove, or cause to remove, the graffiti within the 14-day period due to a hardship, he or she may apply to the Manager for an extension of time in which to remove the graffiti. For purposes of this subsection, "hardship" includes but is not limited to serious illness or disability, extremely inclement weather that temporarily prevents removal of the graffiti, or other extraordinary circumstance.~~

~~6. If the graffiti is not removed within 14 days after serving notice on the owner or occupant, the Manager may cause a citation to be issued to the owner or occupant or both requiring the person to appear in Tigard Municipal Court.~~

~~7. Failure to remove the graffiti as required by this section is a violation punishable by a fine of up to one hundred dollars. Each day the graffiti remains after the notice is sent constitutes a separate offense.~~

~~8. The City Manager may adopt rules and procedures to implement this section.~~

Note: Deleting the above will make permitting a property to become a graffiti nuisance a Class I Civil Infraction subject to 1.16.

EXAMPLE ADMINISTRATIVE RULE – ADMINISTRATIVE FEE DETERMINATION

AR 01.16.410 Administrative Fees

Pursuant to TMC 1.16.410 staff will determine the amount of any administrative fee to be imposed for a Class I Civil Infraction using the following procedure with reference to the Administrative Fee Calculation Schedule shown as Exhibit 1 attached. The numbered steps below correspond to the numbered steps on the schedule.

A. Evaluate the respondent's role in causing and curing the violation in terms of:
    1. Effort
    2. Promptness of Response
    3. Degree of Cooperation
    4. Cause of the Violation
    5. Knowledge or Awareness
    6. Severity of the Violation.

B. Enter those evaluations in the Administrative Fee Calculation Schedule using the 1, 2, or 3 ratings shown in the schedule. This may be done using the Excel version of the schedule or manually, using a hard copy. Excel will automatically perform the mathematical calculations marked with an asterisk (*) below. For any ratings other than 1 enter explanatory notes on page two of the schedule.
    7. Add the six evaluation ratings.*

C. Determine the Full Base Penalty.
    8. Multiply by twenty-five dollars ($25.00) to determine the Full Base Penalty.*

D. Discount Penalty for Timely Compliance.
    9. Enter 1 if compliance was achieved after the given timeline but within 30 days, 0 if not within 30 days.
    10. Discount the Full Base Penalty (#8) by 50% for compliance within 30 days.*
    11. Enter 1 if compliance was achieved within the given timeline, 0 if not.
    12. Reduce penalty to zero for compliance within timeline.*

E. Determine Late Compliance Penalty.
    13. Enter the number of months in violation with 0 for less than one month.
    14. Multiply the number of months times the Full Base Penalty (#8) to determine the Late Compliance Penalty.*

F. Determine Total First Violation Penalty
    15. If #9 + #11 is greater than zero, enter zero, otherwise add #8 + #14 to determine Total First Violation Penalty.*

G. Modify Penalty for Compassionate Adjustment.
    16. Enter a percentage for a Compassionate Adjustment, if appropriate, e.g., if respondent is elderly, incapacitated, or otherwise impaired from coming into prompt compliance. Choose 0, 25, 50, or 100%.
    17. Multiply #15 by #16 to determine Adjusted First Violation Penalty.*

H. Increase Penalty for Repeat Violations.
    18. Enter 1 if this is the second such violation within 24 months, otherwise enter 0.
    19. Multiply #18 by $250.00 to determine Second Repeater Penalty.*

20. Enter 1 if this is the third such violation within 24 months, otherwise enter 0.
21. Multiply #20 by $250.00 to determine Third Repeater Penalty.*

I. Determine Total Penalty.

22. Determine Total Penalty This Violation by:
    a. If #16 is greater than zero, add #17 + #19 + #21,* otherwise:
    b. If #9 + #11 = zero, add #15 + #19 + #21,* otherwise:
    c. Let #22 = #15.*

Attachment #9 - Calculation Sheet

City of Tigard Nuisance Code Enforcement -- Administrative Fee Calculation

Instructions: Enter your rating for 1-6 (required), and 8, 10, 12, 15, 17, 19 as appropriate.

1.	EFFORT	1	1 = Active attempt to correct violation. 2 = Minor attempt to correct violation. 3 = Little or no effort to correct violation
2.	PROMPTNESS OF RESPONSE	1	1= Very prompt response. 2= Delayed response. 3 = Dilatory response.
3.	DEGREE OF COOPERATION	1	1= Highly cooperative. 2 = Reluctant but voluntary. 3 = Uncooperative.
4.	CAUSE OF THE VIOLATION	1	1 = Unintentional or caused by others. 2 = Negligence. 3 = Intentional or Reckless Disregard.
5.	KNOWLEDGE/AWARENESS	1	1 = Unaware action constituted a violation. 2 = Reasonably should have known. 3 = Aware from previous enforcement, permits, etc.
6.	SEVERITY OF THE VIOLATION	1	1 = No fire, life safety, injury, or property damage hazard. 2 = No fire, life safety, or injury hazard; some damage to property or environment. 3 = Fire, life safety, or injury hazard; significant damage. to property or environment.
7.	SUM OF 1 - 6	6	
		X $25.00	
8.	FULL BASE PENALTY	$150.00	(Sum of 1 -6) x $25.00
	TIMELY COMPLIANCE		
9.	30 DAY COMPLIANCE	0	1 = Yes, if complied after Time Line but within 30 days. 0 = Not within 30 days.
10.	DISCOUNTED BASE PENALTY	0	Base Penalty Discounted 50% for compliance within 30 days.
11.	TIME LINE COMPLIANCE	0	1 = Yes, if complied within Time Line. 0 = Not within Time Line.
12.	TIME LINE PENALTY	0	Base Penalty Reduced to zero for compliance within Time Line.
	LATE COMPLIANCE		
13.	MONTHS IN VIOLATION	0	Months in violation from first notice. 0 = <1; 1 = >1; 2 = >2; 3 = >3.
14.	LATE COMPLIANCE PENALTY	$0.00	Number of months times base penalty.
15.	TOTAL FIRST VIOLATION PENALTY	$150.00	TOTAL PENALTY FOR FIRST VIOLATION
16.	COMPASSIONATE ADJUSTMENT	0%	Enter 0, 25, 50, OR 100 (leave off the percent sign)
17.	ADJUSTED FIRST VIOL. PENALTY	$150.00	TOTAL ADJUSTED PENALTY FOR FIRST VIOLATION
	REPETITION OF THE SAME VIOLATION WITHIN 24 MONTHS:		
18.	2ND REPEAT VIOLATION	0	1 = Yes, 0 = No for second same violation withing 24 months.
19.	2ND REPEATER PENALTY	0	$250.00
20.	3RD REPEAT VIOLATION	0	1 = Yes, 0 = No for third same violation withing 24 months.
21.	3RD REPEATER PENALTY	0	$250.00
22.	TOTAL PENALTY	$150.00	TOTAL PENALTY THIS VIOLATION

Please complete memoranda on othe side.

City of Tigard Nuisance Code Enforcement -- Administrative Fee Memoranda

INSTRUCTIONS: Enter notes as to the basis for the entries on page 1.

1. EFFORT

2. PROMPTNESS OF RESPONSE

3. DEGREE OF COOPERATION

4. CAUSE OF THE VIOLATION

5. KNOWLEDGE/AWARENESS

6. SEVERITY OF THE VIOLATION

8. 30 DAY or TIMELINE COMPLIANCE

15. COMPASSIONATE ADJUSTMENT

AIS-633			**Item #: 6.**
Business Meeting			
Date:	09/13/2011		
Length (in minutes):	10 Minutes		
Agenda Title:	Award Contract for Citywide Collection Services to AllianceOne Receivables Management, Inc		
Prepared For:	Nadine Robinson	**Submitted By:**	Nadine Robinson Administrative Services
Item Type:	Motion Requested	**Meeting Type:**	Local Contract Review Board

ISSUE

Shall the Local Contract Review Board award a contract for collection services to AllianceOne Receivables Management, Inc.?

STAFF RECOMMENDATION / ACTION REQUEST

Staff recommends the Local Contract Review Board award the contract for collection of delinquent city accounts to AllianceOne Receivables Management, Inc. and authorize staff to finalize the contract with the vendor.

KEY FACTS AND INFORMATION SUMMARY

The City of Tigard has utilized outside vendors to collect on overdue account receivables since the 1990's. The most recent contract was with AllianceOne Receivables Management, Inc. and was a cooperative procurement with the State of Oregon. The contract expired June 30, 2011.

The city had the opportunity to partner with Washington County and the City of Beaverton to issue a joint Request for Proposal(RFP) for collection services. A joint cooperative procurement is authorized under ORS 279A.210. The joint RFP was advertised in the Daily Journal of Commerce on June 2, 2011 and posted on the State of Oregon Procurement Information Network. The RFP closed on June 24, 2011 with eighteen proposals being received. An evaulation team of three county employees and two city employees met and scored the proposals. The top two firms, J.C. Christensen & Associates and AllianceOne Receivables Management, Inc. were selected for interviews. The evaluation team interviewed and scored both firms. While AllianceOne Receivables Management, Inc. received a slightly lower overall score, they were the evaluation team's top choice based on their previous experience with collections for municipal and county agencies. AllianceOne Receivables Management, Inc. has provided public sector collection services for close to 30 years. Some of their current clients include the Cities of Bend and Salem, the Oregon Judicial Department and Deschutes County. J.C. Christensen & Associates is an excellent company however they have no municipal government or court collection experience.

The contract allows an 18% collection fee for in-state and out-of state collections. The fee for litigation collection services is 30%. Litigation services will only be initiated with the prior consent of the city.

A new agreement with AllianceOne Receivables Management, Inc. will include an option to extend the contract for up to four one-year periods based upon the city's review of services and pricing structure each year and approval of each subsequent year's budget for the collection services expense.

OTHER ALTERNATIVES

Do not approve the contract award and direct staff to issue an individualized request for proposal for collection services.

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

N/A

DATES OF PREVIOUS COUNCIL CONSIDERATION

The Local Contract Review Board has not considered this request previously.

Fiscal Impact

Cost: $11,400

Budgeted (yes or no): No

Where budgeted?:

Additional Fiscal Notes:

Previously the city received payment from the vendor, less the fee for collection. With this contract the city would receive the gross collections and be invoiced for the agency's collection fee. The change will save staff time in tracking payments and determining how the payment needs to be distributed as well as make it easier to audit accounts. Based on 2010 collections, the cost to the City is anticipated to be $11,400 annually. A request for a supplemental budget amendment will be included in the Finance Department's supplemental appropriation amendment to the FY 2012 budget being presented to City Council on October 11, 2011.

Attachments

Score Sheet

Collection Agency RFP Score Sheet - CORRECTED

Score Sheet for Proposers

June 27, 2011

Criteria	Eval#1	Eval #2	Eval #3	Eval #4	Eval #5	Total
AllianceOne Receivables	283	243	273	283	278	1360
Asset Recovery Group, Inc.	200	215	195	205	180	996
California Service Bureau	224	219	254	274	219	1190
Capital Credit & Collection	243	188	218	218	208	1074
Capital Recovery Systems, Inc.	174	204	209	234	234	1056
J.C. Christensen & Associates	288	253	288	263	278	1370
DECA Financial Services LLC	270	175	250	215	245	1156
Farrell & Associates	240	140	175	190	200	943
Fidelity Collection Service	280	280	250	230	220	1260
Municipal Services Bureau (MSB)	285	205	285	271	265	1311
NCO Financial System, Inc.	277	257	277	262	262	1333
Progressive Financial Services	268	238	268	262	258	1295
Professional Credit Service	280	233	283	271	248	1313
Professional Bureau of Collections	162	155	155	198	185	857
RSI Enterprises	275	243	273	264	278	1331
Valley Credit Service, Inc.	237	157	212	229	232	1069
Western Collection Bureau	119	99	154	159	109	641
Windham Professionals Inc.	284	229	264	256	274	1309

Interview Score						Total
	AllianceOne	28	28	28	27	28	139
	J.C. Christensen & Associates	28	27	27	26	28	136

Total score	**AllianceOne**	**Interview**	**139**	**Proposal**	**1360**	**1499**
	J.C. Christensen & Associate	**Interview**	**136**	**Proposal**	**1370**	**1506**

AIS-593			**Item #: 7.**
Business Meeting			
Date:	09/13/2011		
Length (in minutes):	25 Minutes		
Agenda Title:	Public Hearing to Adopt Revisions to Tigard's Public Contracting Rules		
Prepared For:	Joseph Barrett	**Submitted By:**	Joseph Barrett Financial and Information Services
Item Type:	Resolution Public Hearing - Informational	**Meeting Type:**	Local Contract Review Board

ISSUE

Shall the Local Contract Review Board approve a resolution revising Tigard's Public Contracting Rules?

STAFF RECOMMENDATION / ACTION REQUEST

Staff recommends the Local Contract Review Board approve the resolution revising the city's Public Contracting Rules.

KEY FACTS AND INFORMATION SUMMARY

Tigard's Public Contracting Rules (Rules) have been in effect, with no revisions, since early 2006. The city has remained in compliance with applicable State of Oregon public contracting and purchasing laws, statutes and rules; however, staff suggests that it is time for the LCRB to review proposed updates to the Rules. A matrix of the key revisions to the Rules is attached for review.

Staff recommends that the LCRB approve the resolution establishing the city's revised Rules along with the attached supporting findings so the city will have revised Rules in place on October 15, 2011. In addition, the city's Purchasing and Contracting Manual (Manual), used by staff as a guide to the purchasing and contracting processes, should be revised to reflect the changes to the Rules. Staff recommends that the LCRB authorize staff to make the necessary changes to the Manual to reflect the revised Rules.

OTHER ALTERNATIVES

Do not approve the revised Public Contracting Rules and leave the current Rules in place.

Do not approve the revised Public Contracting Rules and direct the city to follow the Attorney General's Model Public Contracting Rules beginning October 15, 2011.

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

N/A

DATES OF PREVIOUS COUNCIL CONSIDERATION

Current rules adopted January 10, 2006.
Discussion at the June 21, 2011 workshop meeting.

Changes to the proposed rules stemming from the June 21st workshop meeting:

- Changes the direct appointment thereshold for personal service contracts to $20k (was proposed at $25k)
- Changed the approval process for Intergovernmental Agreements (IGAs) by making the City Council the

sole body to approve unless they delegate the City Manager with the same authority the position has for general contracts. Original proposed rules had only the LCRB approving IGAs.

Attachments

Resolution

Revised PCRs

Exemption Findings

PCR Changes Matrix

PCR Threshold Memo

Previous Council Adoption Agenda Item Summary

CITY OF TIGARD, OREGON
LOCAL CONTRACT REVIEW BOARD
RESOLUTION NO. 11-

A RESOLUTION ADOPTING REVISED PUBLIC CONTRACTING RULES.

WHEREAS, the City of Tigard previously adopted and used rules applicable to public contracting, including rules covering procedure and rules governing exemptions; and

WHEREAS, legislative changes to statutes applicable to public contracting were incorporated into Tigard's rules to remain compliant with the statutes; and

WHEREAS, the City Council determines that the revised draft rules better suit the needs of the city than the proposed Attorney General model rules; and

WHEREAS, the City of Tigard finds that there will be a future need for the city to enter into public contracts and that it is therefore appropriate for the city to adopt Public Contracting Rules, consistent with the state Public Contracting Code; and

WHEREAS, the City of Tigard's Purchasing and Contracting Manual will be revised to meet the requirements established under the revised Public Contracting Rules.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The City Council, as the Local Contract Review Board, hereby adopts rules attached as Exhibit A pursuant to the authority granted the Board by Tigard Municipal Code Section 2.46. These rules shall apply to all contracting, purchasing, and disposing of surplus personal property by the City of Tigard.

SECTION 2: The Local Contract Review Board adopts the findings in support of exemptions included in the attached Exhibit B.

SECTION 3: The model rules adopted or to be adopted by the Attorney General do not apply to contracting for the City of Tigard.

SECTION 4: The City Council, acting as the Local Contract Review Board, hereby establishes a revised Purchasing and Contracts Manual reflecting the new Public Contracting Rules.

SECTION 5 This resolution takes effect immediately upon adoption and the rules adopted under Section 1 shall be effective as to contracts that have not been advertised or entered into as of August 1, 2011. However, the public contracting rules in existence prior to this resolution shall remain in effect as to any contract entered into prior to August 1, 2011 or for which an invitation to bid or request for proposal is or has been advertised prior to August 1, 2011.

PASSED: This _____ day of _____ 2011.

_____
Local Contract Review Board Chair - City of Tigard

ATTEST:

_____
Local Contract Review Board Recorder - City of Tigard

CITY OF TIGARD - LOCAL CONTRACT REVIEW BOARD
PUBLIC CONTRACTING RULES

The following Public Contracting Rules (PCRs) have been adopted by the City Council acting as the Local Contract Review Board pursuant to the authority granted to the Board by Tigard Municipal Code Section 2.46. The rules apply to all contracting, purchasing, and disposing of personal property by the City of Tigard but do not apply to acquisition, sale or other transfer of real property.

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PCR 10.000 - COMPETITIVE PROCESS REQUIRED, EXEMPTIONS

10.010 COMPETITIVE PROCESS, EXEMPTIONS AND DEFINITIONS

A. All public improvement contracts shall be based upon competitive bidding unless meeting an exception listed here within. All other public contracts shall be based upon competitive bidding or competitive proposals (collectively "formal competitive process"), except the following:

1. Contracts made with other public agencies are not subject to these rules, except to the extent that the rules explicitly allow certain transactions with other public agencies.

2. Contracts which are exclusively for personal services as determined by application of Public Contract Rule (PCR) 70.010. Such contracts may include incidental materials such as written reports, architectural or engineering renderings, and similar supplemental materials.

3. Grants and contracts evidencing acceptance of donations by the City.

4. Contracts for professional or expert witnesses or consultants relating to existing or potential litigation or other legal matters.

5. Transfers of real property or any interest in real property.

6. Energy savings performance contracts.

7. Contracts relating to bonds, certificates of participation, and similar debt repayment obligations, or to program loans, or to public investments.

8. Employee benefit plans.

9. Contracts specifically exempt under the following rules:

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B. As used in this Section:

1. "Board" means the City of Tigard Local Contract Review Board.

2. "City" or "The City" means Tigard, Oregon.

3. Competitive bidding" means a competitive sealed bid procedure for awarding contracts following the rules set forth in PCR 30.000.

4. "Competitive quotes" means the solicitation and receipt of offers by the City from competing vendors, The solicitation may be by advertisement or by the City initiating a request to vendors to make an offer. The solicitation and the offer may be written or oral.

5. "Invitation to Bid" means the solicitation of competitive bids in which price among those bidders meeting specifications will be the predominant award criterion.

6. "LCRB" means the City of Tigard Local Contract Review Board.

7. "Personal property" means everything subject to ownership which is not real property and has exchangeable value.

8. "Price Agreement" means an agreement in which the vendor agrees to supply all goods or services of a particular type ordered by the City within a specified time period at a specified price and on terms specified in the price agreement.

9. "Public agency" means any federal, state or local government, or any department of any federal, state or local government, including any local school or education City or any special district.

10. "Request for Proposal" means the formal solicitation of competitive written proposals to be used as a basis for making an acquisition or entering into contract when price will not be the predominant award criterion, following the rules set forth in Section 30.010 to 30.205.

11. "Service" means work performed to meet a demand, especially work that is not connected with manufacturing a product.

12. "Service contract" means a contract that calls primarily for a contractor's time and effort rather than an end product.

13. "Telecommunications Services" means the lease or rental of the use of voice and data transmission facilities or services, or of central office services, but does not include acquisition of switch or station equipment or acquisition or installation of wire and cable.

C. When a contract is exempt from a formal competitive process, the City shall use reasonable efforts to ensure it is obtaining goods or services on the best terms (price, quality and other terms). Those efforts shall normally include seeking out potential contractors and determining price and availability by use of informal quotes or other similar methods. The City shall not knowingly purchase goods or services if it

knows that comparable goods or services are available at lower cost on otherwise similar terms.

10.015 EXEMPTION OF CONTRACTS UNDER CERTAIN DOLLAR AMOUNTS

A. Public Contracts Other Than Public Improvements Contracts

The City may, in its discretion, enter into public contracts other than public improvements contracts without a formal competitive process if the value of the contract does not exceed $100,000. If this exemption is applied, the City must use either the small contract or intermediate contract procedures set forth in Subsections C and D of this section. This exemption does not authorize City employees or officials to enter into an agreement in excess of their dollar authority to bind the City.

B. Public Improvements Contracts

The City may, in its discretion, enter into public improvement contracts without competitive bidding if the value of the contract does not exceed $100,000. If this exemption is applied, the City must use either the small contract or intermediate contract procedures set forth in Subsections C and D of this section. This exemption does not authorize City employees or officials to enter into an agreement in excess of their dollar authority to bind the City.

C. Small Contract Procedures

When the amount of the contract does not exceed $10,000, the City may award the contract from any source known to the City to provide goods or services of acceptable quality at competitive prices. The City may not knowingly use a more expensive source if the goods or services of equivalent quality are readily available from alternate sources on the same terms at lower prices.

D. Intermediate Contract Procedures

When the amount of the contract does not exceed $100,000, but is more than $10,000, the City may award the contract after seeking at least three competitive quotes or proposals. The City shall keep a written record of the source and amount of the quotes or proposals received. If three suppliers are not available, a lesser number of actual quotes or proposals will suffice provided that a written record is made of the good faith effort to obtain the quotes or proposals.

E. No Division or Fragmentation of Contracts

A procurement of goods and/or services may not be artificially divided or fragmented to allow use of the small or intermediate contract procedures unless an exception or exemption is granted under these Rules.

F. Amendment of Small and Intermediate Contracts

A contract awarded under the small or intermediate contract procedures may not be amendment if the amendment would result in a total contract price that exceeds the maximum amount for the procedure used to award the original contract.

10.020 CONTRACTS FOR PRICE REGULATED ITEMS

The City may, without formal competitive process, contract for the purchase of the goods or services where

the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

10.025 LIBRARY PERIODICALS

Purchases for the library of subscriptions for periodicals including journals, magazines, and similar publications may be made without formal competitive process. However, this provision does not authorize the use of a higher priced source if a lower price source of acceptable quality is known to be available.

10.030 ADVERTISING CONTRACTS

The City may purchase advertising without formal competitive process.

10.035 EQUIPMENT MAINTENANCE, REPAIR, AND OVERHAUL

Contracts for equipment maintenance, repair, or overhaul may be let without a formal competitive process, subject to the following conditions:

A. The services and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

B. The services and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.

The City should, where possible, use a price agreement rather than relying on this exception.

10.040 PURCHASES UNDER ESTABLISHED PRICE AGREEMENTS

When the price of goods and services has been established by a price agreement entered into by a competitive process, the City may purchase goods and services from the supplier without a subsequent competitive process for the duration of the price agreement.

10.045 GASOLINE, DIESEL FUEL, HEATING OIL, LUBRICANTS AND ASPHALT

The City may, without a competitive process, purchase gasoline, heating oil, lubricants, and asphalt subject to the following:

A. Prior to selection of the contractor, the City gets quotes from at least three vendors in the area;

B. The City makes its purchase from the least expensive source of those providing quotes; and

C. The City retains written justification for the purchase made.

10.050 INVESTMENT CONTRACTS

The City may, without a formal competitive process, 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.

10.055 INSURANCE CONTRACTS

Contracts for insurance where either the annual or aggregate premium exceeds $5,000 must be let by a formal competitive process or by one of the following procedures:

A. Agent of Record.

The City may appoint a licensed insurance agent ("agent of record") to perform insurance services 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 agent of record is given responsibility. Proposals for coverage are presented to the City Manager or designee for approval:

1. Prior to the selection of an agent of record, 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 area. The advertisement shall generally describe the nature of the insurance that the City will require. If the amount of the annual premium for insurance other than employee benefits insurance is likely to exceed $10,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state.

2. An agent's appointment shall not exceed a period of 5 years, but the same agent(s) may be selected in a subsequent period. Agents must qualify the appointments prior to each period as if each appointment period were the first.

3. In selecting an agent of record, the City shall select the agent(s) most likely to perform the most cost effective services at a level of competence acceptable to the City.

B. Specific Proposals for Insurance Contracts.

The City may solicit proposals from licensed insurance agents for the purpose of acquiring specific insurance contracts subject to the following conditions:

1. 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 that contract. Such efforts shall include public advertisements in at least one newspaper of general circulation in the area. If the amount of annual premium for insurance other than employee benefits insurance is likely to exceed $10,000 per year, such notice shall also include a public investment in at least one insurance trade publication of general circulation in the state.

2. The City shall select an agent on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.

10.060 EMPLOYEE BENEFIT INSURANCE

The City may purchase employee benefit insurance without formal competitive process.

10.065 OFFICE COPIER PURCHASES

A. The City may enter into contracts for the purchase or lease of photocopiers without formal competitive process.

B. In exercising this exemption, the City shall consider the operating capabilities, limitations, and cost of each brand or model as well as cost and select the brand and vendor that will produce the best combination of performance and cost per copy for each application.

10.070 SOLE-SOURCE PROCUREMENT

The City may purchase without a formal competitive process if there is only one seller (sole seller) of a product or service of the quality required, or if the efficient utilization of existing equipment or supplies requires specification of a compatible product for which there is only one seller, The determination of a sole source must be based on written findings as required by ORS 279B.075. A sole source contract may be awarded only after approval of the findings by the City Manager, Assistant City Manager, or designee. To the extent reasonably practical, the City shall negotiate with single sellers to obtain the best possible contract terms for the City.

10.075 CONTRACT AMENDMENTS (INCLUDING CHANGE ORDERS AND EXTRA WORK)

A contract amendment for additional work, including change orders, extra work, field orders, or other change in the original specifications which increases the original contract price, may be made with the contractor without a formal competitive process subject to the following conditions:

A. The original contract was let by formal competitive process, and the contract documents included unit prices or bid alternates were provided that provide a basis for determining the cost for additional work, and a binding obligation exists on the parties covering the terms and conditions of the additional work; or

B. The amount of the aggregate cost increase resulting from all amendments does not exceed 25% of the initial contract. Amendments made pursuant to Section A of this rule are not included in computing the aggregate amount under this section. The LCRB may, at its sole discretion, approve amendments exceeding the 25% aggregate total if the Board finds it to be in the public's best interest to do so.

10.080 AFFIRMATIVE ACTION CONTRACTS

A. Public contracts may be awarded without a formal competitive process pursuant to a specific Affirmative Action plan. Affirmative Action is a program designed to insure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age, or physical or mental handicap, including but not limited to, personnel practices of contractors, "set-aside" programs, and minority business enterprises. These rules shall not be construed to prohibit engaging in practices designed to promote affirmative action goals and policies.

B. In carrying out the affirmative action policy, by appropriate ordinance, resolution or administrative rule, the City may limit competitive bidding on a public contract for procurement of goods and services or on any public contract estimated to cost $100,000 or less to contracting entities owned or controlled by persons described in Subsection A of this section.

10.085 PURCHASES OFF CONTRACTS BY OTHER PUBLIC AGENCIES

A. The City may purchase any good or service without a formal competitive process if the good or service is purchased from a bidder that has been awarded a contract for the same good or service, whether by a requirements contract or by individual contract by another public agency through its public contract

purchasing procedures if:

1. The original contract was awarded by a competitive bid or proposal process or pursuant to an exemption equivalent to an exemption provided by these rules.

2. The contract allows other public agency usage of the contract. A contract that does not prohibit other public agency usage of the contract shall be deemed to allow other public agency use, unless the agency that awarded the contract objects to the use.

3. The purchase is on the same terms, or terms which are no less favorable to the City in all material respects, as the contract awarded by the public agency.

B. A purchase under the Oregon Cooperative Purchasing Program or any similar federal or regional program, including the Electronic Government Act of 2002 (10 USC 381) shall be considered an exempt purchase under this exemption.

10.090 OIL OR HAZARDOUS MATERIAL REMOVAL

A. The City may enter into public contracts without a formal competitive process when ordered to clean up oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, especially 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 material that has created an emergency condition. in exercising its authority under this exemption, the City shall:

1. 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.

2. Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup.

3. Record the measures taken under Subsection 1 of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selection the contractor selected.

B. The City shall not contract pursuant to this exemption in the absence of an order from DEQ to clean up a site with a time limitation that would not permit hiring a contractor under the usual formal competitive process procedures.

10.095 CONTRACTS WITH QUALIFIED REHABILITATIVE FACILITIES

The City may enter into contracts with qualified rehabilitative facilities providing employment for disabled individuals under ORS 279.835 to 279.855 without a competitive process. The City shall contract with such agencies when required by law. To the extent competition exists among qualified non-profit agencies, the City shall select the qualified non-profit agency offering the lowest price for an acceptable level of service.

10.100 AMMUNITION

The City may enter into contracts for the purchase of lethal and non-lethal ammunition, both for service and for training, without a formal competitive process.

10.105 PUBLIC IMPROVEMENT CONTRACTS INVOLVING DESIGN OR CONSTRUCTION MANAGEMENT

The City may enter into public improvement contracts without competitive bidding if the contracts involve design or construction management or require expertise beyond normal construction work. Unless exempt under some other exemption, a competitive proposal process must be used. One of the following specific processes shall be followed:

A. Construction Manager/General Contractor

The City may select a person or firm to act as a Construction Manager/General Contractor (CM/GC) to construct public improvements by means of a competitive proposal process.

1. A CM/GC performs specified Construction Manager services in addition to traditional General Contractor services. A CM/GC contract shall require full performance within a negotiated Guaranteed Maximum Price (GMP). The basis for payment shall be reimbursable direct costs plus a fee constituting full payment for work and services rendered, which together shall not exceed the GMP.

2. The solicitation documents shall include:

a. A description of the evaluation process and criteria. The criteria may include cost, quality, experience, availability, commitment to timely completion, and other factors.
b. The process to be followed for establishing the guaranteed maximum price.
c. A description of the circumstances under which any of the following activities may be authorized and undertaken for compensation prior to establishing the GMP, but only after unit prices are established:
   1. Early procurement of materials and supplies;
   2. Early release of bid packages for such things as site development; and
   3. Other advance work related to critical components of the project.

3. The contract documents shall include:

a. A description of the method by which the CM/GC shall competitively select contractors and subcontractors.
b. Either the maximum guaranteed price or a process for establishing a guaranteed maximum price.
c. A description of the situations in which the CM/GC may perform the work of the improvement without subcontracting, including any requirement that the CM/GC compete with others to do the work and the work that the CM/GC may perform directly without a competitive process.
d. The standards or factors under which changes or additional work 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 of the GMP.
e. The disposition of any cost savings resulting from completion of the work below the GMP, including the CM/GC share, if any, in those cost savings. Normally, the cost savings should accrue to the City.
f. The items or categories of items are eligible for cost reimbursement within the GMP.
g. A provision for a final audit adjustment and process.
h. 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.

i. Any economic incentives, the specific criteria that apply and their relationship to other financial elements of the Contract (including the GMP).

B. Design-Build Contracts

1. A design-build contract is one in which a single entity designs and constructs a public improvement. Design-build contracts shall only be used if City staff has the expertise and experience to administer a design-build contract. The design-build process may be used to:

a. Obtain 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. Integrate 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. Reduce 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. Shorten 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. Obtain 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. A design-build contractor must have an Oregon licensed design professional(s) on staff that will be assigned to the City's project. The design-build contractor must disclose in its proposal the name of the Oregon licensed design professional(s) and verify that the professional(s) will be the one(s) providing primary design services to the City.

3. A design-build contractor awarded a contract shall provide additional security as required by ORS 279C.380(1)(a). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

4. The level or type of design services required must be clearly defined within the solicitation documents and contract, along with a description of the level or type of any design services previously performed for the project. The services to be performed shall be clearly delineated as either design specifications or performance standards.

5. The contract shall clearly identify the liability of design professionals, shall include requirements for professional liability insurance, and shall clearly identify the extent of any indemnity or warranty.

C. Other Public Improvement Contracts Where Quality Is An Issue

In many situations, including those projects that require a higher than normal level of expertise or skill, quality of the final product may be important beyond meeting minimum specifications. In those situations, the City may use a request for proposal process, provided that the cost factor constitutes at least 75% percent of the total evaluation score. In scoring the cost factor, the proposer submitting the lowest cost amount shall receive the maximum possible score for the cost factor, and the scores of the

other proposers shall be reduced by the percentage by which their cost exceeded the lowest cost. For example, if the maximum score for the cost factor is 80, the lowest cost proposer would get a score of 80. A proposer with a cost that is 10 percent higher would have the score reduced by 10 percent (8 points), to 72.

10.110 INDIVIDUAL EXEMPTIONS

A. The City may exempt a particular contract or contracts from formal competitive process requirements which are not otherwise exempted under these rules. Staff shall prepare an informational packet for the Board when requesting the declaration of an individual exemption that contains the following details:

1. The nature and scope of the project or purchase;

2. Estimated cost of the project or purchase;

3. A narrative description of the cost savings anticipated by the exemption from the formal competitive process and the reasons the formal competitive process would be inappropriate;

4. Proposed alternative contracting and purchasing practices to be employed; and

5. The estimated date by which it would be necessary to let the contract.

B. The Board may require such additional information as it deems necessary to determine whether a specific contract is to be exempt from the formal competitive process.

C. The Board shall hold a public hearing and adopt findings justifying the individual exemption. The findings shall at a minimum address include the findings required by ORS 279B.085(3) for contracts other than public improvements or ORS 279C.335 for public improvement contracts.

D. Notification of the public hearing shall be published in a newspaper of general circulation in the City a minimum of 14 days prior to the hearing. Notification shall be published in a trade newspaper of general circulation in the state if required by the Public Contracting Code.

E. The notice shall state that the public hearing is for the purpose of taking comments on the City's draft findings for an exemption from the formal competitive process requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the City, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment.

F. At the public hearing, the City shall offer an opportunity for any interested party to appear and present comment.

G. If the City is required to act promptly due to circumstances beyond its control that do not constitute an emergency, notification of the public hearing can be published simultaneously with the City's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

10.115 CLASS EXEMPTIONS

A. The Board may exempt certain public contracts or classes of public contracts from the formal

competitive process requirements by amending these rules upon approval of the following findings:

1. It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts;

2. The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the City. In making such findings, the Board may consider the type, cost, amount of the contract, number of persons available to bid, and such other factors as may be deemed appropriate; and

3. The exemption otherwise substantially supports the public interest in a way that could not be achieved under existing rules.

B. The Board shall adopt a class exemption only after a duly noticed public hearing. The notice of the hearing shall be posted in full public view in the City Hall and published in a newspaper of general circulation at least 14 days prior to the hearing. If the exemption involves a public improvement, the notice shall also be published in a trade publication of statewide circulation.

10.120 JUSTIFICATION OF PUBLIC IMPROVEMENT CONTRACTS AWARDED OTHER THAN BY COMPETITIVE BIDDING

Upon completion of and final payment for any public improvement contract in excess of $100,000 for which the City did not use the competitive bidding process, the City shall prepare and deliver to the Local Contract Review Board an evaluation of the public improvement project. The evaluation shall include but not be limited to:

A. The actual project cost as compared with original project estimates.

B. The amount of any guaranteed maximum price.

C. The number of project change orders issued.

D. A narrative description of successes and failures during the design, engineering and construction of the project.

E. An objective assessment of the use of the alternative contracting process as compared to the findings required by ORS 279C.335.

Evaluations required by this section shall be made available for public inspection and shall be completed within 30 days of acceptance of the project.

10.125 SOFTWARE

The City may award a contract for software without a formal competitive process if it is determined that little to no competition exists for the required software. In determining whether or not competition exists, the City may consider the following factors;

A. The extent to which software is able to be integrated with City systems including both hardware and software.

B. The stability of the software company, which shall include:

1. The software's track record in the industry;
2. The software's companies financial standing; and
3. The frequency of upgrades that enhance the software.

C. The overall cost of the software, which shall include the City's internal costs of upkeep on the software.

Contracts for annual software maintenance may also extend past the standard five (5) year maximum contract terms detailed in these rules so long as maintaining the software continues to be in the Citys' best interest.

10.130 TELECOMMUNICATION SERVICES

The City may award a contract for telecommunications services without a formal competitive process if it determines that no competition exists among services suppliers. In determining whether competition exists, the City may consider the following factors:

A. The extent to which alternative providers exist in the relevant geographic and service market. The relevant market will vary from service category to service category and cannot be predetermined in advance.

B. The extent to which alternative services offered are comparable or substitutable in technology, service provided, and performance. For example, if the City's requirement is for digital services, analog services are not comparable or substitutable.

C. The extent to which alternative providers can respond to the City's interests in consistency and continuity of services throughout its service area, volume discounts, and centralized management. The City must document for the record its findings on these factors or any other factors used in determining whether competition exists. In developing its findings, the City may solicit information by any means, including informal discussions or correspondence or through a formal Request for Information.

10.135 DEVELOPER PROVISION OF PUBLIC IMPROVEMENTS

At times, private developers may provide work on public improvements for the City as required by a condition of land use approval or to comply with a land use approval or as required by a development agreement with the City. The developer in those circumstances is conclusively deemed to be a sole source for the provision of the public improvements, without the need for findings. No competitive process is required to enter into a development agreement that includes the provision of public services by a developer or for a developer to provide and the City to accept public improvements as required by a condition of approval.

There are also times when the City may contract with a developer to provide services on a public improvement due to the developers work in the area even through the work may not be a condition of land use. In these circumstances, the City must provide determination that there will be significant savings to the City to contract with the developer. This determination must be made in writing and made part of the project's permanent file. In these cases the developer shall conclusively deemed to be a sole source for the provision of the public improvement. No competitive process is required to enter into a public improvement contract for the developer to provide services on the public improvements if the savings are determined to be significant enough to warrant such an exemption.

PCR 15.000 - PRICE AGREEMENTS

15.010 PRICE AGREEMENTS

The City may enter into price agreements providing the following conditions are met:

A. The contract is awarded by a formal competitive process.

B. The term of the contract including renewals does not exceed 5 years.

15.015 MULTIPLE PRICE AGREEMENTS PERMITTED

The City may enter into price agreements with more than one supplier for the same goods or services.

PCR 20.000 - BRAND NAMES OR MARKS

20.010 SPECIFICATION OF PARTICULAR BRAND NAMES OR PRODUCTS

A. Specifications for public contracts shall not expressly or implicitly require any product of any particular manufacturer or seller except pursuant to an exemption under PCR 20.015 (Copyrighted Materials), 20.020 (Single Manufacturer or Compatible Products), 20.025 (Product Pre-qualification), or 20.030 (Brand Name or Mark Exemption Applications).

B. If there is no other practical method of specification, the City may designate a particular brand name, make or product "or equal", but this practice should be avoided whenever possible.

20.015 COPYRIGHTED MATERIALS

The City may specify a specific copyrighted product. This exemption does not include patented or trade mark goods.

20.020 SINGLE MANUFACTURER OR COMPATIBLE PRODUCTS

A. If there is only one manufacturer or seller of a product of the quality required, or if the required product is data processing equipment which will be used for research where there are requirements for exchange of software and data with other research establishments, or if the efficient utilization of the existing equipment or supplies requires a compatible product of a particular manufacturer or seller, the City may specify such particular product subject to the following conditions:

1. The product is selected on the basis of the most competitive offer considering quality and cost. The term "cost" includes not only the product price, but also other items of expense such as costs related to quality of conversion.

2. Prior to awarding the contract, the City has made reasonable effort to notify known vendors of competing or comparable products of the intended specifications and invited such vendors to submit competing proposals.

3. If the purchase does not exceed $50,000, such notice and invitation may be informal.

4. If the amount of the purchase exceeds $50,000, such notice shall include advertisement in at least one newspaper of general circulation in the area where the contract is to be performed and shall be timely to allow competing vendors a reasonable opportunity to make proposals.

B. If the amount of the purchase exceeds $50,000, the City shall document its actions in the bid file. Such documentation shall include:

1. A brief description of the proposed contract or contracts.

2. A detailed description of the reasons why the product and/or seller was selected and any competing products and/or sellers that were rejected. The description shall also include the efforts taken by the City to notify and invite proposals from competing vendors.

C. If the City intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed 2 years, it may so state in the documentation required by subsection (1)(b) and (2) of this rule, and such documentation shall be sufficient notice as to subsequent purchases.

20.025 PRODUCT PRE-QUALIFICATION

A. When it is impractical to create specific design or performance specification for a type of product to be purchased, the City may specify a list of approved products by reference to particular manufacturers or sellers according to the following product pre-qualification procedure:

1. The City has made reasonable efforts to notify known manufacturers or vendors of competitive products of its intention to accept applications for inclusion in its list of pre-qualified products. Notification shall include advertisement in a trade journal of statewide distribution when possible. In lieu of advertising, the City may notify vendors and manufacturers appearing on the appropriate list maintained by the Oregon Department of Transportation (ODOT) Qualified Products List or any list produced and maintained by the Oregon Department of General Services.

2. The City permits application for pre-qualification of similar products up to 15 days prior to advertisement for bids on the product.

B. If an application for inclusion in a list of pre-qualified products is denied, or an existing pre-qualification revoked, the City shall notify the applicant in writing. The applicant may appeal to the Board for a review of the denial or revocation in the same manner as an appeal of disqualification or denial provided in PCR 30.150.

20.030 BRAND NAME OR MARK EXEMPTION

A. The City may apply for and receive a brand name or mark exemption ruling from the Board for current and contemplated future purchases. Applications shall contain the following information:

1. A brief description of the contract or contracts to be covered. The description should include contemplated future purchases.

2. The brand name, mark or product to be specified.

3. The reasons the City is seeking the exemption.

B. The Board may grant brand name or mark exemptions only if either of the following conditions are met:

1. The exemption is not likely to encourage favoritism in public contracts or substantially diminish competition and will result in cost savings.

2. There is only one manufacturer or seller of the product of the quality required, or efficient utilization of existing equipment or supplies requires acquisition of compatible equipment or supplies.

PCR 25.000 – MINORITY OWNED BUSINESSES, WOMAN OWNED BUSINESSES, AND EMERGING SMALL BUSINESSES

25.010 MINORITY OWNED BUSINESSES, WOMAN OWNED BUSINESSES, AND EMERGING SMALL BUSINESSES

It is the policy of the City to provide opportunities for available contracts to certified minority owned, woman owned and emerging small business and to cooperate with the State or Oregon Advocate for Minority, Women and Emerging Small Business to determine the best means by which to make such opportunities available.

25.015 AUTHORITY TO REQUIRE SUBCONTRACTING WITH CERTIFIED MINORITY OWNED BUSINESSES, WOMAN OWNED BUSINESSES, AND EMERGING SMALL BUSINESSES

The City may, in solicitation documents, require that some portion of the work to be performed or some portion of the materials to be provided be provided by a certified emerging small business and establish other requirements authorized by ORS 279A.105.

PCR 30.000 - FORMAL COMPETITIVE PROCESSES

30.010 DEFINITIONS

For purposes of this chapter, the following definitions apply:

A. "Addenda to the Bid Documents" means additions or changes to the bid documents defined as addenda shall be labeled as such and distributed according to these rules.

B. "Bid" means an offer submitted in response to an invitation to bid.

C. "Bid Closing" means the date and time announced as the deadline for the receipt of bids.

D. "Bid Opening" means the date, time and place set for opening of bids.

E. "Bid Sample" means a representative specimen of the item that will be available in response to the bid.

F. "Bidder" is a person who submits a bid in response to the City's invitation to bid.

G. "Bidding Period" means the span of time between the date of the invitation to bid and the time and date set for receipt of bids. A minimum of 14 calendar days shall be provided, unless a shorter time is deemed necessary in the public interest for a particular procurement.

H. "Board" means Local Contract Review Board.

I. "Contract" means the written agreement, including the City's solicitation document and the accepted portions of a bid or proposal, between the City and the contractor describing the work to be done and the obligations of the parties. Depending upon the goods and services being procured, the City may use "contract" as meaning a purchase order, price agreement, or other contract document in addition to the City's solicitation document and the accepted portions of a bid or proposal. If the contract is for a public improvement, the "contract" may consist of the City's solicitation document, including any addenda, the general and special conditions governing the work, the accepted portions of the bid or proposal, the performance and payment bond (if required), plans, technical specifications, approved shop drawings, and any contract amendments, including approved change orders.

J. "Contract Price" means the total of the awarded bid or proposal amount, including any approved alternates and any fully executed change orders or amendments.

K. "Contract Release Order" means the document authorizing an additional purchase on an existing requirement contract.

L. "Contractor" means the individual, firm, or corporation awarded the public contract to furnish the City the goods, services, or work procured in the City's solicitation.

M. "Descriptive Literature" means materials submitted by prospective vendors to provide information concerning the products available in response to the bid.

N. "Lowest Responsible Bidder" means the lowest bidder who has substantially complied with all prescribed public bidding procedures and requirements and who has not been disqualified by the public contracting agency under ORS 279B.130 or 279C.440.

O. "Proposer" is a person who submits a proposal in response to the City's Request for Proposals.

P. "Solicitation Document" means an Invitation to Bid or Request for Proposals which included all documents, whether attached or incorporated by reference, utilized for soliciting bids or proposals.

Q. "Specifications" means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. Specifications may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or through attachment to the contract.

30.010 COMPETITION

A. Contracts issued by the City shall be awarded by formal competitive process except as otherwise exempted under the Oregon Public Contracting Code or these rules.

B. It is the policy of the City to encourage public contracting competition that supports openness and impartiality in the maximum extent possible.

C. The City finds that:

1. Competition exists not only in prices, but in the technical competence of suppliers, in their ability to make timely deliveries, and in the quality and performance of their products and services and that a balance must exist between performance competition and price competition.

2. The nature of effective competition varies with the product or service being procured and, that while competitive sealed bids are a common method of procurement, it is not always the most advantageous, practical or cost-effective method of source selection. The cost of the selection process must be considered – a costly selection process is not appropriate for contracts with a low dollar value.

3. Meaningful competition can be achieved through a variety of methods when procuring products or services. The methods include but are not limited to:

   a. Price competition as represented by the initial or acquisition price;

   b. Competition as represented by price and performance evaluations of the competing items and suppliers;

   c. Competition as represented by the evaluation of the capabilities of bidders or proposers to perform needed services;

   d. Competition as represented by evaluation of the capabilities of the bidders and proposers to perform the services followed by a negotiation on price;

   e. Competition as represented by another method of procurement that is reasonably determined to satisfy the City's needs.

D. All public contracts shall be made under conditions that foster or reflect competition among a sufficient number of potential suppliers that offer a wide spectrum of products and services and that represent a broad marketplace. Fostering competition shall be reflected in:

1. Research made to determine possible new sources of supply;

2. Attempts made to ensure solicitation documents are simple and inviting;

3. Everyday courtesy shown to prospective suppliers and contractors; and

4. The way information on contracting opportunities is provided to suppliers including but not limited to advertisement in publications of general circulation or in trade publications and any other reasonable methods that encourage competition.

E. The City may evaluate every aspect of competition in its efforts to purchase products or services, choose the appropriate solicitation process, or award contracts according to the criteria described herein and arrive at offers that represent optimal value to the City.

30.020 ELIGIBILITY TO BID ON CONSTRUCTION CONTRACTS

A person shall not submit a bid or proposal to work as a construction contractor unless that person is first registered with the Construction Contractors Board or licensed by the State Landscape Contractor's Board as required by ORS 671.530. Bids from persons who fail to comply with this requirement shall be deemed non-responsive and be rejected.

The City may require prequalification of bidders in accordance with ORS 279C.430 and ORS 279C.435. The City may also disqualify a bidder from consideration for contract award in accordance with ORS 279C.440.

30.025 SOLICITATION DOCUMENTS

Solicitation documents shall include the following:

A. Instructions and information to bidders or proposers concerning the submission requirements, including the time and date set for opening, the name, address and title of the person designated to receive bids and a contact person, if different, a statement the bid or proposal must be physically received by the City by the deadline and any other special information relating to bid submission. The bid deadline shall be at least seven days after the first publication of notice and 5 days after the last publication of notice.

B. The date that pre-qualification applications must be filed if pre-qualification is a requirement.

C. The character of the work to be done or the items to be purchased, including, as applicable: specifications, delivery or performance schedule, inspection and acceptance requirements, and special evaluation factors;

D. The office where any additional information, including additional specifications, may be reviewed or obtained;

E. For bids – the contract terms and conditions, including warranty and bonding or other security requirements, as applicable. For proposals, a list of contract terms required by the City, a list of additional issues to be included in the contract, and a list of issues for which the proposer is expected to propose contract terms.

F. That the solicitation may be cancelled or that any or all bids may be rejected for not complying with all prescribed procedures and requirements;

G. That any and all bids may be rejected for good cause on a finding that it is in the public interest to do so;

H. In invitations to bid, a statement whether the bidders is a resident bidder as defined in ORS 279A.120 (1) (b);

I. That a contractor must be licensed for asbestos abatement under ORS 468A.710, if applicable;

J. A statement that no bid or proposal for construction shall be received or considered by the City unless the bidder or proposer is registered with the Construction Contractors Board per PCR 30.020 ;

K. If bid or proposal security is required, a description of the security required;

L. A description of any performance and payment bonding requirements;

M. For proposals, a description of the manner in which proposals will be evaluated and the relevant value of each evaluation factor, including price. If a multi-tiered process is used, that process will be described, including the process for protesting the decision at any stage of the process;

N. If applicable, a statement that no bid will be considered unless the bid contains a statement that the bidder will comply with ORS 279C.840 or 40 USC 276a; and

O. All addenda issued by the City.

30.030 BIDS AND PROPOSALS ARE OFFERS

A. Bids and proposals constitute an offer to enter into a contract which, if accepted by the City, shall bind the bidder or proposer to a contract unless the bid or proposal is withdrawn prior to opening.

B. The bid or proposal shall constitute a "firm offer" unless bidders or proposers are specifically authorized to take exceptions or to leave terms open to negotiation by the invitation to bid or request for proposals. However, nothing in this provision prohibits the City from negotiating with a bidder or proposer to the full extent allowed by state law. Unless expressly authorized by the solicitation documents or these rules, bidders or proposers shall not make their bids or proposals contingent upon the City's acceptance of specifications or contractual terms that conflict with or are in addition to those advertised in the solicitation documents.

30.035 PUBLIC NOTICE

A. Distribution

Solicitation documents or notices of the availability of bid documents shall be mailed to likely bidders and proposers, placed on the Oregon Department of Administrative Service's electronic procurement system known as the "Vendor Information Program," or otherwise furnished to a sufficient number of bidders or proposers for the purpose of securing competitive bids or proposals. Notice of availability shall indicate where, when, and for how long the bid/proposal documents may be obtained. The City many charge a fee for the bid documents.

B. Advertising

1. Every formal solicitation of bids or proposals shall be advertised. An advertisement for bids or proposals shall be published at least once in at least one newspaper of general circulation in the City and in as many additional issues and publications as the City may determine to be necessary or desirable to ensure competition. If for a construction contract in excess of $100,000 notice shall be published in at least one trade newspaper of general statewide circulation. The City shall endeavor to provide information concerning bids and proposals on its website and may post information on other databases.

2. All advertisements for bids or proposals shall state:

a. The date and time after which bids will not be received, which date shall not be less than five (5) days after the date of the last publication of the advertisement;

b. The date that pre-qualification applications must be filed if pre-qualification is a requirement;

c. The work to be done or the items to be purchased;

d. The office where additional documentation, including specifications, specifications may be reviewed or obtained;

e. The name, title, and address of the person designated to receive bids;

f. The date, time, and place that bids or proposals will be opened;

g. If for a public improvement, whether the prevailing wage provisions of ORS 279C.800 to 279C.870 and/or the Davis-Bacon Act (40 USC 276a) apply.

C. Posting of bid or proposal advertisement

A copy of each bid or proposal advertisement shall be posted at the business office of the City. Bidders or proposers may obtain a copy upon request.

30.040 BID OR PROPOSAL PREPARATION

Bid and Proposal Preparation Instructions:

A. Except as otherwise allowed, as applicable, bids and proposals shall be typed or prepared in ink and shall be signed in ink by the submitter or an authorized representative. The City will not accept facsimile bids, proposals, or signatures.

B. Bids and proposals shall be made on the bid forms provided unless otherwise instructed in the solicitation document.

C. Alterations or erasures, if any, shall be initialed in ink by the person signing the bid.

D. Bids and proposals shall include all required documents and descriptive literature.

30.045 BIDDER PRE-QUALIFICATION

The City may require mandatory pre-qualification of bidders on forms prescribed in the bid document. When pre-qualification is required by the bid documents as a condition for bidding, the City shall not consider the bid(s) of any prospective bidder who is not pre-qualified. The City shall determine qualifications within 30 days of receipt of an application for prequalification. In determining responsibility of the applicant, the City shall consider only the criteria listed in ORS 279B.110(2). The City may have a separate pre-qualification process. If a bidder is currently pre-qualified by the Oregon Department of Transportation to perform specific classes of work, the bidder shall be presumed qualified to perform similar work for the City.

30.050 BIDDER SUBMISSIONS

A. Samples and Descriptive Literature

Samples or descriptive literature may be required when it is necessary to evaluate required characteristics of an item. Samples may be returned in accordance with provisions contained in the bid documents.

B. Identification of Bids and Proposals

Bids and proposals shall be submitted in a sealed envelope appropriately marked to ensure proper identification and special handling. The City shall not be responsible for the proper identification and handling of any bid not submitted in the designated manner or format to the required delivery point. The City may refuse to accept or may reject any bid or proposal not properly sealed or marked.

C. Receipt of Bid or Proposal

It is the submitter's responsibility to ensure that bids or proposals are received by the City at the required delivery point prior to the stated bid or proposal closing time regardless of the method used to submit or transmit them.

30.055 BID SECURITY

A. Public Improvement Contracts

Bid security not to exceed 10 percent of the base bid(s) shall be required for public improvement contracts where the amount of the contract exceeds $10,000. The bid security shall be forfeited if the bidder fails to execute the contract promptly and properly if awarded.

B. Other Public Contracts

Bid security not to exceed 10 percent of the bid may be required by the City for other contracts in order to guarantee acceptance of the award. This requirement shall be stated in the bid documents if in effect.

C. Contracts Under $10,000

Bid security for contracts of less than $10,000 shall be required only in critical circumstances so as not to discourage competition.

D. Form of Bid Security

The following forms of bid security will be accepted by the City:

1. Surety bond from surety company authorized to do business in the State of Oregon;

2. Cashier's check, certified check, or savings and loan secured check; or

3. Annual surety bond filed with the City (except for public improvement contracts).

E. Return of Bid Security

The bid security of all unsuccessful bidders shall be returned after a contract has been executed or all bids have been rejected. The City may return the bid security of unsuccessful bidders after bid opening but prior to award if the return does not prejudice bid award and provided that the security of at least the three lowest bidders is retained pending the execution of a contract.

F. Security for Proposals

If contracts are to be awarded based on competitive proposals, the City may, in its discretion, require proposal security on the same terms as the bid security described in this section. Proposal security shall normally be required for any public improvement contract to be awarded by a proposal process.

30.060 PRE-BID OR PRE-PROPOSAL CONFERENCES

Pre-bid or pre-proposal conferences may be held by the City to explain the City's requirements, conduct site inspections, or otherwise supplement or clarify information. The City may require attendance at the conference as a condition for bidding or submitting a proposal. The conferences shall be announced in the solicitation documents. The conference shall be held within a reasonable time after the solicitation documents have been issued but sufficiently before bid closing to allow consideration of the conference results in preparing submittals. Statements at the conference shall not change the solicitation documents unless confirmed to all prospective bidders or proposers by means of a written addendum to the solicitation documents.

30.065 ADDENDA TO SOLICITATION DOCUMENTS

A. Form

Changes to solicitation documents shall be accomplished by addenda. The bidder or proposer shall acknowledge receipt of all addenda issued, either with the bid or proposal or separately prior to opening. A solicitation may be delayed or suspended by addendum if in the best interest of the City.

B. Distribution

Addenda shall be sent to all prospective bidders or proposers known to have obtained the solicitation documents or attended any mandatory conferences.

C. Timeliness

1. Addenda shall be issued within a reasonable time prior to bid closing to allow consideration prior to submittal of the bid or proposal, but in no case less than 48 hours before the submittal deadline. The standard minimum notification for City-issued addenda shall be 72 hours prior to the close of the bid or proposal. If staff has need to issue any addenda with less than 72 hours (but not less than 48 hours) staff shall document for the project file the reasons for the shorter notification timeframe. If necessary, the City may notify prospective bidders or proposers by telephonic facsimile (fax), e-mail, or telephone. If telephone is used, the City shall confirm the oral notice with a written addendum.

2. In its discretion, the City may extend the closing date and time to allow prospective bidders or proposers to analyze and adjust to changes made by Addenda. The City shall notify prospective

bidders or proposers of new closing date and time either in the Addendum or in writing accompanying the Addendum.

D. Addenda to Multi-Tier RFPs

If a multi-tier process is used to evaluate proposals, the City may issue addenda applicable to any tier of the process at least 5 days before starting that tier of the process. If the City does issue such addenda, amended or supplemental proposals may be submitted before the next tier of the process is started.

30.070 PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS OR PROPOSALS

A. Modifications

Bids or proposals once submitted may be modified in writing prior to the time and date set for bid closing. Any modifications shall be prepared on the company letterhead, signed by an authorized officer, and state that the new document supersedes or modifies the prior bid or proposal. To ensure the integrity of the process, the envelope containing any modifications to a bid or proposal shall be marked as follows:

Bid/Proposal Modification
Bid/Proposal Title, Number, and/or Other Identification

B. Withdrawals

1. Bids or proposals may be withdrawn by written notification on company letterhead signed by an authorized person and received prior to the time and date set for closing. Bids or proposals also may be withdrawn in person prior to the scheduled closing upon presentation of appropriate identification.

2. Unopened bids or proposals withdrawn under subsection (a) above may be released to the bidder after voiding any date and time documentation detailed as the result of the initial submittal.

3. Requests to withdraw mailed bids or proposals shall be marked as follows:

Bid/Proposal Withdrawal
Bid/Proposal Title, Number, and/or Other Identification

C. Documentation

All documents relating to the modification or withdrawal of bids or proposals shall be made a part of the appropriate bid file.

30.075 RECEIPT, OPENING, AND RECORDING OF BIDS AND PROPOSALS

A. Receipt

Upon receipt, each bid, proposal, or modification shall be time-stamped or marked by hand but not opened and shall be stored in a secure place until opening. If bids, proposals, or modifications are opened inadvertently or are opened prior to the time and date set for opening because they were improperly identified, the bids, proposals, or authorized modification documents shall be resealed and

stored for opening at the correct time. When this occurs, documentation of the procedure shall be placed in the file.

B. Opening and Recording

Bids and modifications shall be opened publicly, at the time, date, and place designated in the bid documents. If witnesses are present at the bid opening, and to the extent practicable, the name of each bidder, the bid price(s), and such other information as considered appropriate, shall be read aloud. On voluminous bids the City may advise bidders as part of the bid documents that the bid items and prices will not be read aloud.

Proposals may be opened at any time after the deadline for submittal of proposals. A summary sheet providing basic information about each proposal shall be prepared.

C. Availability

Opened bids shall be available for public inspection prior to award except to the extent the bidder designates trade secrets or other proprietary data to be confidential (ORS 192.501(2)). Proposals shall not be available for public inspection until after a contract is awarded and entered into. The City shall verify and determine that the confidential information claimed to be exempt is in fact exempt from disclosure under the Oregon Public Records Law. Material so designated shall accompany the bid and shall be readily separable from the bid or proposal in order to facilitate public inspection of the non-confidential portion of the bid or proposal. Prices, makes, model, or catalog number of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary.

D. Notice of Intent to Award

The City shall provide notice of intent to award to each person that has submitted a bid or proposal. The notice shall state the date, time and location of the bid award decision. The notice shall include the name of the person or entity that staff recommends the contract be awarded to. The notice shall include any bid comparisons sheets or proposal comparison sheets.

30.080 LATE BIDS, PROPOSALS, WITHDRAWALS, AND MODIFICATIONS

Any bid, proposal, withdrawal, or modification received after the deadline for submission set in the solicitation documents is late and shall not be considered. The City may use any watch or clock to determine the time and the determination of the City employee or officer receiving the bids as to whether a bid, proposal, withdrawal, or modification is late shall be final and not subject to challenge.

30.085 MISTAKES

A. General

Under extraordinary circumstances, a bid or proposal may be withdrawn after the deadline for submittal because of an inadvertent nonjudgmental mistake. If the mistake is attributable to an error in judgment, the bid or proposal may not be withdrawn or corrected. Correction or withdrawal by reason of nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of the City or the fair treatment of other bidders or proposers.

B. Mistakes Discovered after Bid Closing but before Award

This section applies to situations where mistakes in bids are discovered after the submission deadline but before award.

1. Minor Informalities

Minor informalities are matters of form rather than substance that are evident from the bid documents, or insignificant mistakes that can be waived or corrected promptly without prejudice to other bidders or the City; that is, the informality does not affect price, quantity, quality, delivery, or contractual conditions except in the case of informalities involving unit prices. Examples include, but are not limited to, the failure of a bidder to:

a. Return the number of signed bids or number of other documents required by the bid documents

b. Sign the bid form in the designated block so long the bid documents evidence an intent to be bound; or

c. Acknowledge receipt of an addendum to the bid documents, but only if:

1. It is clear from the bid that the bidder received the addendum and intended to be bound by its terms; or

2. The addendum involved did not affect price, quantity, quality, or delivery.

C. Mistakes Where Intended Correct Bid is Evident

If the mistake and the intended correct bid are clearly on the face of the bid form, or can be substantiated from accompanying documents, the City may accept the bid. Examples of mistakes that may be clearly evident on the face of the bid form are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors. Mistakes that are clearly evident on the face of the bid form or proposal document also may include instances in which the intended correct bid or proposal item is made clearly evident by simple arithmetic calculations. For example, a missing unit price may be established by dividing the total bid or proposal item by the quantity of units for that item, and a missing or incorrect total bid or proposal price for an item may be established by multiplying the unit price by the quantity when those figures are available on the bid or proposal. For discrepancies between unit prices and extended prices, unit prices shall normally prevail.

D. Mistakes Where Intended Correct Bid is Not Evident

The City may not accept a bid in which a mistake is clearly evident on the face of the bid form but the intended correct bid is not clearly evident or cannot be substantiated from accompanying documents.

30.090 TIME FOR ACCEPTANCE

Bids shall be valid and binding offers for 30 days from the deadline to submit bids unless otherwise specified in the bid documents. Proposals shall be binding and valid offers for 60 days from the date of the submittal deadline.

30.095 EXTENSION OF TIME FOR ACCEPTANCE OF BID OR PROPOSALS

The City may request orally or in writing that bidders or proposers extend the time in which the City may accept their offers.

30.100 EVALUATION AND AWARD

A. General

The contract, if awarded, is to be awarded to the lowest responsive and responsible bidder or the best responsive and responsible proposer. Consistent with the provisions of the solicitation documents and in the public interest as determined by the City, awards may be made by item, groups of items, or entire bid or proposal. The City reserves the right to reject any bid or proposal not in compliance with the solicitation documents or with state law, City Code, or these rules. The City reserves the right to reject any or all bids or proposals upon a finding by the City that it is in the public interest to do so.

B. Special Requirements

1. Solicitation documents shall set forth any special requirements and criteria that will be used to determine the lowest responsible bidder. No bid shall be evaluated for any requirement or criterion that is not disclosed in the bid documents or City regulation.

2. In determining the lowest responsible bidder, the City shall, for the purpose of awarding the contract, add a percent increase on the bid of a non-resident bidder equal to the percent, if any, or of the preference give to that bidder in the state in which the bidder resides.

3. The City may rely on a list provided for by the Oregon Department of Administrative Services pursuant to ORS 279A.120 (1) (4) for preference provided for by this section.

C. Product Acceptability

1. The solicitation documents shall set forth the evaluation criteria to be used in determining product acceptability. The City may require the submission of samples, descriptive literature, technical data, or other material, and may also provide for accomplishing any of the following prior to award.

a. Demonstration, inspection, or testing of a product prior to award for such characteristics as quality or workmanship;

b. Examination of such elements as appearance, finish, taste, or feel; or

c. Other examinations to determine whether the product conforms to specifications.

2. The acceptability evaluation is conducted only to determine that a bidder's offering is acceptable as provided in the bid documents. Any bidder's product which does not meet the minimum requirements shall be rejected.

D. Determination of Lowest Responsive and Responsible Bidder

Following determination of product acceptability as set forth in subsection C, if applicable, bids will be evaluated to determine which bidder offers the lowest cost to the City in accordance with the evaluation

criteria set forth in the bid documents. Only objectively measurable criteria, which are set forth in the bid documents, shall be applied in determining the lowest responsible bidder. Examples of such criteria include, but are not limited to, transportation cost, volume weighing, trade-in allowances, depreciation allowances, cartage penalties, and ownership or life cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors:

1. Are reasonable estimates based upon information the City has available concerning future use;

2. Treat all bids equitably; and

3. Recognize that public policy requires acquisitions and public improvements to be accomplished at the least cost.

The City shall take into account any preferences provided by these rules in determining the lowest bid.

E. Determination of Best, Responsive, and Responsible Proposer

Proposals will be evaluated to determine which proposer offers the best solution to the City in accordance with the evaluation criteria set forth in the solicitation documents. Only the criteria set forth in the solicitation documents shall be applied. The criteria shall be as objective as possible. Examples of evaluation criteria may include, but are not limited to, cost, quality, service, compatibility, product reliability, operating efficiency, expansion potential, performance history on other private and public contracts, experience of key personnel, adequacy of equipment and/or physical plan, financial wherewithal, sources of supply, references and warranty provisions. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such evaluation factors shall:

1. Be reasonable estimates based on information available to the City;

2. Treat all proposals equitably;

3. To the extent that the proposal involves a public improvement, recognize that public policy requires public improvements to be accomplished at the least cost.

F. In evaluating proposals, the City may use any of the following methods:

1. An award based solely on an evaluation of the written proposals;

2. Discussions with a number of proposers leading to a best and final offer from each proposer and an evaluation of the best and final offers;

3. An award based on the written proposals and interview performance;

4. Serial negotiations, staring with the highest ranked proposer;

5. Competitive simultaneous negotiations;

6. A multi-tiered process, with some number of proposer being eliminated at each stage of the process;

7. A multi-stage process, with a qualifications determination at the first stage of the process, followed

by cost considerations; or

8. Any other method or combination of methods designed to best serve the needs of the City and its taxpayers.

The solicitation document shall describe the process to be followed.

G. No Assignment or Transfer of Contract Rights

Unless an express provision of the public contract otherwise provides, the contractor shall not assign, sell or transfer rights, nor delegate responsibilities, under public contract, either in whole or in part, without first obtaining 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 a public contract, and any assignee or transferee shall be considered the agent of the contract and bound to abide by all provisions of the public contract. Except in the event of a novation, if the City consents in writing to an assignment, sale, or transfer of the contractor's rights and responsibilities, the contractor and its surety, if any, shall remain ultimately liable to the City for complete performance of the public contract as if no such assignment, sale, or transfer had occurred.

30.105 LIFE CYCLE COST ANALYSIS

A. In determining the lowest responsible bidder, in the award of a contract, the City may use the cycle costing. As used in this rule, life cycle costing means determining the cost of a product for its useful life.

B. The City shall follow these procedures:

1. At the time of writing specifications for the product, the City shall identify those factors which will have cost implications over the life of the product and which, for evaluation purposes, will be used to adjust the bid or proposal price of the product.

2. The solicitation documents shall set out clearly the factors and methodology to be used in life cycle cost adjustments.

3. The results of life cycle costing adjustments shall be applied to the bid or proposal price of the product(s) offered. The bid or proposal that results in the lowest overall ownership cost, taking into account the life cycle costing adjustments, shall be considered the lowest bid or best proposal for purposes of bid or proposal price evaluation.

30.110 RESPONSIBILITY

A. A responsible bidder or proposer is one who has:

1. Adequate financial resources to perform the contract, or the ability to obtain such resources. The City shall require acceptable evidence of the bidder's or proposer's ability to provide or obtain the required financial resources. Acceptable evidence normally consists of, but is not limited to, current and recent balance sheets; income statements; cash flow statements; and/or a performance bond from an acceptable surety in an amount equal to the bid or proposal price. Such evidence may also include a commitment of specific arrangement that will be in existence at the time of contract award to rent, purchase, or otherwise acquire the needed facilities, equipment, or other resources;

2. The ability to comply with the required or proposed delivery or performing schedule, taking into consideration all existing commercial and public business commitments;

3. A satisfactory performance record. A bidder or proposer who is, or recently has been, seriously deficient in contract performance shall be presumed to be non-responsible, unless the City determines that the circumstances were properly beyond the contractor's control or that the contractor has taken appropriate corrective action. Record of failure to perform acceptably is strong evidence of non-responsibility. The City shall consider the number of contracts involved and the extent of the deficiency of each in making this evaluation. In addition, the City may consider whether the bidder's performance history demonstrates responsibility as defined in ORS 279B.110 and 279C. 375;

4. Key personnel available of sufficient experience, as determined by the City, to perform the contracts;

5. The necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain these skills and abilities as required to satisfactorily perform the contract. These may include, as appropriate, such elements as production control procedures, property control systems, and quality assurance measures applicable to materials to be produced or services to be performed by the bidder and its proposed subcontractor(s);

6. The necessary production, construction, and technical equipment and facilities, or the ability to obtain them;

7. A satisfactory record of integrity;

8. For contractors on public improvement contracts, has not been determined to be not responsible by the Construction Contractors Board; and

9. Is otherwise qualified and eligible to receive award under applicable laws and regulations.

B. The City shall consult with the Construction Contractor's Board concerning the responsibility of any person to whom a public improvement contract is proposed to be awarded, and shall comply with the reporting requirements of ORS 279C.375. The City has the right, prior to awarding any public contract, to make such investigation as is necessary to determine whether a bidder or proposer is responsible. This investigation may include, but is not limited to:

1. An inquiry into the responsibility of proposed subcontractors and suppliers.

2. Requiring a bidder or proposer to demonstrate its financial ability to perform the contract as provided in subsection A.1 of this rule. In exercising this right, the City shall notify the apparent successful bidder or proposer in writing to submit such documentation as the City deems necessary to complete a thorough evaluation of financial ability.

3. By submitting a bid or proposal, a bidder or proposer authorizes the City to request any credit report information the City deems necessary to investigate and evaluate financial responsibility to perform the contract(s).

C. Failure of a bidder or proposer to promptly supply information requested by the City during its responsibility investigation shall be grounds for a finding of non-responsibility.

D. Only bids and proposals from responsible bidders or proposers, as defined in this rule, shall be eligible for contract award. Bid or proposals from non-responsible bidders or proposers shall be rejected as provided in PCR 30.115.

30.115 RESPONSIVE AND NON-RESPONSIVE BIDS OR PROPOSALS; ACCEPTANCE AND REJECTION

A. A "responsive bid or proposal" is one that complies in all material aspects with the solicitation documents and with all prescribed public bidding procedures and requirements.

B. A "non-responsive bid or proposal" is one which:

1. Omits, or is unclear as to the price and the price cannot be determined in the bid or proposal documents;

2. Offers goods or services of a quality or quantity inferior to that requested in the solicitation documents;

3. Does not meet the delivery date requirements specified in the solicitation documents;

4. Takes exception to the terms and conditions of the solicitation documents other than as allowed by these rules or the solicitation documents;

5. Is conditional upon the City's acceptance of terms and conditions difference from those contained in solicitation documents, except as allowed by these rules or the solicitation documents; or

6. Contains a deviation which, if the bid or proposal were accepted, would give the bidder or proposer a substantial advantage or benefit not shared by other bidders or proposers to the solicitation documents.

C. The City shall accept, and consider for award, only those bids or proposals, which are responsive as defined in this rule. Non-responsive bids or proposals shall be rejected, as provided in PCR 30.115.

30.120 LOW TIE BIDS

A. Definition

Low tie bids are low responsive bids from responsible bidders that are identical in price, fitness, availability and quality and which meet all the requirements and criteria set forth in the bid documents.

B. Award

1. If low tie bids are received, a preference shall be given to goods and services that have been manufactured or produced in Oregon.

2. If the bids remain tied after application of the Subsection 1, preference shall be given to the bidder whose principal offices or headquarters are located in Oregon.

3. If the bids remain tied after application of Subsections 1 and 2, the award shall be made by drawing lots

among any tied Oregon bidders. Such bidders shall be given notice and an opportunity to be present when the lots are drawn.

4. If there are no Oregon bidders after application of subsections 1 and 2, award of the contract shall be made by drawing lots.

30.125 REJECTION OF INDIVIDUAL BIDS OR PROPOSALS

A. General

This section applies to rejections, in whole or in part, of individual bids or proposals. The City may reject in whole or in part, any bid not in compliance with all prescribed bidding procedures and requirements, and may reject for good cause any bid or proposal upon a written finding of the City that it is in the public interest to do so. No bid shall be considered unless the bid security, properly executed, has been submitted with the bid as required by the bid documents.

B. Reasons for Rejection

Reasons for rejecting a bid or proposal include but are not limited to:

1. The submitter has not pre-qualified when pre-qualification is required or has been disqualified;

2. The submitter has been declared ineligible by the Commissioner of the Bureau of Labor and Industries under ORS 279.361;

3. The bid or proposal is non-responsive, that it does not conform in all material respects to bid documents or requirements, including all prescribed public procurement procedures and requirements;

4. The supply, service, or construction item offered in the bid or proposal is unacceptable by reason of its failure to meet the requirements of the solicitation documents or permissible alternates or other acceptability criteria set forth in the solicitation documents;

5. The submitter is not capable of satisfying the terms and conditions of the public contract in a timely manner due to financial incapacity; inability to obtain bonding, loss of license, or other objective cause;

6. The submitter within the last 5 years has been found, in a civil, criminal, or administrative proceeding, to have committed fraud, misrepresentation, price-rigging, unlawful anti-competitive conduct, or similar behavior;

7. The submitter has been determined responsible (i.e., adjudicated by a court, or as determined in writing by the City agency in the case of a public contract) for more than one breach of a public or private contract(s) in the last 3 calendar years before the scheduled date of the bid opening;

8. The security has not been submitted or properly executed as required by the solicitation documents;

9. When applicable, the bidder has not met the emerging small business, disadvantaged business, minority business, and women business enterprise requirements, if any, established by the City, and has not made a good faith effort to comply with the requirements prior to the time bids are opened;

10. The submitter failed to certify in accordance with Section D of this rule;

11. Other circumstances of the particular bid, proposal, or submitter (including submitter's subcontractors) indicate that acceptance of the bid or proposal would impair the integrity of the selection process or result in an imprudent contract by the City; or

12. The contractor has discriminated against subcontractors because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.

C. Form of Business Entity

The corporate or business form of bidders or proposers shall be subject to scrutiny, so that previously disqualified bidders or proposers, or their officers and directors, may not by subterfuge, change of apparent ownership, or other adjustments in formal appearance, avoid application of this rule.

D. Non-discrimination Certification

The bidder or proposer shall certify as part of the bid that the contractor has not discriminated against subcontractors because the subcontractor is certified as a minority, women, or emerging small business enterprise.

30.130 REJECTION OF ALL BIDS OR PROPOSALS

A. Bid Rejection

All bids or proposals may be rejected for good cause upon a written finding by the City that it is in the public interest to do so. Notification of rejection of all bids or proposals, along with the good cause justification and finding of public interest shall be sent to all that submitted a bid or proposal.

B. Rejection Criteria

Reasons for rejecting all bids or proposals include but are not limited to:

1. An error in the solicitation documents, including its terms, conditions, or specifications that unnecessarily restricted competition for the public contract;

2. The price, quality, or performance presented by the lowest or best responsible bidder or proposer is, in the City's opinion, too costly or of insufficient quality to justify acceptance of the bid or proposal. This criterion may be satisfied evidence that the same goods or services can be obtained otherwise for less cost;

3. Misconduct, error, or ambiguous or misleading provisions in the bid documents or process threaten the fairness and integrity of the competitive process; or

4. Causes other than legitimate market forces threaten the integrity of the competitive procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the bid documents.

30.135 PROTESTS OF AWARD

A. Purpose

Adversely affected or aggrieved bidders or proposers must exhaust all avenues of administrative review and relief before seeking judicial review of and decision by the City under the Public Contracting Code or these rules.

B. Notice of Award

The written notice of award of the contract shall constitute a final decision by the City to award the contract if no written protest of the notice of award is filed with the City within seven calendar days of the notice of award or such other period as provided in the City's solicitation. If a protest is timely filed, the notice of award is a final decision of the City upon issuance of a written decision denying the protest and affirming the award. The notice of award and any written decision on a protest shall be sent to every bidder or proposer who provided an address.

C. Right to Protest

Any actual bidder or proposer who is adversely affected or aggrieved by the City's notice of award of the contract to another bidder or proposer on the same solicitation shall have seven calendar days after notice of award to submit to the City a written protest of the notice of award or such other time as provided in the solicitation documents. The written protest shall specify the grounds upon which the protest is based. In order to be adversely affected or aggrieved, a bidder or proposer must itself claim to be eligible for award of the contract as the lowest responsible bidder or best proposer and must be next in line for award; i.e., the protester must claim that all lower bidders or better proposers are ineligible for award because they are non-responsive or non-responsible. The City shall not entertain a protest submitted after the time period established in this rule or such different period as may be provided in the City's solicitation.

D. Authority to Resolve Protests

The City Manager, or designee, shall have the authority to settle or resolve a written protest submitted under section E of this rule.

E. Decision

If the protest is not settled or resolved by mutual agreement, the City Manager, or designee, shall promptly issue a written opinion on the protest. If the opinion denies the protest, judicial review of this decision will be available if provided for by statute. If the City Manager or designee determines that there is good cause for the protest, the matter shall be submitted to the Board for further action. The decision of the Board on a protest shall be final. Both the protestor and the person to whom the contract was awarded shall have a right to present arguments to the Board.

30.140 PROTESTS OTHER THAN NOTICE OF AWARD

A. A protest may be filed to contest the adoption or amendment of these rules, adoption of a class or contract specific exemption, solicitation documents (including specifications and contract terms), or the process used in the solicitation. The protest must be filed with the City's Contracts and Purchasing Office within 7 days of the adoption or amendment of rules or exemptions, the publication of

solicitation documents, or other action being protested. Grounds for protest are limited to:

1. That the City acted contrary to law;

2. That the City's actions unnecessarily restrict competition; or

3. That the City has improperly specified a brand name.

B. The protest must include:

1. Sufficient information to identify the solicitation;

2. The grounds for the protest;

3. Evidence or supporting information; and

4. The relief sought.

C. The City Manager shall, if possible, issue a written decision on the protest under this section at least three days before any bid or proposal opening that could be affected by the protest.

D. A bidder or proposer who does not protest a proposed contract term included in the solicitation documents must accept the contract term as included in the solicitation documents.

E. If protest of a solicitation is timely received, the opening date may be extended if necessary to allow consideration for the protest and issuance of any addenda to the solicitation documents.

F. Envelopes containing protests of solicitation specifications shall be marked as follows:

Specification Protest
Bid/Proposal Title, Number, and/or Other Identification

30.145 NEGOTIATION

A. Negotiation with Bidders

If a project is competitively bid and all responsive bids from responsible bidders exceed the City's cost estimate, the City may negotiate with the lowest responsive, responsible bidder, prior to awarding the contract, in order to solicit value engineering and other options to attempt to bring the project with the agency's cost estimate.

1. A negotiation with the lowest responsive, responsible bidder pursuant to this paragraph shall not result in the award of the contract to that bidder if the scope of the project is significantly changed from the original bid proposal.

2. Notwithstanding any other provision of law, the records of a bidder used in contract negotiation pursuant to this paragraph are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated.

B. Negotiation with Proposers

The City may negotiate with proposers after proposal opening in order to try to reach the best possible contract for the City. Proposals may be revised in the course of negotiations for the best offer, provided that any revision is not so extensive as to be unfair to other proposers who do not have the opportunity to negotiate.

30.150 BIDDER DISQUALIFICATION

A. Definitions - *As used in this rule*:

1. "Disqualification" means the debarment, exclusion or suspension of a person from right to submit bids or proposals in response to the City's solicitations for a reasonable, specified period of time named in the order of disqualification. A contractor or vendor so debarred, excluded or suspended, is disqualified.

2. "Person" means an individual, partnership, or corporation. Disqualification attaches to and follows the individual, so that an individual who is a partner in a partnership or an officer or principal in a corporation which is disqualified may not re-form the business entity as a way of avoiding the disqualification.

B. Grounds for bid-specific disqualification include:

1. The person does not have sufficient financial ability to perform the contract. If a bond is required to ensure performance of a contract, evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability;

2. The person does not have equipment available to perform the contract;

3. The person does not have key personnel available of sufficient experience to perform the contract; or

4. The person has repeatedly breached contractual obligations to public and private contracting agencies.

5. The person has discriminated against a subcontractor because the subcontractor is a minority, women, or emerging small business enterprise certified under ORS 200.055.

6. The person has engaged in conduct prohibited by ORS 200.075, including:

   a. If the person has entered into any agreement representing that a disadvantaged, minority, women or emerging small business enterprise, certified pursuant to ORS 200.055, will be performing or supplying materials under a public improvement contract without the knowledge and consent of the certified enterprise;

   b. If the person exercises management and decision making control over the internal operations, as defined by ORS 200.075(1)(b), of any certified disadvantaged, minority, women or emerging small business enterprise;

   c. If the person uses a disadvantaged, minority, women or emerging small business enterprise to

perform contracting services or provide supplies under a public improvement contract to meet an established Disadvantaged Business Enterprise (DBE)/Minority-owned Business Enterprise (MBE)/Woman-owned Business Enterprise (WBE)/Emerging Small Business (ESB) goal, when the enterprise does not perform a commercially useful function, as define by ORS 200.075(3), in performing its obligations under the contract.

C. Debarment

A prospective bidder or proposer may be debarred from consideration for an award for a period of up to three years if convicted of a criminal offense relating to a public contract; convicted of a crime involving dishonesty (as provided in ORS 279B.130(2)(b), convicted under antitrust statutes, has violated a contract and debarment for violation was listed in the contract terms, or failure to carry workers compensation or unemployment insurance.

Debarment shall be by written decision explaining the reasons for the debarment and explaining appeal rights. Appeals shall be provides under ORS 279B.425. Any appeal must be filed with the City's Contracts and Purchasing Office within three days after receipt of the notice of debarment.

D. Investigation

The City may make such investigation as is necessary to determine whether a person is qualified. If a bidder or prospective bidder fails to supply information promptly as requested by the City, such failure is grounds for disqualification.

E. Notice of Disqualification

The bidder or prospective bidder will be notified in writing by personal service or certified mail of the City's decision to disqualify the person from bidding with the City. The notice shall contain:

1. The effective date of the disqualification and the effective period of disqualification;

2. The grounds for disqualification from bidding; and

3. A statement of the contractor's appeal rights and applicable appeal deadlines.

F. Appeal of Disqualification

If a contractor wishes to appeal the City's decision to disqualify, the contractor must notify the City in writing within three business days after receipt of the notification. The City shall mail its notice to the contractor by Certified Mail Return Receipt Requested, if not personally served. Appeals shall be conducted under the procedures and standards of ORS 279C.445 and 279C.450. A protest of a denial, revocation, or revision of a prequalification shall be filed within three business days after receipt of notice of the decision. On receipt of the protest, a hearing shall be set before the Local Contract Review Board and the hearing shall be held and the decision issued within 30 days of receipt of the protest. The Local Contract Review Board will consider the action *de novo*, based on applicable standards. If the denial is upheld, the person filing the protest shall reimburse the City for costs of processing the protest.

30.155 CANCELLATION OF INVITATIONS TO BID OR REQUESTS FOR PROPOSALS

A. Cancellation in the Public Interest

An invitation to bid or request for proposal may be canceled, in whole or in part, and all bids received may be rejected when it is in the public interest as determined by the City. The reasons therefore shall be made part of the file.

B. Notice of Cancellation

When an invitation to bid or request for proposal is canceled prior to the submission deadline, notice of cancellation shall be sent to all known holders of the documents. When an invitation to bid or request for proposals is canceled after deadline for submission, notice shall be sent to those who submitted a bid or proposal. The notice of cancellation shall:

1. Identify the specification documents;

2. Briefly explain the reason for cancellation; and

3. Where appropriate, explain that an opportunity will be given to compete on any re-solicitation.

30.160 DISPOSITION OF BIDS OR PROPOSALS IN EVENT OF CANCELLATION

A. Prior to Bid Opening

When an invitation for bids or request for proposals is canceled prior to opening of the bids or proposals, all submissions will be returned unopened, if submitted with a clearly visible return address. If there is no return address on the envelope, the submissions will be opened to determine the source and then returned to sender.

B. After Opening

When all bids or proposals are rejected, those received shall be retained and become part of the City's permanent project file.

30.165 DOCUMENTATION OF AWARD

A. Basis of Award

Following award, a record showing the basis for determining the successful bidder shall be made a part of the file.

B. Contents of Award Record

The record shall consist of:

1. Completed bid tabulation sheet; or

2. Completed proposal evaluations; and

3. Written justification of any rejection of lower bids; or

4. Written explanation for any rejection of proposals for failing to meet mandatory requirements of the Request for Proposals.

30.170 FOREIGN CONTRACTOR

If a contractor is not domiciled in or registered to do business in the State of Oregon, the City shall require the contractor to promptly provide the Oregon Department of Revenue and the Secretary of State Corporation Division with any and all information required by those agencies relative the contract between the contract and City. The City shall have the right to withhold final payment to the contractor under this Rule until the contractor has met the requirement under the Rule.

30.175 CONTRACT TERMS AND CONDITIONS

A. Required Terms and Conditions

The City shall establish standard terms and conditions for contracts. Contracts shall include provisions relating to the following, if applicable. For those provisions referring to statutes, the contract language shall comply with and implement the statutes.

1. Payment of laborers and material suppliers; contributions to Industrial Accident Fund; liens and withholding taxes, and drug testing (ORS 279B.220, 279C.505);

2. Payment of claims by public officers, payments to first tier subcontractors and claims by labor and materials suppliers (ORS 279C.515),

3. Hours of labor (ORS 279B.020, 279B.235, 279C.520, 279C.540);

4. Environmental and natural resources regulations (279B.525);

5. Payment for medical care, compliance with or exemption from workers compensation laws (ORS 279B.230, 279C.530);

6. Prevailing wage rates (ORS 279C.830);

7. Salvaging, recycling, composting or mulching yard waste material, and salvage and recycling of construction and demolition debris (ORS 279B.225, 270C.510);

8. Certification by contractor of compliance with the Oregon tax laws according to ORS 305.385;

9. Certification by contractor of nondiscrimination as to relations with subcontractors (ORS 279A.110);

10. Inclusion of provisions in contracts with subcontractors, as required by ORS 279C.580;

11. Progress payments and retainage;

12. Bonding requirements (performance and payment bonds, and bonds required to be filed with the Construction Contractors Board or BOLI); and

13. Any other requirement imposed by federal or state law, regulation, rule or ordinance, which is applicable to the contract.

B. The City may develop and require contract provisions relating to the following:

1. Termination of the contract;

2. Suspension of the work;

3. Labor and materials liens;

4. Liability in absence of bond;

5. Use of recovered resources and recycled and recyclable materials, including paper, oils, and tires;

6. Any other term to further the City's and the public interest.

C. Terms and Conditions Applicable to Construction Contracts

In cases where the contract calls for work as described in ORS 701.005(2) (i.e.; construction work), the contracts shall contain:

1. Certification by the "contractor" that the contractor is registered with the Construction Contractors Board according to ORS 701.035 to 701.055, unless prohibited by federal regulations.

2. Certification by the contractor that all subcontractors performing work as described in ORS 701.005(2) will be registered with the Construction Contractors Board according to ORS 701.035 to 701.055 before the subcontractors commence work under this contractor.

D. Special Terms and Conditions

The City may also establish special terms and conditions applicable to specified categories of contracts. Any special terms and conditions shall be included in the bid documents and become an integral part of those contracts.

E. Compliance and Exceptions to Terms and Conditions

1. Bidders and proposers shall be responsible for noting the terms and conditions included applicable to each set of solicitation documents.

2. By submitting a bid or proposal, the bidder or proposer acknowledges acceptance of and the intent to abide by the terms and conditions specified in the invitation to bid or request for proposals and agrees to enter into a contract consistent with state public contracting law requirements. Submission of a bid or proposal without objection to provisions listed in the form contract included in the solicitation documents constitutes an offer to enter into a contract on those terms and no negotiation of those terms is permitted after the contract award.

3. The City has the right to reject any bid or proposal that takes exception to specifications or to contract terms unless the right to take exception is expressly granted in the Invitation to Bid or

Request for Proposals. Bids or proposals which take exception to the specifications or contract terms, or which are made contingent upon the City's acceptance of different or additional specifications or terms, may be rejected because they are not responsive to the Invitation to Bid or the Request for Proposals.

4. Any exceptions to any proposed terms and conditions must be clearly stated in writing by the bidder or proposer in the signed bid or proposal. The City reserves the right to reject or accept any bid or proposal that takes exception to the terms and conditions, but must take into account any objections in comparing the bid or proposal to other bids or proposals. Exceptions to the terms and conditions become contractual obligations only upon written acceptance by the City.

F. Commentary

The following is a list of federal, state, and local agencies of which the City has knowledge that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of contracts:

FEDERAL AGENCIES:

Agriculture
- Department of Forest Service
- Soil Conservation Service

Defense
- Department of Army Corps of Engineers

Energy
- Department of Federal Energy Regulatory Commission

Environmental Protection Agency

Department of Health and Human Services

Housing and Urban Development
- Department of Solar Energy Conservation Bank

Interior, Department of
- Bureau of Sports Fisheries and Wildlife
- Bureau of Outdoor Recreation
- Bureau of Land Management
- Bureau of Mines
- Bureau of Indian Affairs
- Bureau of Reclamation
- Geological Survey
- Minerals Management Service

Labor, Department of
- Mine Safety and Health Administration
- Occupational Safety and Health Administration

Transportation, Department of
- Coast Guard
- Federal Highway Administration

Water Resources Council

STATE AGENCIES:

Administrative Services, Department of
Agriculture, Department of
Columbia River Gorge Commission
Consumer & Business Services, Department of Oregon Occupational Safety & Health Division
Energy, Department of
Environmental Quality, Department of
Fish and Wildlife, Department of
Forestry, Department of
Geology and Mineral Industries, Department of
Human Resources, Department of
Land Conservation and Development Commission
Parks and Recreation, Department of
Soil and Water Conservation Commission
State Engineer
State Land Board
Water Resources Board

LOCAL AGENCIES:

City Council
County Court
County Commissioners, Board of
Port Districts
Metropolitan Services Districts
County Service Districts
Sanitary Districts
Water Districts
Fire Protection Districts

30.180 AVAILABILITY OF AWARD DECISIONS – CONTRACT RETENTION

A. Contract Documents

A signed purchase order, agreement, or contract, as applicable, shall be executed with the person to whom the contract is awarded.

B. Notification to Unsuccessful Bidders

Unsuccessful bidders and proposers will be provided with the notice of intent to award. Tabulations of awarded bids shall be posted on the City's website or may be obtained in accordance with the City's Public Record Request policies.

C. Availability of Files

Completed files, other than confidential materials, shall be available for public review at the City in accordance with the City's Public Records policies.

D. Copies from Files

Copies of material from files may be obtained in accordance with the City's Public Records policies.

E. Contract Retention

The following requirements on retention of contract documents after award shall apply:

1. For all service contracts the original must be kept for six (6) years after the contract has been completely executed;

2. Capital improvement contracts must be kept a minimum of 10 years after substantial completion;

3. Goods contracts must be kept for six (6) years after maturity;

4. Intergovernmental and interagency agreements must be kept a minimum of 10 years after substantial completion; and

5. Other purchasing related documents should be retained according to City retention schedules;

Any copies of the originals must be kept for two (2) years after maturity in all of the categories listed above.

30.185 REQUESTS FOR PROPOSALS

A. The City may use the request for proposal process for any contract for which price is not the sole factor for awarding the contract. When the City uses a request for proposal, the solicitation document shall state:

1. The necessary contract terms;

2. The evaluation criteria to be applied in awarding the contract and the role of an evaluation committee, if any;

3. The criteria for awarding the contract, which may include but are not limited to cost, quality, service, experience, expertise, compatibility with existing or future City assets, product reliability, operating efficiency, and expansion potential;

4. Complaint processes and remedies available;

5. The provisions made for vendors to comment on any specifications that they believe limit competition; and

6. The location where sealed written proposals are to be submitted and the date and deadline for submittal.

B. All requests for proposals shall be published at least once in a newspaper, journal, trade publication or similar periodical. In deciding where to advertise, the City shall consider what publication is most likely to be read by qualified proposers.

C. The City may establish an ad hoc proposal review committee to evaluate any proposal and may provide for an interview of selected proposers as part of the evaluation process. Any use of a proposal review committee or interview process shall be detailed in the request for proposals.

30.190 PERFORMANCE AND PAYMENT SECURITY

A. Public Improvements Contract

Except in emergencies, when the requirement may be waived, or unless the requirement is exempted under these rules, all persons entering into public improvements contracts with the City will be required to provide:

1. A performance bond in a sum equal to the contract price, and

2. A payment bond in a sum equal to the contract price.

3. Proof that a public works bond with a corporate surety in the amount of $30,000 has been filed with the Construction Contractors Board for contracts subject to Prevailing Wage Rate Law.

Public improvement contracts of $10,000 or less are exempt from the bond requirements.

B. Other Public Contracts

The City may require performance security for other public contracts. Such requirements shall be stated in the solicitation documents.

C. Contracts Under $10,000

Performance bonds for a contract under $10,000 shall be utilized only in critical circumstances, so as not to discourage competition.

D. Requirement for Surety Bond

A surety bond furnished by a surety company authorized to do business in Oregon is the only acceptable form of performance security unless otherwise specified in the solicitation documents.

E. Time for Submission

Upon request by the City, the apparent successful bidder or proposer must furnish the required performance bond within ten days of contract award. Prompt submittal of the performance bond is required to ensure timely project initiation. Failure to furnish the bond prior to the deadline shall result in rejection of the bid or proposal, forfeiture of bid security, and award to the next lowest responsible bidder or next highest-scoring proposer.

F. Claims on Payments Bonds

Claims on payment bonds shall comply with ORS 279C600 to 279C.625 and Section 40.060.

30.195 RIGHT TO AUDIT RECORDS

A. Records Maintenance; Access

Contractors and subcontractors shall maintain all fiscal records relating to public contracts in accordance with generally accepted accounting principles. In addition, contractors and subcontractors shall maintain any 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 public contract accessible to the City at reasonable times and places, regardless whether litigation has been filed as to such claims.

B. Audit of Cost or Pricing Data

The City may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data according to the terms of a contract to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, for which cost or pricing data are required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

C. Contract Audit

The City shall be entitled to inspect, examine, copy, and audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontract for a period of three (3) years from the date of final payment under the subcontract, 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.

30.200 RIGHT TO INSPECT PLANT

A. Time for Inspection

The City may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor that is related to the performance of any contract awarded.

B. Access to Plant or Place of Business

As a condition of bidding, bidders agree that the City may enter a contractor's or subcontractor's plant or place of business during normal business hours for the following purposes:

1. Inspect and/or test supplies or services for acceptance by the City pursuant to the terms of the bid; or

2. Investigate in connection with a bidder's application, a minority business certification, or bidder disqualification.

C. Contractual Provisions

Contracts may provide that the City may inspect supplies and services at the contractor's or subcontractor's facility and perform tests to determine whether they conform to the bid documents, or, after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the contract.

D. Procedures for Trial Use and Testing

The City may establish operational procedures governing the testing and trial use of equipment, materials, and the application of resulting information and data to specifications or procurements.

E. Conduct of Inspections

1. Inspectors

Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No change of any provision of the specifications or the contract may be required by the inspector without written authorization of the City, unless otherwise specified in the solicitation documents. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirement of the contract.

2. Location

When an inspection is made in the plant or place of business of a contractor or subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

3. Time of Testing or Inspection

Inspection or testing of supplies and services performed at the plant or place of business of any contractor or subcontractor shall be performed at reasonable times during normal business hours.

F. Inspection of Construction Projects

On-site inspection of construction shall be performed in accordance with the terms of the contract.

30.205 CONTRACT CANCELLATION AND TERMINATION PROCEDURES

A. A contract may be canceled by the City for any violation of the provisions of the contract or for violation of the certification of non-discrimination against minority, women, and emerging small business enterprises.

B. The City may terminate any contract if insufficient funds are appropriated to complete the contract.

C. No cancellation of a public contract shall, unless limited by the terms of the particular contract, restrict or abrogate any other remedy available to the City that is provided either by law or under the particular contract.

D. The City shall provide the contractor written notice of the grounds for cancellation or termination and

of its intention to cancel the contract or terminate the contractor's performance. If the contractor provided a performance and payment bond, the surety shall also be provided with a copy of the notice of contract cancellation or contractor termination. The notice shall include the effective date of the intended cancellation or termination, the grounds for cancellation or termination and notice of the amount of time (if any) in which the City will permit the contractor to correct the failure to perform. The public contract may provide contract cancellation or contractor termination procedures that are different from or in addition to, those provided in this rule.

E. If the contractor has provided a performance and payment bond, the City may afford the contractor's surety the opportunity, upon the surety's receipt of a contractor termination notice, to provide a substitute contractor to complete performance of the contract. Performance by the substitute contractor shall be rendered pursuant to all material provisions of the original contract, including the provisions of the performance and payment bond. Such substitute performance does not involve the award of a new public contract and shall not be subject to competitive procurement requirements.

PCR 40.000 - PUBLIC IMPROVEMENT CONTRACTS

40.010 APPLICATION

In addition to the requirements set forth in Section 30 of these rules, the following rules apply to public improvement contracts. The requirements in Section 40 are intended to be complementary to those in Section 30, with the rules in Section 40 supplementing the Section 30 requirements, where necessary, to meet the City's needs when administering contracts for public improvements.

40.015 COMPETITIVE BIDDING

Except as otherwise specifically permitted by these rules, public improvement contracts shall be awarded by competitive bidding. If the public improvement contract includes design aspects, including value engineering under a CM/GC covered project, the City may award the contract by a competitive proposal process.

40.020 FIRST TIER SUBCONTRACTOR NOTICE

If the public improvement contract may be for more than $100,000, the solicitation documents must provide notice that the contractors must disclose first-tier subcontractors who will furnish labor or materials greater than five percent of the total bid or $15,000, whichever is greater, or $350,000 regardless of the percentage of the total bid within two working hours after the deadline for bid submission. The disclosure must state the name of each subcontractor and the category of work the subcontractor will perform.

40.025 FIRST TIER SUBCONTRACTOR DISCLOSURE

A. Bidders for public contracts with a value of more than $100,000 must submit a first-tier contractor disclosure sheet within two hours of the deadline for submitting a bid. The disclosure sheet must list all first-tier subcontractors who will furnish labor or materials greater than five percent of the total bid or $15,000, whichever is greater, or $350,000 regardless of the percentage of the total bid. The disclosure must state the name of each subcontractor, the category of work the subcontractor will perform and the dollar value of each subcontract. If no first-tier subcontractor meets the threshold level for disclosure and the bid price is more than $100,000, the disclosure sheet must still be submitted with the information that no subcontractors meet the threshold level for disclosure.

B. Bid and proposals for public improvement contracts with a value of greater than $100,000 for which a first-tier subcontractor disclosure is not submitted within two hours of the submittal deadline shall be considered non-responsive.

C. The closing for submission of bids subject to first-tier subcontractor disclosure shall be on Tuesday, Wednesday or Thursday between 2 and 5 pm.

D. First tier subcontractors may be substituted if only in compliance with ORS 279C.585.

E. The City may require first-tier subcontractor disclosure in any invitation to bid, even if disclosure is not otherwise required by statute or these rules.

40.030 BID EVALUATION AND AWARD

A. General

Unless exempted by these rules, a public improvement contract, if awarded, is to be awarded to the lowest, responsive and responsible bidder.

B. Special Requirements

The solicitation documents shall set forth any special requirements and criteria, which will be used to determine the lowest, responsive and responsible bidder. No bid shall be evaluated for any requirement or criterion that is not disclosed in the solicitation documents or City regulation.

C. Bid Evaluation and Award

The evaluation format for competitive bid pricing can be lump sum, unit price, or a combination of the two.

1. Lump sum
If the bid form includes a lump sum base bid, plus additive or deductive alternates, the total bid price, for the purpose of comparing bids, shall be the total sum computed from adding or deducting alternates, as selected by the City, to the base bid. If the alternates, or if the City has selected no additive or deductive alternates for award, bids shall be compared on the basis of lump sum prices, or lump sum base bid prices, as applicable.

2. Unit Price
If the bid includes unit prices and extensions for estimated quantities, the total bid price, for the purpose of comparing bids, will be the total sum computed from multiplying the bidder, with due adjustments being made for additive or deductive alternates, if any, selected for award. Note: In case of a conflict between a unit price and the corresponding extended amount, the unit price shall govern.

3. Combination Lump Sum and Unit Price
The City shall select a combination of factors for purposes of bid evaluation and contract award and use the methods described in (a) and (b) to compute and compare bids. Note: In case of a conflict between a unit price and the corresponding extended amount, the unit price shall govern.

D. Proposal Evaluation and Award

If a selection method other than competitive bids is authorized by these rules for a public improvement, proposals will be evaluated to determine which proposer offers the best solution to the City in accordance with the evaluation criteria set forth in the solicitation documents and in the City's rules. The solicitation evaluation criteria may include, but are not limited to, cost, quality, relevant experience, service, performance history on other private and public contracts, experience and availability of key personnel, adequacy of equipment and physical plant, financial wherewithal, sources of supply, and references. Evaluation factors need not be precise predictors of actual future costs and performance, but, to the extent possible, such evaluation factors shall:

1. Be reasonable estimates based on information available to the City;

2. Treat all proposals equitably;

3. Recognize that public policy requires acquisitions and public improvements to be accomplished at the least cost.

E. No assignment or transfer of contract rights

A contractor shall not assign, sell, or transfer rights, nor delegate responsibilities under a public contract either in whole or in part, without first obtaining the City's prior written consent. Such written consent shall not relieve a contractor of any obligations under a public contract, and any transferee shall be considered the agent of the contractor and bound to abide by all provisions of the public contract. Except in the event of a novation, if the City consents in writing to an assignment, sale, or transfer of the contractor's rights and responsibilities, the contractor shall remain ultimately liable to the City for complete performance of the public contract as if on such assignment, sale, or transfer had occurred.

40.035 CONTRACT CANCELLATION PROCEDURES

A. Termination Due to Circumstances Beyond the Control of the Contractor

1. Reasons for Termination

The City may, in its sole discretion, by written order or upon written request from the contractor, terminate the contract or a portion thereof if any of the following occur:

a. The contractor is prevented from completing the work for reasons beyond the control of the City;

b. Completion of the project is beyond the control of the contractor;

c. For any reason considered by the City to be in the public interest (other than a labor dispute or reason of any third party judicial proceeding relating to the work other than a suit or action filed in regards to a labor dispute). These reasons may include, but are not necessarily limited to, non-availability of materials, phenomenon of nature of catastrophic proportions or intensity, executive orders of the President related to national defense, congressional or state acts related to funding;

d. Any third party judicial proceeding relating to the work other than a suit or action filed in

regards to a labor dispute;

e. If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the public works;

f. The City does not have funds budgeted or available to complete the contract; or

g. Any other reason allowed as a basis for termination under the contract.

2. Payment When Contract is Terminated

When the contract, or any portion thereof, is terminated before completion of all items of work in the contract, payment will be made for the actual items of work completed under the contract, or by mutual agreement, for items of work partially completed. No claim for loss of anticipated profits will be allowed.

3. Responsibility for Completed Work if Contract Terminated

Termination of the contract or a portion thereof shall not relieve the contractor of responsibility for the work completed, nor shall it relieve the surety of its obligation for any claims arising from the work performed.

B. Termination of Contract for Default

1. Declaration of Default

The City may, after giving the contractor or the surety seven (7) days' written notice and an opportunity to cure deficient performance, terminate the contractor's performance for any reasonable cause, including but not limited to those set forth in subsection 2(a)(1) to (6) of this rule. Upon such termination, the City may immediately take possession of the premises and of all materials, tools and appliances thereon as well as all other materials, whether on the premises or not, on which the contractor has received partial payment. The agency may finish the work by whatever method it may deem expedient.

a. If the contractor should persistently or repeatedly refuse to or fail to supply an adequate number of properly skilled workers or proper materials for the efficient execution of the project; or

b. If the contractor should fail to make prompt payment to subcontractors for material or labor, or persistently disregard laws, ordinances, or the instruction of the City, or otherwise be guilty of a substantial violation of any provision of the contract; or

c. If the Contractor should voluntarily or involuntarily seek protection under the U.S. Bankruptcy Code and its Debtor in Possession or Trustee for the estate fails to assume the contract within a reasonable time; or

d. If the contractor should make a general assignment for the benefit of the contractor's creditors; or

e. If a receiver should be appointed on account of the contractor's insolvency; or

f. If the contractor is otherwise in material breach of any part of the contract.

2. Required Response to Declaration of Default

If the above action is taken, the contractor or the surety shall provide the City with immediate and peaceful possession of all of the materials, tools, and appliances located on the premises, as well as all other materials whether on the premises or not, on which contractor has received any progress payment. Further, the contractor shall not be entitled to receive any further payment until the work is completed. On the completion of the work, determination shall be made by the City of the total amount under the terms of the contract, had the contractor completed the work. If the difference between said total amount and the sum of all amounts previously paid to the contractor, which difference will hereinafter be called the "unpaid balance," exceeds the expense incurred by the City in completing the work, including expense for additional managerial and administrative services, such excess will be paid to the contractor, with the consent of the surety. If, instead, the expense incurred by the City exceeds the unpaid balance, the amount of the excess shall be paid to the City by the contractor or the surety.

3. Expense of Completion

The expense incurred by the City shall be as determined and certified by the City.

4. Substitution of Contractor

As provided in PCR 30.205, termination of the contractor and substitution of another contractor to complete the work does not constitute the award of a new public contract and shall not be subject to the provisions of ORS 279A.015 (5), ORS 279B.050 to ORS 279B.085, or ORS 279C.300 to ORS 279C.470.

5. Refusal to Perform

In addition to and apart from the above-mentioned right of the City to terminate the employment of the contractor, the contract may be canceled by the City for any willful failure or refusal on the part of the contractor to perform faithfully the contract according to all of its terms and conditions; however, in such event neither the contractor nor the surety shall be relieved from damages or losses suffered by the City on account of the contractor's breach of contract.

6. Remedies are Cumulative

The City may, at its discretion, avail itself of any or all of the above rights or remedies without prejudice or preclude the City from subsequently invoking any other right or remedy set forth above or elsewhere in the contract.

40.040 RETAINAGE

A. Retainage of Five Percent

The City will retain amounts from progress payments so that the total value of all amounts retained will not exceed 5 percent of the value of completed work. If the contract work is 50 percent completed and the work is progressing satisfactorily, the retainage may be reduced on the remaining progress payments. Any reduction or elimination of retainage shall be allowed only upon written application of the

contractor, which application shall include written approval of the contractor's surety; except that when the contract work is 97-1/2 percent completed, the City may without application by the contractor, reduce the retained amount to 100 percent of the value of the contract work remaining to be done. If retainage has been reduced or eliminated, the City reserves the right in protecting its interests to reinstate at any time retainage from further progress payments.

B. Alternatives to Cash Retainage

In lieu of cash retainage to be held by the City, the contractor may select one of the following options:

1. Deposit of Securities

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 in an amount equal to the value of the bonds and securities. This reduction in retainage will be made in the progress payments made subsequent to the time the contractor deposits the bonds and securities.

The value of the bonds and securities will be determined periodically by the City and the amount retained on progress payments will be adjusted accordingly. The bonds and securities deposited by the contractor shall be fully assigned to the City or be payable to the City on demand and shall be of a character approved by the Finance Director, including but not limited to the following:

a. Bills, certificates, notes or bonds of the United States.

b. Other obligations of the United States or its agencies.

c. Obligations of any corporation wholly owned by the Federal Government.

d. Indebtedness of the Federal National Mortgage Association.

e. Time certificates of deposit or savings account passbooks issued by a commercial bank, savings and loan association, or mutual savings bank, duly authorized to do business in Oregon.

f. Corporation bonds rated A or better by a recognized rating service.

g. General obligation bonds of the State of Oregon or any political subdivision thereof.

h. General obligation improvement warrants issued pursuant to ORS 287.502.

i. Irrevocable letters of credit from a bank doing business in Oregon.

At the time the City determines that all requirements for the protection of the City's interest has been fulfilled, all bonds and securities deposited as above provided will be released to the contractor.

2. Deposit in Interest-Bearing Accounts

Upon written request of the contractor, the City shall deposit any amounts withheld as retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association for the benefit of the City. Interest earned on such account shall accrue to the contractor.

3. The City may, at its discretion, 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 to be retained. The contractor shall accept like bonds from subcontractors and suppliers when the City allows surety bonds for retainage.

C. Recovery of Costs

If the City incurs additional costs as a result of the exercise of any of the options for retainage described herein, the City may recover such costs from the contractor by reduction of the final payment. As work on the contract progresses, the City shall, upon request, inform the contractor of all accrued costs.

40.045 PROGRESS PAYMENTS

A. Request for Progress Payments

At a regular time each month, the contractor shall, if required by the contract documents, submit to the City a request for payment based upon an estimate of the amount of work completed and of the value of acceptable material to be incorporated in the completed work which has been delivered and acceptably stored. Upon verification and approval of the City, the sum of these values will be referred to the "value of completed work." With these estimates as a base, a progress payment will be made to the contractor, which shall be equal to the value of completed work, less such amounts as may have been previously paid, less such other amounts as may be deductible or as may be owing and due to the City for any cause, and less an amount to be retained in protection of the City's interests.

B. Progress Payments Do Not Constitute Acceptance of Work

Progress payments shall not be construed as an acceptance or approval of any part of the work covered thereby, and they shall in no manner relieve the contractor of responsibility for defective workmanship or material.

C. Estimates for Progress Payments

The estimates upon which progress payments are based are not represented to be accurate estimates, and all quantities shown therein are subject to correction in the final estimate. If the contractor uses such estimates as a basis for making payments to subcontractors, this is at the contractor's own risk, and the contractor shall bear all loss that may result.

D. Contractor Certified Payroll Payment Withholding

The City shall withhold 25% of any amount owed to a contractor if the contractor does not file certified payroll records with the City along with any invoice for payment on any project covered by Prevailing Wage Rate Law.

40.050 FINAL INSPECTION

A. Notification of Completion

When the contractor determines that all construction work on the project has been completed, the contractor shall so notify the City in writing. The City shall make an inspection of the project and project records within fifteen (15) days of receiving said notice. If, at such inspection, all construction provided for and ordered under the contract is complete and satisfactory to the City, and all

certifications, bills, forms, and documents have been submitted properly, such inspection shall constitute the final inspection.

B. Instructions to Complete the Work

If, however, at any inspection, any work in whole or in part is found unsatisfactory, or it is found that all certifications, bills, forms, and documents have not been submitted properly, the City shall within fifteen (15) days provide instructions to the contractor on outstanding requirements to complete the project. At such time as the contractor determines full compliance with, and the execution of such instructions, the contractor shall notify the City in writing. The City shall make another inspection within fifteen (15) days after such notice, and this inspection shall constitute the final inspection provided construction work has been completed satisfactorily.

C. Acknowledgment of Acceptance

Upon satisfactory completion of all work required under the contract, the City shall acknowledge acceptance of the work in writing.

40.055 FINAL ESTIMATE AND FINAL PAYMENT

A. Submission of Final Estimate

As soon as practicable after final inspection of the work under the contract, if unit prices were applicable, the City shall prepare a final estimate of the quantities of the various classes of work performed. Following a determination of the total amount due the contractor, and following final acceptance of the work by the City, final payment shall be made to the contractor.

B. Set-off of Prior Payments

All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

C. Retainage

Any retainage help by the City shall be included in and paid to the contractor as part of a contract's final payment.

D. Interest

In accordance with ORS 279C.570 (8), the City shall pay a contractor interest at the rate of 1.5 percent per month on the final payment due to a contractor, with the interest to commence thirty (30) days after the work under the contract has been completed and accepted and shall run until the date when the final payment is paid to the contractor.

40.060 CLAIMS FOR UNPAID LABOR OR SUPPLIES

A. Right of Action

A person claiming to have supplied labor or materials for work on a public improvement contract led by the City for which the person has not been paid by the prime contractor or any subcontractor, has a right of action on the contractor's payment bond. This right arises if the person has not been paid in full and has given written notice of a claim within 120 days of last providing labor or furnishing

materials, or within 150 days of providing labor or furnishing materials if the claim is for a required contribution to a fund of any employee benefit plan.

B. Notice of Claim

1. To initiate a claim against the contractor's bond, a person should file a Notice of Claim in the form and manner attached as PCR 40.061 - Exhibit A. Such notice must be given to the contractor and the City.

2. Any notice of claim should include the following information:

a. Name and address of the claimant;

b. Name of prime contractor;

c. Title of project and contract date;

d. Name of the City;

e. Name of bonding company (may be obtained from City); and

f. Name of contractor or subcontractor to whom labor or material supplied.

C. Response to Notice of Claim

Upon receipt of such Notice of Claim, the City shall:

1. Send an acknowledgment to claimant;

2. Send a copy of the notice to the prime contractor; and

3. File a copy of the Notice with the bonding (surety) company.

D. Referral to Surety Company

If the contract has been completed and all funds disbursed to the prime contractor, all claims shall be referred to the surety company for resolution. The City shall not arrange for second payments directly to subcontractors or suppliers for work already paid for by the City.

E. Discretionary Payment of Claim

If the contract is still in force, the City may pay a valid claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the contractor under the contract.

F. Liability of Claim

If the City chooses to make a payment as provided in Subsection E, the contractor or the contractor's surety shall not be relieved from obligation with respect to any unpaid claims.

40.061 EXHIBIT A

To: (insert name of the public body)

NOTICE IS HEREBY GIVEN that the undersigned, (insert name of subcontractor or supplier), a (corporation, partnership, sole proprietorship, etc.), as claimant, has a claim for (labor performed by the claimant, materials supplied by the claimant, etc.), generally consisting of (brief description) in the sum of $_____ against the payment bond taken from (name of prime contractor), as principal, and (name of bonding company if known), as surety, for the construction of the (title or description of project). The material or labor was supplied to (name of contractor).

(Insert a brief description of the work concerning which the bond was taken.)

DATED this _____day of _____, 20__.

By_____
(claimant's name)

40.065 PLANNING FOR PUBLIC IMPROVEMENTS

The City will prepare a file with the Commissioner of the Bureau of Labor and Industries a list of planned public improvements at least 30 days before adoption of the City's budget and otherwise comply with ORS 279C.305.

40.070 PREVAILING WAGE LAWS

Contractors shall comply with all Prevailing Wage Rate Laws (ORS 279C.800 to 279C.870 or the Davis-Bacon Act, 40 US 276a) if applicable.

PCR 50.000 - WAIVER OF SECURITY (BID, PERFORMANCE AND PAYMENT BONDS)

(Also see PCR 30.055)

50.010 BID SECURITY REQUIREMENTS

The City shall require bid security unless an exception under the Public Contracting Code or these rules apply. The City may, in its discretion, waive bid security requirements for contracts other than those for public improvements. In its discretion, the City may accept blanket bid bonds. The City may require proposal security bonds.

50.015 CONTRACTS UNDER $10,000

The City may, in its discretion, waive the bid security and performance bond requirements if the amount of the contract is less than $10,000.

50.020 EMERGING SMALL BUSINESS CONTRACTS UNDER $100,000

A. The City may, in its discretion, waive bid security requirements and performance bond requirements when the public improvement project:

1. Has estimated direct construction costs not exceeding $100,000;

2. Is being undertaken through a program where the bidders are drawn exclusively from a list of certified Emerging Small Businesses maintained by the Advocate of Minority, Women and Emerging Small Business; and

3. The City has been provided funds by the legislature for the purpose of assisting Emerging Small Businesses.

B. The City may waive bid security requirements and/or performance bond requirements under the following conditions:

1. There exists an emerging small business account or like source of funds containing an unexpended and unobligated balance;

2. The City has authority to encumber and make payments from the account; and

3. The City encumbers an amount in the account to cover the total cost of each project wherein the bid security and/or the performance bond is waived.

PCR 60.000 - PROPERTY DISPOSITION

60.010 SURPLUS PERSONAL PROPERTY

A. Personal property owned by the City and under the dollar value of $500 may be disposed of with the approval of any department head or the City Manager. Personal property that exceeds that dollar value may be disposed of only after being declared surplus by the City Manager. The method of disposal will be determined based on condition, value, demand, and/or use.

B. Personal property may be declared surplus by the City Manager or designee if it is scheduled for replacement in an adopted budget or it is no longer necessary to provide City services.

60.015 AUCTION SALES OF PERSONAL PROPERTY

Personal property may be sold at auction if the City determines that an auction will probably result in the best net return for the City. Auctions that are widely publicized, including internet auctions, do not require notice by the City.

60.020 SALES OF PERSONAL PROPERTY

A. When the current market value per item is estimated to be more than $25,000, the personal property must be offered for competitive bid and be advertised in a newspaper of general circulation in the City. The City at its discretion may choose between sealed written bids or a 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:

1. An appraisal of the market value of the property is obtained and documented, and the negotiated sale price exceeds the market value; or

2. The sale amount exceeds the highest bid received through the bidding or auction process.

B. The City may sell personal property by a negotiated sale if the value of the property is estimated to be less than $25,000 and the City has determined that a sale without competitive bidding will result in at least as much net revenue as would a competitive bidding process. The City shall endeavor to get as many quotes as is reasonable under the circumstances (normally at least three) and shall negotiate to maximize the proceeds for the City.

60.025 LIQUIDATION SALES OF PERSONAL PROPERTY

The City may sell personal property through a commercially recognized third party liquidator if the City has determined that a liquidation sale will result in increased net revenue and the selection of the liquidator was conducted by the competitive request for proposal process under these rules.

60.030 DONATIONS OF PERSONAL PROPERTY

A. The City may transfer personal property, including recyclable or reclaimed materials, without remuneration or only nominal remuneration without competitive bids to the following entities:

1. Another public agency;

2. 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

3. 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:

1. A determination has been made that the property is not needed for other public purposes; and

2. If the property has a current market value of $500 or more, the donation or sale shall:

   a. Be approved by the City Manager or designee; and

   b. Be documented by the City to be clearly in the public interest.

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

60.035 TRADE OF PERSONAL PROPERTY

The City may trade personal property owned by the City to other government agencies or to other entities provided the following conditions apply:

A. Trades to other government agencies are exempt from public bidding by PCR 10.010A.1; however, such trades must be approved by the City Manager.

B. Trades of personal property with parties other than government agencies must proceed as follows:

1. The market value of both the item to be traded and the item requested must be documented.

2. The proposal to trade an item for another item must be made available to an adequate number of potential vendors to encourage competition.

3. Such trades must be approved by the City Manager.

60.040 DISPOSAL OF SURPLUS PERSONAL PROPERTY MEETING HAZARDOUS WASTE DEFINITIONS

If personal property has been declared surplus by the City and can be defined as a hazardous material or waste, including electronic material, or e-waste, the City may appropriately recycle or dispose of the property without competitive bids subject to the following conditions:

A. A determination has been made that the property is not needed for other public purposes,

B. If the property has a current market value of $500 or more, staff made a good faith effort to locate a seller and documentation of the effort will be made part of the City's files.

PCR 70.000 - PERSONAL SERVICES CONTRACTS

70.010 PERSONAL SERVICES CONTRACTS

A. Personal service contracts are not "public contracts" subject to formal competitive process under the Oregon Public Contracting Code. This Section of the PCRs describes a method for distinguishing between personal service contracts and public contracts, particularly service contracts, and provides examples of contracts or classes of contracts which are or are not personal service contracts.

B. The determination whether a contract is a public contracts or a personal service contract shall be based on the following:

1. Whether the City has developed or is reasonably able to develop reasonably adequate design and/or performance specifications and whether selecting a contractor on the basis of lowest price and meeting minimum specifications would likely meet the City's needs. If the tasks to be performed can reasonably be performed based solely on compliance with minimum specifications, then the tasks should be performed pursuant to a public contract awarded by a competitive bidding process. Conversely, if the City is reasonably unable to develop adequate design and/or performance specifications but must instead have the assistance of the contractor's training, knowledge, and expertise to develop a scope of work statement and selecting the contractor on the basis of lowest price would be unlikely to meet the City's needs, then the tasks would most appropriately be performed under a personal service contract.

2. Whether selecting the contractor on the basis of qualifications rather than lowest price will result in the City obtaining the best value for its money.

3. A personal service contract is appropriate where the contract is awarded primarily on the basis of the contractor's qualifications, including but not limited to, such criteria as experience, training, knowledge, and expertise, technical skill, creativity, artistic ability, performance history, and demonstrated ability to exercise sound professional judgment. Price will be a secondary criterion for awarding a personal service contract.

4. A personal service contract is not appropriate where price is or should be the primary or a major selection criterion.

C. Personal service contracts may include, but are not limited to, the following:

1. Contracts for services performed as an independent contractor in the professional capacity, including but not limited to the services of an accountant; attorney; architectural or land use planning consultant; physician or dentist; registered professional engineer; appraiser or surveyor; aerial photographer; timber cruiser; broadcaster; or data processing consultant.

2. Contracts for such services as an artist in the performing of fine arts, including but not limited to photographer, filmmaker; painter; weaver; or sculptor.

3. Contracts for services of a specialized creative and research oriented, noncommercial nature.

4. Contracts for educational and human custodial care services.

D. The following are NOT personal service contracts:

1. Contracts, even though in a professional capacity, if predominately for a product, e.g., a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the shrubs and trees is predominately a tangible product.

2. A service contract, including a contract with a temporary service or personnel agency, to supply labor which is of a type that can generally be done by any competent worker, e.g., data entry, janitorial, security guard, crowd management, crop spraying, laundry, and landscape maintenance service contracts

3. Contracts for trade related activities considered to be labor and material contracts.

4. Contracts for services of a trade-related activity, to accomplish routine, continuing, and necessary functions, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.

70.015 SCREENING AND SELECTION POLICY FOR PERSONAL SERVICES CONTRACTS

It is the City's policy to select as expeditiously as possible the best qualified consultant available, consistent with financial considerations. The selection procedures in this section shall be used to select the personal services contractors, except where ORS 279C.110 requires a different procedure. The selections procedures do not apply to the appointment or hiring of City officials and employees, to employment or services contracts with City officials and employees (except if providing services outside the scope of employment or official duties), or to collective bargaining agreements.

A. Formal Selection Procedure

This procedure shall be used for personal service contracts when the total cost of the contract exceeds $100,000. The City may elect to use the Formal Selection Procedure for any personal service contract, regardless of price.

1. Announcement

The City will make at least one public announcement of its need for personal services in an appropriate trade periodical or newspaper of general circulation. The announcement shall include a description of the proposed project, the scope of the services required, project completion dates, and a description of any special requirements, if present. The announcement shall invite qualified prospective contractors to indicate to the requesting department their interest in performing the services required. The announcement will specify a closing date by which the statement must be received by the appropriate department.

2. Application

Prospective contractors must submit a statement which describes their capabilities, credentials, and performance data sufficient to establish their qualification for the project.

3. Initial Screening

The Department Head or designee shall evaluate the qualifications of all applicants responding to the announcement by the closing date and select from among the respondents a minimum of three prospective contractors whose statements evidence the highest level of qualification. Should fewer than three (3) statements be received, then each prospective contractor submitting statements that meet the minimum qualifications will be interviewed.

4. Final Selection Procedure

a. Interviews

The Department Head or designee may hold discussions with the finalists selected for initial screening. Applicant capability, experience, and compensation requirements shall determine the department's final selection. The interviews may be in person or by phone.

b. Award of Contracts

The Department Head or designee shall make a recommendation to the Board for award of the contract based on the written materials and the interview evaluation. The designee may be a committee.

B. Informal Selection Procedure

1. This procedure may be used when the estimated fee to the contractor does not exceed $100,000.

2. The department will contact a minimum of three (3) prospective contractors with which it has had previous successful experience or which are known by the department to be qualified to offer the sought-after services. A projected fee will be requested and a selection made by the Department Head or designee based upon the consultant's capability, experience, project approach, and compensation requirements.

C. Direct Appointment Procedure

1. A qualified consultant may be appointed directly from the City's current list of consultants, another

public contracting agency's current list of consultants pursuant to an interagency or intergovernmental agreement entered into in accordance with ORS Chapter 190; or from consultants offering the necessary services that the City reasonably can locate. Direct appointment procedure may be used when:

a. The consultant's estimated fee does not exceed $20,000; or

b. When the project consists of work that has been substantially described, planned, or otherwise previously studied or rendered in an earlier departmental contract, provided that the original selection procedure used for the project was a formal procedure and the consultant's estimated fee does not exceed $100,000.

2. A direct appointment shall be competitive to the extent practicable and may be based on the consultant's availability, capabilities, staffing experience, compensation requirements and the project's location.

D. Emergency Appointment Procedure

Nothing in the rule shall be inferred to prohibit or otherwise impede the Department Head's or designee's right to make direct consultant appointments when conditions require a prompt action to protect life or property. In such instances, the recommended appointment and a written description of the conditions requiring the use of this appointment procedure shall be submitted by the Department Head or designee to the City Manager or designee for action. The City Manager or designee will determine if an emergency exists, declare the emergency, and when appropriate, approve the appointment.

E. Responsible Parties' Actions

1. Professional Consultants

Submit qualifications, credentials, and performance data relating to their capabilities to the appropriate division in response to project announcement.

2. Division/Department

a. Determine that the work on a project requires the services of a consultant.

b. Announce project as required by this section.

c. Request the City Manager's approval of the required actions.

d. Determine appropriate selection/appointment procedure.

e. Select consultant/candidates as specified under this rule.

f. Interview the top candidates and make the final selection.

g. Execute contracts and awards to consultants, with the City Manager's prior approval.

h. Maintain a file on the selection process, including:

1. The method and copy of the announcement.

2. The names of firms/individuals and cost estimates considered.

3. A justification of need for the contract.

4. The basis for selection.

5. The means by which rates were established.

6. How reasonableness of price was determined.

7. A copy of the resulting contract.

3. City Manager

a. Approves each project's scope and budget as necessary.

b. Makes direct and emergency appointments as required.

c. Approves/disapproves Personal Services Contract and all subsequent amendments unless the amount of the contract requires the Board's approval.

70.020 AMENDMENTS

Amendments for additional work on personal service contracts shall be permitted only if the City requests additional work of the same type. Any such amendment may not exceed 25% of the original contract value. If an additional personal services contract is to be awarded for work related to an existing personal service contract, the total value of the new and old contracts is to be considered in determining the type of selection procedure required. If a contract was originally awarded by the informal selection procedure, amendments that would result in a total contract price of more than $50,000 are not permitted. If a contract was originally awarded by the direct appointment procedure under Section 70.015C.1.a, amendments that would result in a total contract price of more than $10,000 are not permitted.

PCR 80.000 - EMERGENCY CONTRACTS; SPECIFIC EXEMPTION REQUIREMENTS; BOARD EXCEPTION; PROCEDURES; TEMPORARY EXEMPTIONS

80.010 EMERGENCY CONTRACTS

A. The City Manager or designee may, at the City Manager's or designee's discretion, authorize or let public contracts without a formal competitive process if an emergency exists and the emergency consists of circumstances creating a substantial risk of loss, damage, interruption of service, or threat to public health or safety that could not have been reasonably foreseen and requires prompt execution of a contract to remedy the condition.

B. The City Manager or designee must declare the existence of an emergency, which shall authorize the City to enter into an emergency contract with a price under $50,000 and make detailed written findings describing the emergency conditions necessitating prompt execution of the contract. A copy of the

findings together with the amount of the contract and the name of the contractor shall be immediately forwarded by the City Manager to the Board.

C. Any contract awarded under this exemption shall be awarded within sixty (60) days following declaration of the emergency unless an extension is granted.

D. The City may enter into a public contract without a formal competitive process when circumstances that could not reasonably be anticipated, require prompt establishment and performance of the contract in order to preserve public funds, property, or the uninterrupted provision of government services. In exercising its authority under this exemption, the City shall:

1. 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;

2. Make written findings describing the circumstances that require the prompt performance of the contract and of the harm anticipated to result from failing to establish the contract on an expedited basis; and

3. Record the measures taken under subsection (a) of this section to encourage competition, the amounts of the quotes or proposals obtained, if any, and the reason for selecting the contractor.

E. The City shall not contract pursuant to the exemption in the absence of a substantial risk of loss, damage, or interruption of services that would occur if contract performance awaited the time necessary, given the complexity of the project, to solicit, receive and analyze bids or proposals.

PCR 90.000 - RECYCLABLE/RECYCLED PURCHASING GUIDELINES

90.010 RECYCLED MATERIALS AND PRODUCTS GUIDELINES

The City shall make a good faith effort to prefer, specify, and purchase recyclable items and materials with recycled content in accordance with ORS 279A.125.

Incentives for recycled materials shall be applied whenever economically feasible.

A preference of 5% shall be applied for materials and supplies manufactured from recycled materials, as provided in PCR 90.015 with the exception of recycled paper and paper products, which receive a higher preference percentage as stated in PCR 90.020.

The bidder or proposer shall indicate in its bid or proposal, the materials it considers subject to the 5% preference. The 5% preference will only apply to the value of that portion of a bid or proposal that offers products containing verifiable recycled contents. The "5% preference" shall be applied by dividing the bid amount for the recycled goods by 1.05 and using the resulting number in calculating the total bid amount.

90.015 RECYCLED MATERIALS PREFERENCE

A. In order to qualify for a recycled materials preference, bidders and proposers, in their bids and proposals, shall certify the minimum or the exact percentage of recycled product in all materials and supplies offered and both the post-consumer and secondary waste content thereof.

B. Bids that contain false information about the percentage of recycled product, post-consumer and

secondary waste content, and verifiable recycled content shall be rejected as non-responsive.

C. Contracts awarded as a result of a preference under this rule are subject to investigation, including but not limited to, audits, plant visitations, examination of invoices and other documents, etc., as the City deems necessary to confirm that the products supplied contain the percentages of recycled product, post-consumer and secondary waste stated in the bid or proposal.

D. Failure to provide products containing the percentages of recycled product, post-consumer and secondary waste stated in the bid may result in:

1. The contractor being required to reimburse the City for the portion of the contract price that is attributable to the preference; and

2. Contract termination; or

3. Both 1 and 2, or such other remedies the City deems appropriate.

90.020 RECYCLED MATERIALS AND PRODUCTS PURCHASING GUIDELINES

A. Purchase of Paper Products

The City promotes the use of recycled paper and paper products. Purchase of recycled paper and paper products is preferred even when the cost of the such recycled paper or paper products is up to seven percent (7%) higher than the cost of the same quality paper or paper products containing little or no recycled paper. "Recycled paper" shall be defined as a paper product with not less than fifty percent (50%) of its total weight consisting of secondary waste materials or twenty five percent (25%) of its total weight consisting of post-consumer waste.

1. In the specification and purchase of City high speed copier and small offset press application paper and fine printing paper including book, bond, cover, gum, index, bristols, boards, ledger, and duplicator papers:

a. The City shall use recycled paper wherever possible if available and compatible with existing printing and copying equipment;

b. The City shall try to eliminate excessive or unnecessary paper use, including but not limited to over-purchase of paper, over-printing of materials, purchases of too high a grade of paper, purchase of paper which is not recyclable; and purchase of virgin paper when recycled paper is available in the same grade;

c. Procurement specifications for the purchase of new printing and copying equipment shall require the acceptance and operational use of recycled paper and shall be capable of two-sided copying;

d. The procurement of unbleached, recycled paper is encouraged and the use of bright, hard to bleach colored or otherwise non-recyclable papers shall be discouraged; and

e. In the specification and purchase of other paper items including corrugated and fiberboard boxes, folding box board and cartons, stationery, envelopes, legal and scratch pads, manifold business forms (including computer paper), toilet tissue, paper towels, facial tissue, paper

napkins and industrial wipes, and brown and coarse papers, the City shall actively solicit information from vendors with regard to the availability of other paper products (as listed above) with recycled paper content and promote its use.

B. Purchase of Composted Waste Materials

In the specification and purchase of landscape cover, soil amendment, and fill materials:

1. The City shall eliminate from procurement specifications any exclusions or barriers to the purchase of recycled compost materials except for exclusions based upon plant or human health or safety; and

2. The City shall make every effort to utilize and specify functionally equivalent composted waste products in the place of products manufactured from virgin materials.

C. Purchase of Re-refined Petroleum Products

In the purchase of lubricating oils for vehicles and equipment in the City fleet:

1. The City shall make every reasonable effort to utilize lubricating oils with re-refined oil content unless:

   a. The product does not meet performance specifications recommended by the original equipment manufacturer and related warranties would be voided; and

   b. The product is found to not be economically or technically feasible.

2. The City shall review current procurement specifications in order to eliminate (wherever economically and technically feasible) an exclusion of lubricants refined from recycled waste materials.

D. Purchase of Building Insulation Products

In the specification and purchase of building insulation products:

1. The City shall make every effort to prefer, specify and purchase insulation products manufactured from recovered or recycled materials for maintenance and repair operations, building construction projects and work or projects which are let to private contractors; and

2. A decision not to purchase insulation products with the highest percentage of recovered material content shall be based upon a determination that such products:

   a. Are not available within a reasonable period of time;

   b. Are not available at a reasonable price; and/or

   c. Fail to meet reasonable performance standards set forth in applicable specifications.

E. Purchase of Recyclable Plastic Products

In the specifications and purchase of disposable food service products and bags:

1. The City shall specify and utilize products, which are exclusively recyclable where available and locally marketed. Preference shall be given to products manufactured from materials which are readily recyclable with developed recycling markets and processes; and

F. Recycling/Reuse

The City shall also recycle or reuse materials and supplies of purchases as much as possible. Following is a listing of some basic items which shall be recycled or reused: paper, cardboard, scrap metal, tires, lubricants, and solvents, lead acid batteries, roadside brush and chipped wood waste, plastic materials, and surplus property.

PCR 100.00 – INTERGOVERNMENTAL AGREEMENTS

100.010 RIGHT TO ENTER INTERGOVERNMENTAL AGREEMENTS

The City may as set forth in ORS 190.010, enter into a written agreement with any other unit or units of local government for the performance of any or all functions and activities that a party to the agreement, its department, offices, officers, agents, or employees, have authority to perform. The Intergovernmental Agreement shall serve to define roles and responsibilities for each party.

Any agreement let by the City under this Section of the PCRs shall specify the functions or activities to be performed and by what means they shall be performed. Information provided in the let Intergovernmental Agreements shall include:

A. The agencies involved along with contact departments or divisions;

B. The functions or activities to be carried out, and by which party, during the terms of the agreement;

C. The payment and funding terms, if applicable;

D. The apportionment of fees or other revenue derived from the functions or activities under the agreement, if applicable;

E. The duration terms of the agreement;

F. The rights of the parties to terminate the agreement;

All other provisions carried out in ORS 190.010 relating to Intergovernmental Agreements shall be followed by the City.

100.020 APPLICABILITY OF INTERGOVERNMENTAL AGREEMENTS

The City shall require an Intergovernmental Agreement be let any time obligations between the City and a unit or units of another local governmental agency exist. Exchange of funds does not need to occur for an Intergovernmental Agreement to be required.

100.030 INTERGOVERNMENTAL AGREEMENT APPROVAL AUTHORITY

The Tigard City Council shall have the sole right to award the City's Intergovernmental Agreements unless

the Council delegates such authority to the City Manager. Such delegation to the City Manager shall not exceed the dollar threshold granted to the City Manager under Tigard Municipal Code. Upon award of an Intergovernmental Agreement by the City Council, either the Mayor or City Manager shall be authorized to execute and sign the Agreement.

FINDINGS IN SUPPORT OF EXEMPTIONS TO COMPETITIVE BIDDING OR PROPOSALS

The Local Contract Review Board of the City of Tigard adopts the following findings in support of exemptions to competitive bidding/proposal requirements.

Contracts Under Certain Dollar Amounts

1. The City incurs costs in awarding contracts under a formal competitive bidding or formal competitive proposal process.

2. While competitive bidding or competitive proposals can result in cost savings for large projects, the cost of the process can exceed the cost savings for smaller contracts.

3. State law creates exemptions for contracts under specified dollar amounts, and the City's exemption implements state law rather than creating a new or special exemption.

4. The rules require an informal competitive process (solicitation of quotes) in most situations, assuring competition. Even when a direct appointment is possible, the City cannot use a higher priced source if a lower priced source is known to be available. The rule against fragmentation of contracts prevents misuse of this exemption.

5. The requirement to obtain at least three quotes for intermediate contracts discourages favoritism by requiring the City to check with several sources.

6. It is unlikely that this exemption will encourage favoritism or diminish competition because it still provides for competition in most circumstances and requires the City to consider alternate sources.

7. The exemption will lead to cost savings by avoiding the cost of a formal process when that cost would outweigh any likely cost savings.

8. The exemption is in the public interest because it allows the City to reduce internal costs while controlling contract expenditures. This could not be achieved otherwise.

Price Regulated Items

9. If prices are regulated, a competitive process would not result in a lower-cost contract and the costs of the process would increase the City's overall costs.

10. Price-regulated items are typically available only from a single or limited number of sources, so exempting price-regulated items is unlikely to encourage favoritism.

11. The exemption is in the public interest because it results in cost savings for the City that could not be achieved without the exemption.

Library Periodicals

12. The purchase of most library periodicals is within the small contract dollar amount.

13. A substantial amount of market competition exists for periodicals, which results in competitive prices in the market.

14. The costs of a formal competitive process are greater that the amount of any likely savings from a competitive process.

15. The prohibition on use of higher priced sources when lower priced sources are known to be available discourages favoritism.

Advertising Contracts

16. Most entities that provide a forum for advertisers have set prices that cannot be negotiated.

17. The City has legal requirements for advertising public notices that can only be met by a small number of sources and all possible sources can be contacted without the need for an invitation to bid or request for proposals.

18. The correct advertising medium is important for the success of any advertising, so the specific medium needs to be selected based on considerations that are difficult to quantify. Therefore, selecting advertising media by bid is inappropriate and selecting by proposals may also result in a proliferation of proposals that do not meet the City's needs.

19. Advertising often must be placed on a short time schedule that does not permit the use of a formal competitive process.

20. The costs of a formal competitive process would likely be greater than the savings resulting from using that type of process to place advertising.

21. This exemption will not encourage favoritism because the City is still able to use informal processes to compare media and choose the best outcome for the City.

22. The exemption is in the public interest because it will result in cost savings to the City without encouraging favoritism and those purposes could not be met with existing rules.

Equipment Maintenance Repair and Overhaul

23. It is often impossible to determine the cost of equipment repair or overhaul without testing the equipment. It is not cost effective to have one contractor test the equipment and another perform the repairs.

24. Equipment repair often is needed to be performed without delay and in less time than a competitive process would take.

25. The only way to have a competitive process for equipment repair or overhaul, other than by

creating price agreements, would be to have a separate entity test the equipment to determine what is wrong with the equipment.

26. Without knowing the extent of repairs needed, competition is not possible because different entities could quote only their hourly rates, with no prediction as to the amount of time the repairs would take.

27. The exemption is unlikely to encourage favoritism because it is to be used only in rare occasions where the City does not have established price agreements, reached by a competitive process without favoritism.

28. This exemption serves the public interest by providing a simple process for obtaining equipment repair when needed.

29. The exemption for maintenance does not apply to routine or scheduled maintenance, unless there is only one entity capable of providing the service.

Purchases Under Established Price Agreements

30. Purchases under existing price agreements are unlikely to encourage favoritism or diminish competition because they are based on price agreements entered into after an open competitive process.

31. This exemption furthers the public interest by ensuring that price agreements will function properly and the same results would not be achievable if this exemption were not granted.

Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt

32. The exemption encourages competition and discourages favoritism by requiring an informal competitive process and requiring the City to use the least expensive source of those providing quotes.
33. The purchases under this exemption are likely to be at levels that qualify as small or intermediate contracts and the process is similar to the process required for intermediate contracts. The exemption is provided because over a period of time the total dollar amount of goods purchased from a single source may exceed the dollar maximum for intermediate contracts. The exemption is justified because each individual contract will be entered into on a competitive basis.

34. This exception is in the public interest because it allows the City to reduce costs while maintaining competition. The same result could not be achieved within existing rules because a costly formal process might otherwise be required.

Investment Contracts

35. Investment of City funds is closely regulated by state statutes.

36. Protecting the City's financial resources is in the public interest and awarding investment contracts to low bidders creates a risk of the security of the City's funds. The City needs to

have a relationship of trust with those

37. The exemption for investment contracts or contracts to borrow funds is not likely to restrict competition or encourage favoritism because the City will investigate a range of potential contractors to assure the security of the City's funds.

38. The exception is in the public interest because it protects the City's financial resources in a way that could not be achieved without the exception.

Insurance Contracts

39. This exception provides for a competitive process for appointing agents of record or obtaining specific insurance, although the process does not necessarily conform to the standard RFP or ITB process. The competitive nature of the process promotes competition and does not encourage favoritism. The public interest would not be served by reliance on other regulations because of the specific nature of insurance contracts.

Employee Benefit Insurance

40. The Public Contracting Code creates an exemption for employee benefits contracts and the City's regulations implement that exemption.

Office Copier Purchases

41. This exemption requires a comparison of products and prices and so is a competitive process.

42. The exception is not likely to discourage competition or encourage favoritism because it does require the City to compare and choose the best combination of goods and price. It also results in a cost savings by being a less costly process than a formal competitive bidding or proposal process.

43. The exemption is in the public interest because it allows the City to reduce procedural costs while maintaining competition, and other regulations do not provide the same combination of cost savings and competitive process.

Sole Source Procurement

44. In some cases, there is only one possible supplier of the goods or services needed by the City. If there is only one supplied, a competitive process would be both unnecessary and costly.

45. This exception does not discourage competition, it simply recognizes that in some situations competition does not exist and that having a competitive process would not result in competition. It also does not encourage favoritism because no one would be disfavored by choosing the only possible source. The regulation contains sufficient safeguards to assure that it will be used only when other sources are not available.

46. The exception is in the public interest because it results in cost savings that would not be possible if the exception did not exist.

Contract Amendments (Including Change Orders and Extra Work)

47. At times the City's needs change during the course of a contract and more goods, services, or work is needed to meet the City's needs. It would not be cost-effective to require a new contracting process for additional work closely related to an existing contract.

48. This exemption contains limitations to prevent abuse and to limit the extent of contract amendments. These limitations discourage favoritism by requiring a new competitive process for major amendments.

49. The exemption does not discourage competition because it applies only when the existing contract was awarded by a competitive process.

50. The exemption is in the public interest because it saves the cost of a competitive process to make minor amendments to an existing contract.

Affirmative Action Contracts

51. This exemption implements an exemption created by the Public Contracting Code.

Purchases of Contract by Other Public Agencies

52. Contracts by public agencies often allow other public agencies to make purchases on the same terms.

53. This exemption promotes competition and does not encourage favoritism because it may be used only if the original contract was awarded after a competitive process.

54. The exemption is in the public interest because it allows the City to take advantage of other competitive processes and avoid duplication of costly processes.

55. The exemption is in the public interest because it results in cost savings while maintaining competition. The same results could not be achieved without this exemption.

Oil or Hazardous Material Removal

56. This exemption is limited to situations in which the City must comply with a DEQ order. The exemption is needed to ensure compliance with environmental laws and protection of the environment in a timely manner and applies only if a competitive process cannot be completed in time to comply with the DEQ order.

57. The exception promotes competition by requiring the City to use an informal competitive process by obtaining informal solicitations or quotes from potential suppliers.

58. This exemption is in the public interest and the public interest in environmental cleanup

would not be served if this exemption were not adopted.

Contracts With Qualified Non-Profit Agencies

59. This exemption implements an exemption required by state law.

Ammunition

60. The City uses specialized ammunition, including special training ammunition. The ammunition meeting the City's requirements is often available only for short time periods, insufficient to allow a competitive process.

61. The general requirement to attempt to find the lowest price goods or services will ensure that the City does not add to the City's costs. Providing this exemption will give the City the flexibility to purchase ammunition when available and needed. Not providing this exemption could endanger public safety.

62. The public interest is served by this exemption because it allows the City to ensure that its police officers are adequately armed and trained.

Public Improvement Contracts Involving Design or Construction Management

63. This exemption allows a competitive proposal process to be used rather than a competitive bid process for public improvements under some circumstances.

64. The exemption promotes competition and discourages favoritism by requiring a competitive process.

65. The exemption recognizes that under some circumstances, the public interest is served by considering quality as well as cost in contracting for public improvements.

66. The use of the design/build and construction manager/general contractor types of contracts should result in cost savings to the City by allowing various means of controlling costs and coordinating design and construction to reduce costs.

67. The public interest is served by this exemption. The public interest would not be served by requiring competitive bidding on all public improvement contracts because doing so would limit the City's ability to use cost-saving techniques and would prevent the City from considering differences in quality among potential contractors when quality is a legitimate issue. Under the competitive bidding process, the City is required to award the contract to the lowest bidder, even if there is only a one cent difference in cost and a substantial difference in quality, providing that the low bidder meets minimum specifications.

Software

68. This exemption allows contracts for software to be let if a determination is made that little to no competition exists for the required software.

69. The exemption details the criteria that must be used in determining whether or not competition exists for the software.

70. The exemption is in public interest as it results in cost savings by eliminating the costs associated with the competitive process that would be unproductive as little to no competition exists for the required software.

Telecommunication Services

71. This exemption allows contracts for software to be let if a determination is made that little to no competition exists for the required service.

72. The exemption detail which factors the City may look at in determining whether or not completion exists.

73. The exemption is in public interest as it results in cost savings by eliminating the costs associated with the competitive process that would be unproductive as little to no competition exists for the required service.

Emergencies

74. In emergencies, the City is often required to take action in less time than it would take to complete a formal competitive process.

75. The exemption promotes competition and discourages favoritism by requiring the City to use an informal competitive process and by limiting the exemption to those contracts needed to avoid a substantial risk of loss, damage or interruption of services.

76. The exemption promotes the public interest by allowing the City to respond quickly to emergencies that threaten loss, damage or interruption of services. The public interest would not be served by requiring a formal competitive process to respond to an emergency.

Conclusion

As to each of the exemptions provided in the City's public contracting rules:

77. It is unlikely that any of the exemptions will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts. It is unlikely that the rules as a whole, including all exemptions, will encourage favoritism in the awarding of public contracting or substantially diminish competition for public contracts.

78. The awarding of public contracts pursuant to any of the exemptions will result in substantial cost savings to the City. The exemptions have been prepared to allow less expensive selection processes to be used when a more expensive process would not result in sufficient contract cost reduction to justify a more expensive process.

79. For those provisions allowing public improvement contracts to be awarded by a means other than formal competitive sealed bids, the exemptions will result in cost savings by allowing

the use of cost control measures throughout the development process.

80. Each exemption supports the public interest and each exemption is needed to provide a comprehensive approach to public contracting that would not be achieved if any of the exemptions were not provided.

PROPOSED CHANGES TO TIGARD'S PUBLIC CONTRACTING RULES – 2011

TOPIC/DEFINITIONS	CURRENT RULE	PROPOSED CHANGE	COMMENTS ON REASONING	SECTION
Formal Solicitation Threshold vs. Local Contract Review Board Approval Level	Both the formal solicitation level and the LCRB approval levels are $50,000 & Over – Good and Services $75,000 & Over – Public Improvements	Both levels would be moved to $100,000 & Over – All Types	The proposed change would keep the two levels together… anything requiring a formal solicitation would be presented to the LCRB for an award decision. The two do not need to remain together at any certain level. The LCRB's "signature" authority can remain at a level in which the Board determines appropriate.	
Small Purchase Threshold – The amount where the city only need the one quote	Less than $5,000 – All Types	Less than $10,000 – All Types	See above. May want to stay with $5,000 after all. We would be only second city in the area (Oregon City is the other) with a limit above $5k. The two do not need to remain together at any certain level. The LCRB's "signature" authority can remain at a level in which the Board determines appropriate.	10.015 (C)
Intermediate Solicitation Threshold – The amount where the city needs to obtain three or more quotes or proposals	$5,000 - $49,999 – Goods and Services $5,000 - $74,999 – Public Improvements	$10,000 - $100,000 – All Types	See above. The two do not need to remain together at any certain level. The LCRB's "signature" authority can remain at a level in which the Board determines appropriate.	10.015 (D)

PROPOSED CHANGES TO TIGARD'S PUBLIC CONTRACTING RULES – 2011

TOPIC/DEFINITIONS	CURRENT RULE	PROPOSED CHANGE	COMMENTS ON REASONING	SECTION
Formal Solicitation Threshold – The amount where the city needs to issue an Invitation to Bid or Request for Proposal Invitation to Bid = lowest responsible bidder win award Request for Proposal = the city may look at factors other than pricing when determining award	$50,000 & Over – Good and Services $75,000 & Over – Public Improvements	$100,000 & Over – All Types	The last update to the City's Purchasing Rules was completed in 2005. This action serves to bring the City more in line with current prices while streamlining the procurement process. The State of Oregon is current at $150k. An analysis of local agencies shows a range of $30k on the low end to $150k on the high side. The two do not need to remain together at any certain level. The LCRB's "signature" authority can remain at a level in which the Board determines appropriate.	10.015 (A), 10.15 (B)
Direct Appointment Level for Personal Service Agreements – The amount where staff only needs one proposal for a personal service agreement Changed from $25k to $20k per LCRB workshop discussion on June 21st.	Less than $10,000	Less than $20,000	See above. The State of Oregon is currently at $50k for a Direct Appointment of a personal service. An analysis of local agencies shows a range of $10k on the low end (where Tigard is now) to $25k on the upper end (where staff is recommending we go.) Most agencies have not updated lately. $15k-$20k is a typical threshold. The two do not need to remain together at any certain level. The LCRB's "signature" authority can remain at a level in which the Board determines appropriate.	70.015 (C)

PROPOSED CHANGES TO TIGARD'S PUBLIC CONTRACTING RULES – 2011

TOPIC/DEFINITIONS	CURRENT RULE	PROPOSED CHANGE	COMMENTS ON REASONING	SECTION
Software Exemption Exemptions do not inhibit a contract award from being presented to the Local Contract Review Board but rather allow for solicitation without a Request for Proposal or Invitation to Bid if proper documentation exists.	No Exemption – must follow same rules as any other purchase	Adding an exemption that software may be let without a formal competitive process if determined that little to no competition exists. Determination of competition shall include the following factors: • The extent to which the software is able to be integrated with other City systems. • The stability of the software company. • Continuity Savings - The overall cost, including hardware requirements, maintenance, programming, training, initial installation costs, and support of the software. Contracts for annual software maintenance may also extend past the standard five (5) year maximum life as long as the software remains in the City's best interest.	In today technology environment, staff is not able to look solely at the "sticker" price for a software package. Other factors, such as hardware requirements, staff training, both for users and network staff, integration with other City systems with often requires customization and special training, and data conversion among others make a software decision more complex than simple price. While an RFP can and is used in many cases where the City is looking at software, there are certain license requirements and upgrade where a new "version" of existing software may be considered a software package. In reality however, the continuity that the upgrade of the current software maintains should result in significant cost savings to the City. This exemption would have little to no impact on what the Local Contract Review Board would be presented. The exemption would be to the solicitation requirements not to any approval threshold levels.	10.125

PROPOSED CHANGES TO TIGARD'S PUBLIC CONTRACTING RULES – 2011

TOPIC/DEFINITIONS	CURRENT RULE	PROPOSED CHANGE	COMMENTS ON REASONING	SECTION
Intergovernmental Agreements (IGAs) IGAs are agreement with any other unit or units of local government	Not addressed	Defined what information must be detailed in an IGA: • Which agencies are involved • Functions or activities to be performed and by which party. • Payment and funding if applicable • Apportionment of fees or other revenue if applicable • Duration terms of the agreement • Rights to terminate agreement All provisions in ORS 190.010 must also be followed by the City. IGA shall be required any time obligations between the City and any unit of another local governmental agency exist. Exchange of funds does not need to occur for IGA to be required. The LCRB, acting on behalf of the Tigard City Council, shall have the sole right to award an IGA for the City	Tigard has not addressed IGAs in the Public Contracting Rules to date. IGAs have been approved by the LCRB, City Council, City Manager, and Department Heads in the past. By including IGAs in the Public Contracting Rules, staff hopes to develop a policy and subsequent processes that will lead to consistency in regards to how IGAs are treated. Under this new section, the Local Contract Review Board, acting under authority granted by the City Council, shall have the sole authority to approve the City's IGAs. The section also requires an IGA be entered into any time obligations between the City and a unit or units of another local governmental agency exist. Exchange of funds does not need to occur for an IGA to be required. The revised Rules also serve to identify what must be detailed with in an IGA. The new additions to the Rules should serve to both clear confusion surrounding the approval process surrounding the approval of IGAs as well as ensure a proper audit trail of that process.	100.00

PROPOSED CHANGES TO TIGARD'S PUBLIC CONTRACTING RULES – 2011

TOPIC/DEFINITIONS	CURRENT RULE	PROPOSED CHANGE	COMMENTS ON REASONING	SECTION
Developer Exemption Develop exemptions allow the City to contract with developers when a project need exists and the developers contractor is already staged in the area.	Addition.	Non-Land use condition exemption added. States that the City may contract with a developer that is in an area to perform a public improvement even if it is not a condition of land use. The City must provide determination that there will be significant savings to the City to do so. The determination must be made in writing and made part of the permanent file. The developer shall be seen as a Sole Source for the provision of the public improvement and no competitive process shall be required.	This is a change to the Rules that can be viewed as an overdue addition. The city, on occasion, runs into small projects that can be handled by a developer and that developers contractor in a much more efficient and cost-effective manner than the City issuing a design-bid-build agreement. If this situation arises, the city can make a written determination that a significant savings exist buy contracting with the developer for the work and, making the findings part of the project's permanent file, sole source the vendor to perform the work. This exemption would have little to no impact on what the Local Contract Review Board would be presented. The exemption would be to the solicitation requirements not to any approval threshold levels.	10.135
Timing for Addenda The city, at times, issues changes or clarifying information on Invitations to Bid or Request for Proposals. Theses addenda to the ITB or RFP must be release to all packet holders with enough time to submit their response.	No addenda may be issued by the City within 72 hours of the ITB or RFP closing date and time.	Adding language that allows for 48 hour issuance in extreme cases. In the event of less than 72 hour notice (but not less than 48 hour notice, staff must document the reason behind the shorter notification in the project file.	There are times when minor changes for clarification need to be made in a short time frame to an ITB or RFP. No addenda issued under 72 hours will be allowed to have significant impact on a bid schedule or scope of work. Staff is trying to address minor issues such as identifying a mismarked street name, contact individual or agency, or minor adjustment (cosmetic in nature) to the solicitation.	30.065 C. 1.

PROPOSED CHANGES TO TIGARD'S PUBLIC CONTRACTING RULES – 2011

TOPIC/DEFINITIONS	CURRENT RULE	PROPOSED CHANGE	COMMENTS ON REASONING	SECTION
Pre-Qualification During various projects, the city may determine it best to pre-qualify certain products or qualification level to ensure standards are met.	Current Rules allow the City to utilize products on an "appropriate list maintained by the Department of General Services."	Proposed change now reads "appropriate list maintained by the Oregon Department of Transportation (ODOT) (Qualified Products List) or any other list produced and maintained by the Oregon Department of General Services."	To staff's knowledge, ODOT is the only State department that is currently maintaining a pre-qualified products list. We propose leaving it open to the General Services Department in the even the start a list up again.	20.025 A. 1.
Hazardous Waste Surplus	Not addressed	Adding language that allows the City to appropriately recycle or dispose of surplus that can be deemed hazardous waste without soliciting competitive bids or proposals if the City has determined that no other agency has a need for the equipment and, if the value exceeds $500 the City made a good faith effort to sell the equipment.	The City is seeing an increasing amount of technology surplus. With computer boxes, monitors, laptops and printer prices consistently getting lower and lower while technology advances on an almost weekly basis, the City is finding less and less public agencies or qualified non-profits to whom the City can donate the equipment. This language allows staff to expedite the disposal of this hazardous waste, typically through the use of an e-waste recycler (one of which is a State-certified QRF) so the equipment is properly disposed of and freeing much need storage space within the City.	60.040

PROPOSED CHANGES TO TIGARD'S PUBLIC CONTRACTING RULES – 2011

TOPIC/DEFINITIONS	CURRENT RULE	PROPOSED CHANGE	COMMENTS ON REASONING	SECTION
Language Changes	Current Rules use the term "Single Seller"	Proposed change is to switch to "Sole Source"	Staff recommendation to be more consistent with the common purchasing vernacular	10.070
	Current Rules use the term "Qualified Non-Profits"	Proposed change is to switch to "Qualified Rehabilitative Facilities"	Staff recommendation to be consistent with ORS 279.835-279.855 which uses "Qualified Rehabilitative Facilities"	10.095
Miscellaneous	Current Rules require the City to make every reasonable effort to purchase and utilize retread tires rather than purchase new tires.	Proposed rules eliminate this requirement.	In the passenger replacement market, retreaded tires do not provide a sufficient economic advantage compared to the cost of new tires. And nearly 100 % of passenger tires consist of radial tires. Light weight tires contribute to improved fuel efficiency and high speed stability. Newly developed high strength compounds have made this possible. Manufacturers have decreased side wall and tread thickness in order to reduce weight. This has a negative impact for retreading, since the tire will require a more technically accurate procedure, and an additional cost to the retreader. Competition in the passenger replacement market is very tight. Manufacturers have realized that there is little demand for passenger tire retreading, and have designed one-time-use casings.	

M E M O R A N D U M

TO: Craig Prosser, City Manager
Toby LaFrance, FIS Director

FROM: Joe Barrett, Sr. Management Analyst

RE: Direct Purchasing Thresholds Comparison

DATE: May 18, 2011

Overview

I conducted a review of the formal thresholds of various other cities and counties in Oregon along with the State itself. Agencies compared include:

Cities: Lake Owego, Beaverton, Hillsboro, West Linn, Tualatin, Milwaukie, Gresham, Salem, Oregon City, Wilsonville, Portland, Eugene, Bend, and Newport.

Counties: Washington County, Multnomah County

States: State of Oregon

Others: Eugene Water and Electric Board, Metro

The comparison of these agencies to specific components of the City's Public Contracting Rules should serve as a base moving forward on the proposed changes to the Rules.

Direct Purchasing Thresholds

Of the agencies researched the vast majority define a Small Purchase (a purchase that may be directly negotiated without additional competition) as any purchase up to $5,000. Only one agency, Oregon City, appears to have a different level (any purchase under $10,000). In addition, many agencies had Direct Appointment thresholds defines for personal services (same concept with no other competition needed.) The threshold for a Direct Appointment ranged from $10,000 to $50,000.

For an Intermediate Purchase (a purchase requiring typically three quotes or proposals but not limited to low quote) the agencies had wide ranges. The Intermediate Purchase upper threshold for goods and services range from $30,000 to $150,000 and show a very definite break at $100,000 with roughly half below $100,000 and the other half at or above $100,000. The upper thresholds can be split out as follows:

Under $100,000 Goods and Services	$100,000 or Higher Goods and Services
Tualatin ($30k)	Portland ($100k)
Beaverton ($50k)	Bend ($100k)
Hillsboro ($50k)	Newport ($100k)
West Linn ($50k)	Metro ($100k)
Gresham ($50k)	**Tigard – proposed ($100k)**
Oregon City ($50k)	Lake Oswego ($150k)
Washington County ($75k)	Multnomah County ($150k)
Tigard – current ($50k)	Salem ($150k)
	Wilsonville ($150k)
	State of Oregon ($150k)
	Eugene ($150k)
	Eugene Water and Electric Board ($150k)

The Formal Purchase level, defined as any purchase that requires an Invitation to Bid or Request for Proposal, will then cover any purchase that is valued above the Intermediate Purchase's upper threshold.

Public improvement projects have a different threshold in many agencies just as Tigard does. All agencies are bound to the State and Federal definitions of a public improvement and when prevailing wage and Davis-Bacon rates must be in effect.

This does not need to impact the purchase level at which point the award of a contract or purchase is brought before the Local Contract Review Board. The LCRB's "signature" authority can remain at whatever level in which the Board determines appropriate.

AGENDA ITEM # 3.5
FOR AGENDA OF January 10, 2006

CITY OF TIGARD, OREGON
LOCAL CONTRACT REVIEW BOARD (LCRB) AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE A RESOLUTION ADOPTING REVISIONS TO THE CITY'S PUBLIC CONTRACTING RULES AS REQUIRED BY NEW STATE LAWS.

PREPARED BY: Joe Barrett DEPT HEAD OK _____ CITY MGR OK CP

ISSUE BEFORE THE LOCAL CONTRACT REVIEW BOARD

Shall the Local Contract Review Board approve a resolution adopting revisions to the City's Public Contracting Rules as required by new State laws?

STAFF RECOMMENDATION

Staff recommends that the Local Contract Review Board approve the resolution revising the City's Public Contracting Rules as required due to changes in State laws.

INFORMATION SUMMARY

At its February 22, 2005 meeting, the City's Local Contract Review Board (LCRB) approved a resolution which adopted the City's current Public Contracting Rules under the authority granted to the LCRB under Tigard Municipal Code, Section 2.46. These Rules apply to and guide all contracting, purchasing, and disposing of personal property (except real property) by the City.

Oregon's 2005 Legislature session produced significant changes to laws that relate to public purchasing and contracting throughout the State. As these changes affect the responsibility of the City and other public agencies, as well as contractors and subcontractors, the City's Public Contracting Rules require a revision.

Staff has worked closely with the City Attorney's Office to make the appropriate and necessary changes to the Public Contracting Rules to have them meet the new requirements. The majority of the changes involve Prevailing Wage Rate Law which impact the City's agreements for public improvement projects. Changes affecting the City that are addressed in the revised Public Contracting Rules include the following:

- ✓ An increase in the threshold for coverage under the Prevailing Wage Rate Law is increased from $25,000 to $50,000.
- ✓ City is now required to withhold 25% of amounts owed to contractors if certified payrolls are not filed by the contractor as required for work performed on projects falling under Prevailing Wage Rate laws.
- ✓ City is required to verify that contractor and subcontractors have filed a public works bond with a corporate surety in the amount of $30,000 with the Construction Contractors Board before beginning any project falling under Prevailing Wage Rate Law.
- ✓ The threshold requiring the use of a Qualification Based Selection process is raised from $400,000 to $900,000 for professional service contracts involving at least 10% funding from the State.

A memo explaining the required changes to the Public Contracting Rules was sent to members of the City Council on December 16, 2005. The revised Public Contracting Rules themselves make up a significantly large document of over eighty pages. Due to the size of the document, it has not been attached. Copies of the Public Contracting Rules may be requested by contacting Joe Barrett, Buyer, in the Purchasing Office.

OTHER ALTERNATIVES CONSIDERED

None.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

None.

ATTACHMENT LIST

1. Resolution.
2. December 16, 2005 Memo.

FISCAL NOTES

There are no costs associated with this item.

AIS-623 **Item #: 8.**

Business Meeting

Date:	09/13/2011		
Length (in minutes):	15 Minutes		
Agenda Title:	Public Hearing to Amend the Tigard Municipal Code to Remain Consistent with the Public Contracting Rules		
Prepared For:	Joseph Barrett	**Submitted By:**	Joseph Barrett Financial and Information Services
Item Type:	Ordinance Public Hearing - Informational	**Meeting Type:**	Council Business Meeting - Main

ISSUE

Shall the Tigard City Council approve an ordinance providing for the transition to new Public Contracting Rules, revise certain provisions in the Tigard Municipal Code relating to contracting authority, and authorize the adoption of revised Public Contracting Rules by resolution.

STAFF RECOMMENDATION / ACTION REQUEST

Staff recommends Council approve the attached Ordinance providing for the transition to new Public Contracting Rules, revise certain provisions in the Tigard Municipal Code relating to contracting authority, and authorize the adoption of revised Public Contracting Rules by resolution.

KEY FACTS AND INFORMATION SUMMARY

Tigard's Public Contracting Rules (Rules) have been in effect, with no revisions, since early 2006. The Rules serve to meet the requirement of a centralized system of purchasing set forth in Tigard Municipal Code (TMC) 2.46. As the city is seeking to update the Rules under the Resolution also considered on September 13, 2011, a slight update to TMC 2.46.110 (c) and 2.46.140 (b) needs to occur for the Rules to be consistent. Under the proposed Rules, the formal threshold for purchases (those needing to be let by either Invitation to Bid or Request for Proposals) is raised to $100,000 from the current $50,000 (good/services) or $75,000 (public improvements) split levels. This move seeks to clarify the formal threshold as well as bring it more current to the marketplace. In doing so, it seems natural to raise the limits delegated to the City Manager to the same levels, which the city has historically done. The Revised TMCs shall read:

2.46.110 (c)

The public contract, personal services contract**, public improvement contract** or any other type of contract let by the City does not exceed ~~$50,000 for contract other than public improvement contracts and $75,000 for public improvement contracts~~ **$100,000**.

2.46.140 (b)

The expenditure shall not be a component of a project with a total cost in excess of ~~$50,000 for contracts other than public improvements contracts and $75,000 for public improvement contracts~~**$100,000**, except in the case of a project which involves a personal services contract and a public contract. If a project involves a personal service contract and a public contract, the two contract shall be considered separate projects.

These changes will provide the flexibility and simplicity of having the dollar level requiring LCRB approval directly correlate to the LCRB approved formal Public Contracting Rules threshold.

OTHER ALTERNATIVES

Do not approve the ordinance revising TMC 2.46. This action would require any public improvement contract exceeding $75,000 or any other form of contract exceeding $50,000 to be brought before the Local Contract Review Board regardless of the means of solicitation that was utilized to procure the good, service, or project.

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

DATES OF PREVIOUS COUNCIL CONSIDERATION

The current rules were adopted by ordinance on February 22, 2005.
Council Workshop on June 21, 2011.

Attachments

Ordinance

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
ORDINANCE NO. 11-

AN ORDINANCE AMENDING TIGARD MUNICIPAL CODE CHAPTER 2, SECTION 2.46 TO REFLECT REVISIONS IN THE PUBLIC CONTRACTING RULES.

WHEREAS, Tigard Municipal Code Section 2.46 related to the Local Contract Review Board was last updated in 2005 by Ordinance 05-05 to be consistent with the Public Contract Rules; and

WHEREAS, The Local Contract Review Board, under Resolution ____-____ is revising and updating the city's Public Contracting Rules; and

WHEREAS, The City desires to update and revise provisions of Tigard Municipal Code Section 2.46.110(c) related to the delegation of authority to obligate the city and Section 2.46.140(b) related to limitation of expenditures to be consistent with the Public Contracting Rules adopted by the Local Contract Review Board;

WHEREAS, The City wishes to have the updated and revised rules in place by October 15, 2011.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Tigard Municipal Code 2.46 is amended as follows:

2.46.110(c)
The public contract, personal services contract, public improvement contract or any other type of contract let by the City does not exceed $100,000**.**

2.46.140 (b)
The expenditure shall not be a component of a project with a total cost in excess of $100,000, except in the case of a project which involves a personal services contract and a public contract. If a project involves a personal service contract and a public contract, the two contracts shall be considered separate projects.

SECTION 2: The authority granted under Ordinance 05-05 shall remain in effect for contracts for which the contracting process is initiated prior to October 15, 2011.

SECTION 3: The Local Contract Review Board may adopt, repeal, and amend regulations related to public contracting by resolution while under compliance with this Ordinance.

SECTION 4: This ordinance shall become effective on October 15, 2011 after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2011.

_____
Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2011.

_____
Craig Dirksen, Mayor

Approved as to form:

_____
City Attorney

_____
Date