

**CITY COUNCIL MEETING
McMinnville, Oregon**

AGENDA

**McMINNVILLE CIVIC HALL
200 NE SECOND STREET**

**August 9, 2016
6:00 p.m. – Informal Dinner Meeting
7:00 p.m. – Regular Council Meeting**

Welcome! All persons addressing the Council will please use the table at the front of the Board Room. All testimony is electronically recorded. Public participation is encouraged. If you desire to speak on any agenda item, please raise your hand to be recognized after the Mayor calls the item. If you wish to address Council on any item not on the agenda, you may respond as the Mayor calls for "Invitation to Citizens for Public Comment."

NOTE: The Dinner Meeting will be held at the McMinnville Civic Hall and will begin at 6:00 p.m. At the Dinner Meeting, Council will hold an Executive Session pursuant to ORS 192.660(2)(i) to review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

CITY MANAGER'S SUMMARY MEMO

- a. City Manager's Summary Memorandum

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVITATION TO CITIZENS FOR PUBLIC COMMENT – *The Mayor will announce that any interested audience members are invited to provide comments. Anyone may speak on any topic other than:*

- 1) a topic already on the agenda;*
- 2) a matter in litigation,*
- 3) a quasi judicial land use matter; or,*
- 4) a matter scheduled for public hearing at some future date.*

The Mayor may limit the duration of these comments.

1. CONSENT AGENDA

- a. **Resolution No. 2016 - 58:** Awarding a personal services contract to the law firm of Fisher & Phillips, LLP for employment law services

2. PUBLIC HEARING

- a. 7:00 p.m. Public Hearing: Regarding Implementation of an Exclusion Zone Ordinance

3. ORDINANCES

- a. **Ordinance No. 5006:** Implementing an Exclusion Zone for the downtown area
- b. **Ordinance No. 5007:** An Ordinance of the City of McMinnville describing the method for calculating parking time limits, repealing Ordinance No. 4985, repealing and replacing Section 32 of Ordinance No. 3629, and declaring an emergency
- c. **Ordinance No. 5008:** An Ordinance amending the McMinnville Municipal code provisions regulating skateboards
- d. **Ordinance No. 5009:** An Ordinance adopting Public Contracting rules; repealing Ordinances 3780 and 4736; and declaring an emergency

4. RESOLUTIONS

- a. **Resolution No. 2016 - 58:** Entering into an agreement to provide funds to assist in the provision of a public portable toilet facility

5. ADVICE / INFORMATION ITEMS

- a. Reports from Councilors on Committee and Board Assignments
- b. Department Head Reports
- c. Financing Update - 2016 Issuance of Debt
- d. City County Dinner - Hosted by City of Dundee - August 18, 2016

6. ADJOURNMENT



City Council- Regular

TO: Mayor and City Council
FROM: Rose Lorenzen, Administrative Assistant / HR Analyst
DATE: 08/09/2016
SUBJECT: City Manager's Summary Memorandum

SUMMARY:

M E M O R A N D U M

DATE: Aug 2nd, 2016
TO: Mayor and City Council
FROM: Martha Meeker, City Manager
SUBJECT: Agenda for the August 9th McMinnville City Council Session

CONSENT AGENDA

The following items are considered routine and will be enacted by one motion without separate discussion on each item. If a Council member (or a citizen through a Council member) wishes additional time on a particular topic, it will be removed from the Consent Agenda and considered separately.

Resolution awarding a personal services contract to the law firm of Fisher & Phillips, LLP for employment law services

In order to ensure that the City complies with all applicable laws related to its role as a public employer, there is an occasional need to consult with specialty legal counsel for employment law advice. As such, the City is budgeting for contract legal services to provide assistance to the City Attorney, as needed.

REGULAR AGENDA

PUBLIC HEARING: Downtown Exclusion Zone

In 2005, in response to concerns expressed by the Downtown merchants, the City Council approved an Enhanced Enforcement Area and authorized officers the ability to exclude individuals who were responsible for repeated nuisance behaviors from the area. While this was an effective tool, it was rescinded in 2011 after court decisions within the State placed doubt on the legality of such exclusions. To retain options for dealing with repeated nuisance behaviors, the City implemented alternate enforcement methods involving release agreements and orders issued from the Municipal Court bench. Unfortunately, these have not proven effective.

In order to provide additional options to address problem behaviors, the City Manager and the Police Chief are recommending re-implementing the Exclusion Zone under the guidelines recommended from the Municipal Court Judge, the City Attorney and the City Prosecutor. The changes shrink the footprint of the Exclusion Zone and implements it as a tool the City Prosecutor can request as a condition of probation.

ORDINANCES

Regarding Implementation of an Exclusion Zone Ordinance

After the Public Hearing, the Council may vote to implement the Exclusion Zone Ordinance as presented by staff, recommend modifications for later review or vote not to implement the Exclusion Zone Ordinance.

Amending the McMinnville Municipal Code Provisions Regulating Skateboarding

The City has received several complaints about near run-ins with skateboarders in the City-owned parking lot at 2nd and Cows Streets. After review, it is recommended the Council prohibit skateboarding in City parking lots within the Downtown core due to the growing congestion in these lots.

Describing the Method for Calculating Parking Time Limits, Repealing Ordinance 4985, Repealing and Replacing Section 32 of Ordinance 3629, and Declaring an Emergency

In Nov, 2014, the City Council passed Ordinance 4985 amending the municipal code language on parking restrictions to read as follows:

10.28.100 Parking – Time limits not extended by moving vehicle. Where maximum parking time limits are designated by sign, movement of a vehicle within a single block face shall not extend the time limits for parking. A vehicle leaving from and returning to the same block face during a 9:00 a.m. to 6:00 p.m. parking day will not cause parking time to be extended. A. "Block face" is defined as one side of the street between two intersecting streets. A parking lot will be considered part of the block face that is its longest border.

Recently, the McMinnville Municipal Judge ruled this language was unconstitutionally vague and/or overbroad. As such, and in collaboration with the Court staff and the City's prosecutor, the staff is proposing new language to correct the deficiencies.

Adopting Public Contracting Rules; Repealing Ordinances 3780 and 4736; and Declaring an Emergency

This ordinance brings our public contracting rules into alignment with our current practices and provides a process for awarding personal service contracts. In 2003, the Oregon Legislature adopted a new Public Contracting Code, which became effective March 1, 2005. By operation of the new law, all rules and exemptions that had previously been adopted by local governments expired on March 1, 2005, including two City of McMinnville ordinances that had been adopted in 1975 and 2000 (codified as McMinnville Municipal Code Chapter 2.20). Since that time, the City has followed the Attorney General's Model Rules for public contracting, although no action was taken to repeal the City's old public contracting code, which has remained on the books.

Four actions are being undertaken with the proposed ordinance:

- 1) The City is repealing the old public contracting ordinances that are no longer in effect.
- 2) The City is expressly adopting the Attorney General's Model Rules as the City's public contracting rules.
- 3) The City is exercising its authority under the Public Contracting Code to declare certain professional services agreements as "personal services contracts".
- 4) The City is adopting the procedures described in the Model Rules for the selection of consultants that provide architectural, engineering, and related services, as the procedures that will be used to award other personal services contracts. The three tiers of selection and award procedures are:
 - a) Direct Appointment Procedure (OAR 137-048-0200): Allows a direct appointment for contracts up to \$100,000. If the project eventually continues, it cannot exceed \$250,000 in total costs.
 - b) Informal Selection Procedure (OAR 137-048-0210): Allows a Request for Proposal process for contracts up to \$250,000.
 - c) Formal Selection Procedure (OAR 137-048-0220): Allows a more extensive Request for Proposal process for contracts over \$250,000.

Contracts will continue to be approved at the Council level as it exercises its authority as the Local Contract Review Board.

A copy of OAR Chapter 127, Division 48 is included in the packet.

RESOLUTION

Entering into an Agreement to Provide Funds to Assist in the Provision of a Public Portable Toilet Facility

The First Baptist Church of McMinnville provides a public portable toilet facility at 1st and Cows and has requested funding from the City to continue its availability.

Recommendation: Approve the funding as a limited measure to reduce problems in the downtown area and to aid individuals experiencing homelessness.

STAFF UPDATES

Update on 2016 Issuance of Debt

In 2001 the City and Water & Light became members of OPERS Local Government Rate Pool (LGRP) which the Oregon legislature subsequently merged with the State/Community College Pool, forming the State and Local Government Rate Pool (SLGRP). Upon joining in 2001, a Transition Liability (if a City had underfunded PERS assets) or a surplus (if a City had overfunded PERS assets) was calculated to ensure that each employer entered the pool on a comparable basis with an original interest rate on any Transitional Liability of 8%, which was reduced to 7.75% in 2013 and to 7.5% in 2015.

Currently, the PERS Transition Liability for the City and McMinnville Water & Light is approximately \$5.2 million. With today's lending rates, it makes sense to pay off the PERS Transitional Liability, and as such, the City is working with Water & Light to finalize options for the Council's and the Water & Light Commission's review. These options are scheduled for presentation later this fall and a more in-depth update can be found from the City's Finance Director in the Informational Items section of the Council's packet.

City Recorder / Legal Assistant Candidate Search

There are 15 candidates who have applied for the City Recorder / Legal Assistant position and the Staff will update the Council on the next steps to finding the most qualified candidate.

URBAN RENEWAL AGENCY

Appointing two members to the McMinnville Urban Renewal Agency Committee (MURAC)

Appointed by the City Council, the MURAC consists of seven voting members and three non-voting, ex-officio members responsible for reviewing, advising and making recommendations to the McMinnville Urban Renewal Agency on matters pertaining to the adopted "McMinnville Urban Renewal Plan."

In recent months, two MURAC members, Jeb Bladine and Rob Stephenson, have left the Committee to pursue other ventures. The MURAC and the staff recommend Kyle Faulk and Cassie Sollars to fill their positions.

Existing Members	Term Expiration
Ed Gormley	2017
Walt Gowell	2016
Kelly McDonald	2016
Wendy Stassens	2018
Marilyn Worrix	2017
Kem Carr	ex-officio
Scott Hill	ex-officio
Rebecca Quandt	ex-officio
Vacant	2016
Vacant	2018



City Council- Regular

Meeting Date: 08/09/2016

Subject:

From: Rose Lorenzen, Administrative
Assistant / HR Analyst

AGENDA ITEM:

Resolution No. 2016 - 58: Awarding a personal services contract to the law firm of Fisher & Phillips, LLP for employment law services

BACKGROUND:

Attachments

Personal Services Resolution
Engagement Letter

RESOLUTION NO. 2016 – 57

A Resolution awarding a personal services contract to the law firm of Fisher & Phillips, LLP for employment law services.

RECITALS:

The City of McMinnville employs approximately 210 Full Time Equivalent employees, including the members of two separate bargaining units.

In order to ensure that the City complies with all applicable laws related to its role as a public employer, there is an occasional need to consult with specialty legal counsel for employment law advice.

The City has budgeted for contract legal services to provide assistance to the City Attorney, as needed.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON as follows:

1. That the engagement of Fisher & Phillips, LLP, for employment law service is hereby approved.
2. The Mayor is authorized to execute the engagement letter and agreement, and such other documents as are necessary to carry out this decision.
3. This Resolution will take effect immediately upon passage.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 9th day of August 2016 by the following votes:

Ayes: _____

Nays: _____

Approved this 9th day of August 2016.

MAYOR

Approved as to form:

CITY ATTORNEY



fisherphillips.com

July 27, 2016

Via Email

David Koch
City of McMinnville
230 NE 2nd Street
McMinnville, OR 97128

Re: *Terms of Engagement*

Dear David:

Thank you for selecting the Firm to represent the City of McMinnville in connection with employment law advice.

I will be primarily responsible for this representation but will call upon other lawyers and legal assistants as I believe appropriate in the circumstances.

The principal factors in determining our fees will be the time and effort devoted to the matter and the hourly rates of the lawyers and legal assistants involved. My current hourly rate for this matter is \$320. Other charges are explained in the accompanying Appendix, which sets forth in greater detail the terms on which we will represent you. Please review the Appendix carefully. If you agree to these terms, please countersign the enclosed copy of this letter and return a copy for our files. We will not require an advance against fees or other charges, but we do require payment upon presentation of our invoices.

We appreciate the confidence you have shown by selecting us as your counsel in this matter, and we look forward to working with you.

Very truly yours,

/s/ Todd A. Lyon

Todd A. Lyon
For FISHER & PHILLIPS LLP

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Fisher & Phillips LLP

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Irvine • Kansas City • Las Vegas • Los Angeles • Louisville • Memphis • New Jersey • New Orleans • Orlando • Philadelphia
Phoenix • Portland • Sacramento • San Antonio • San Diego • San Francisco • Seattle • Tampa • Washington, DC

APPENDIX

SUMMARY OF ENGAGEMENT

We appreciate your confidence in selecting Fisher & Phillips LLP to represent you in connection with the matter described in the accompanying letter. The rules of professional responsibility applicable to lawyers strongly encourage written agreements between lawyers and their clients to ensure that there are no misunderstandings that could compromise the representation. For that reason, this sets forth the standard terms of our engagement as your lawyers. Unless modified in writing by mutual agreement, these terms will be an integral part of our agreement with you. Therefore, we ask that you review this statement carefully and contact us promptly if you have any questions. We suggest that you retain this statement in your file.

Scope and duration of Representation

It is our policy that the person or entity that we represent is the person or entity that is identified in our engagement letter. Unless the Firm agrees in writing to do so, our engagement does not include any employees, affiliates, or members of that person or entity.

Our practice focuses on advising and representing employers and comparable entities in matters arising under the laws governing labor, employment, immigration and benefits, and our representation is limited to the matter or matters described in the accompanying letter (although the scope of that representation might be enlarged by a supplemental engagement letter). We do not provide advice or representation concerning whether any matters are covered by a client's insurance policies, and, in the event of a dispute over coverage, we cannot advise or represent you in connection with such a dispute. We therefore urge you to review your policies to determine whether any matter for which you might retain us is covered by such a policy; if you believe that the policy might cover any such matter, it will be your responsibility to notify the insurance company.

We do not practice securities law or corporate law, and we do not advise our clients on such matters. Neither do we undertake to determine or advise our clients whether any particular matter or potential matter is material or must be disclosed for financial-audit purposes.

An attorney/client relationship will exist between us for the duration of the matter for which we have been engaged, unless that relationship is earlier terminated in writing by either of us. In cases in which we have been engaged to provide general labor and employment advice, the relationship will end twelve months after the last substantive work you ask us to perform. The term "substantive work" does not include routine responses to auditors' requests.

During the representation, our advice will of course be consistent with applicable legal principles and interpretations as of the date we provide it. However, those principles and interpretations are subject to change, and we cannot undertake to advise you of later changes at our own initiative. We will be pleased to respond to future requests that we reevaluate our advice in light of any such developments.

Management of Engagement

Each client is served by a responsible lawyer who has primary responsibility for communication between the Firm and the client. The responsible lawyer should be someone in whom you have confidence and with whom you enjoy working. You are free to request a change of the responsible lawyer by request to the Managing Partner of the office where the responsible lawyer is located or to a member of the Firm's Management Committee. The responsible lawyer may delegate your work, or parts of it, to other lawyers or staff. This delegation may be for the purpose of involving other lawyers who have special expertise or to provide services on the most efficient and timely basis.

Fees and Charges

We are sometimes requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Whenever possible, we will furnish such an estimate based upon our professional judgment, but always with a clear understanding that it is not a maximum or fixed-fee quotation unless otherwise agreed in writing signed by you and us. The ultimate cost frequently is more or less than the estimated amount.

We normally review our fees annually and adjust them at that time. In addition to the fees for legal services described in the accompanying letter, we will charge you for long-distance telephone calls, travel-and-lodging, photocopying, express delivery, facsimile transmissions, computer-aided legal research, and similar items connected with our handling your work. Ordinarily, these amounts will be set forth separately on your billing statement. Please let us know should you have any questions about the way in which we compute non-fee charges. On some occasions, there might be third-party charges, such as for deposition transcripts, outside printing or copying, expert witnesses, or any one of a variety of other things. Our policy is to submit all invoices from third-party vendors to you for direct payment, and we request that you pay these invoices immediately.

We do not charge for secretarial overtime, and we do not bill for time spent in travel unless (i) we are working while we travel; or (ii) the travel occurs during our normal 8:30 a.m.-to-6:00 p.m. workday. We make our best effort to travel outside our normal workday.

Billing Procedures

Our practice is to send bills on a monthly basis. Our statements generally cover fees and charges for the prior calendar month, although sometimes fees or charges might not be immediately available for one reason or another and will therefore be billed later. We ask that our statements be paid upon presentation to you. If you ever have questions about an invoice, please do not hesitate to contact us promptly to discuss them. If for any reason a statement cannot be paid upon presentation, please call us promptly so that we can discuss this.

Occasionally clients may make an overpayment on a bill. If this happens, unless you tell us otherwise, we will apply the overpayment to any outstanding fees and expenses or to the next

bill, with notice to you as to how we have applied the overpayment. If there are no outstanding fees or expenses and no work in process, we will refund the overpayment to you.

We do reserve the right to impose interest charges at 1½% per month in connection with any balance that remains unpaid more than 30 days after the statement date. Also, if it ever should be necessary for us to resort to legal action to collect our fees and expenses, it is agreed that the prevailing party shall recover its reasonable attorney's fees and costs in connection with any such action.

Payments to Trust Accounts

All trust deposits we receive from you will be placed in a trust account for your benefit. As required by law, your deposit will be placed in a pooled account if it is not expected to earn a net return, taking into consideration the size and anticipated duration of the deposit and the transaction costs, with the interest earned on the pooled account payable to a charitable foundation as provided by law. Trust deposits that are expected to earn a net return will also be placed into the pooled account, unless you request a segregated account. Interest earned on the segregated trust account will be added to the deposit for your benefit.

Client Responsibilities

You understand and agree that, in order for us to represent you effectively, it is necessary for you to assist and cooperate with the Firm. You agree to (1) make yourselves (including your employees if applicable) available to discuss issues as they arise in this matter; (2) attend and participate in meetings, preparation sessions, court proceedings and other activities in connection with the representation; (3) provide complete and accurate information and documents to us on a timely basis; and (4) make timely payment to any experts or vendors retained in connection with our services.

Communications

It is of course essential that clients and attorneys communicate effectively with one another to exchange information and to discuss developments and possible courses of action. Naturally, we will keep you informed as developments occur and will consult with you as to the appropriate steps to take. By the same token, we ask that you keep us informed of your objectives and wishes and that, if we ask for specific information or for instructions necessary to our adequately carrying out our representation, you will respond accurately, completely, and as quickly as possible.

As you know, communications between clients and attorneys are generally privileged and are not discoverable by third parties. However, court decisions have emphasized how easily that privilege can be lost, such as where attorney correspondence is routed through a client's routine intra-office mail, or where attorney/client communications are discussed with persons outside the attorney/client relationship. Any practical steps you can take to ensure that our attorney/client communications are not disclosed to third parties will be important in protecting your right to claim that privilege.

It is also important that we agree from the outset what kind of communications technology we will employ in the course of this engagement. Unless you specifically direct us to the contrary, we agree that it is appropriate for us to use fax machines and e-mail in the course of the engagement without any encryption or other special protections. In that regard, please specify an e-mail address which you would like us to use to communicate with you. Please also notify the Firm if you have any other requests or requirements in connection with the methods of telecommunication, or persons to be included or copied in the circulation of documents relating to the engagement.

Avoidance of Conflicts

In the event you have a potential dispute with a third party, and you wish to discuss with us the possibility of us representing you in connection with that potential dispute, we request that you do not disclose the nature of that dispute or any relevant facts until you have provided us with the name of the potential adverse party and afforded us the opportunity to determine whether the representation would create a conflict with another client.

Similarly, because we represent a number of staffing agencies or Professional Employer Organizations (PEOs), it is important that, before you ask us to comment upon such an entity's actions taken, advice given, or services otherwise rendered, you first disclose to us the name of that organization or agency.

Termination of Representation

You may terminate our representation at any time, with or without cause, by notifying us. If you do, papers and property which you have provided to us will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our internal files regarding administrative matters pertaining to the case will be retained. Termination of our services will not affect your responsibility for payment of legal services rendered and additional charges incurred both before termination and in connection with an orderly transition of the matter, including the copying of any files that you request that we provide to you or to substitute counsel.

The rules of professional responsibility for the jurisdictions in which we practice list several types of conduct or circumstances that require or allow us to withdraw from representing a client. These include, for example: nonpayment of fees or costs, use of our services to perform a criminal or fraudulent act, misrepresentation of or failure to disclose material facts, action contrary to our advice, and conflicts-of-interest with another client. In addition, we reserve the right to stop our work for you if you fail to cooperate with us, or if any account is past due and we have been unable to agree on a mutually acceptable plan for payment. You agree that we may withdraw from the representation under these circumstances, subject to court approval where such approval is required for such withdrawals. In the event we seek to withdraw, you agree to engage new counsel immediately.

Document Retention

At the conclusion of the Representation, we return to the client any documents that are

specifically requested to be returned. As to any documents so returned, we might elect to keep a copy of the documents in our files. At the close of any matter, we generally purge our files in that matter of unnecessary materials and send the retained materials to a storage facility for storage at our expense. We will maintain the files in storage for a period of ten years. After that time, we reserve the right to destroy the documents in the stored files without further notice to you. You hereby consent to such destruction of your documents in our files, unless we receive from you, within ten years after the close of the matter, written instructions for a different disposition of your documents.

Your Right to Arbitrate Fee Disputes

If you disagree with the amount of our fee, please take up the question with your principal lawyer contact or with the Firm's Managing Partner. Typically, such disagreements are resolved to the satisfaction of both sides with little inconvenience or formality. In the event of a fee dispute which is not readily resolved, you have the right to request arbitration under supervision of the state or district bar associations for the jurisdictions in which we practice, and we agree to participate fully in that process.

Errors-and-Omissions Insurance

The rules of professional responsibility applicable to attorneys in some states require that law firms advise clients whether the firms have errors-and-omissions insurance coverage. Fisher & Phillips of course does have such coverage.

Miscellaneous Matters

We publish a bi-monthly *Labor Letter* and other, more-narrowly-focused newsletters in which we cover topical matters relating to employment laws and labor relations. In addition, when circumstances warrant, we publish a *Labor Alert* to let our clients know about particularly time-sensitive issues of importance. These publications are intended to keep our clients advised about matters which we think will be of interest to them. Of course, due to the generalized nature of these publications, we cannot undertake to address in them every pertinent legal development which might be important to a particular client, and the materials published therein do not constitute legal advice.

We also present seminars periodically. In these seminars, we discuss a broad spectrum of relevant labor- and employment-law issues. These seminars are provided as a service to our clients, and you will be invited to them as they are scheduled.



City Council- Regular

Meeting Date: 08/09/2016

Subject:

From: Rose Lorenzen, Administrative
Assistant / HR Analyst

AGENDA ITEM:

7:00 p.m. Public Hearing: Regarding Implementation of an Exclusion Zone Ordinance

BACKGROUND:

Please see attached documents.

Attachments

Rules of the Road

Park Ranger Update

Exclusion Zone Memorandum

Chapter 10.12

RULES OF THE ROAD*

Sections:

- 10.12.010 Vehicle operation—Generally.
- 10.12.020 Vehicle operation—Backing.
- 10.12.030 Vehicle operation—Right-of-way.
- 10.12.040 Vehicle operation—Turn signal.
- 10.12.050 Vehicle operation—Stopping at intersections.
- 10.12.060 vehicle operation—Proceeding without sufficient space.
- 10.12.070 Emerging from vehicle.
- 10.12.080 Clinging to vehicles prohibited.
- 10.12.090 Riding outside vehicle prohibited when—Entering or leaving moving vehicle prohibited.
- 10.12.100 Careless driving prohibited.
- 10.12.110 Reckless driving prohibited.
- 10.12.120 Driving under the influence of intoxicating liquor, dangerous drugs or narcotic drugs prohibited.
- 10.12.130 Damaging or obstructing sidewalks and curbs.
- 10.12.140 Obstructing passage of vehicles or pedestrians.
- 10.12.150 Removing glass and debris.
- 10.12.160 Crossing private property.
- 10.12.170 Driving in parks.
- 10.12.180 Sleds and skis on streets.
- 10.12.186 Skateboards.
- 10.12.187 Scooters, unicycles and roller skates.
- 10.12.190 Trains not to block streets.

10.12.010 Vehicle operation—Generally. In addition to state law, the provisions set forth in Sections 10.12.020 through 10.12.060 shall apply to the operation of vehicles upon the streets of the city. (Ord. 3629 §12(part), 1972).

10.12.020 Vehicle operation—Backing. The operator a vehicle shall not back the vehicle unless the movement can be made with reasonable safety and without interfering with other traffic, and shall yield the right-of-way to moving traffic and pedestrians. (Ord. 3629 §12(1), 1972).

10.12.030 Vehicle operation—Right-of-way. The operator of vehicle in the traffic lane shall have the right-of-way over an operator of a vehicle departing from a parking space. (Ord. 3629 §12(2), 1972).

* For statutory provisions on local traffic regulation, see ORS 487.55 et seq.

10.12.050 Vehicle operation—Stopping at intersections. Where a stop sign is erected at or near the entrance to an intersection, the operator of a vehicle approaching shall bring the vehicle to a stop before crossing a stop line or crosswalk; or, if none, then before entering the intersection. Stopping at a point which does not yield an unobstructed view of traffic on the intersecting street shall not constitute compliance with the requirements of this section. (3629 §12(4), 1972).

10.12.060 Vehicle operation—Proceeding without sufficient space. Notwithstanding an indication by a traffic control device to proceed:

A. No operator of a vehicle shall enter an intersection unless there is sufficient space on the opposite side of the intersection to accommodate his vehicle without obstructing the passage of other vehicles.

B. No operator of a vehicle shall enter a parked crosswalk, whether or not at an intersection, unless there is sufficient space on the opposite side of the crosswalk to accommodate his vehicle without obstructing the passage of pedestrians. (Ord. 3629 §12(5), 1972).

10.12.070 Emerging from vehicle. No person shall open the door of a motor vehicle into a traffic lane without first ascertaining that it can be done in safety. (Ord. 3629 §14, 1972).

10.12.080 Clinging to vehicles prohibited. No person riding upon a bicycle, motorcycle, coaster, roller skates, sled or other device shall attach the device or himself to a moving vehicle upon a street, nor shall the operator of a vehicle upon a street knowingly allow a person riding on any of the above vehicles or devices to attach himself, the vehicle or the device to his vehicle. (Ord. 3629 §17, 1972).

10.12.090 Riding outside vehicle prohibited when--Entering or leaving moving vehicle prohibited.

A. No operator shall permit a passenger and no passenger shall ride on a vehicle upon a street except on a portion of the vehicle designed or intended for the use of passengers. This provision shall not apply to an employee engaging in the necessary discharge of a duty, or to a person riding within a truck body in space intended for merchandise.

B. No person shall board or alight from a vehicle while the vehicle is in motion upon a street. (Ord. 3629 §15, 1972).

10.12.100 Careless driving prohibited. No person shall operate a motor vehicle or other property open to public travel in a careless manner that endangers or would be likely to endanger any person or property. (Ord. 3629 §51, 1972).

10.12.110 Reckless driving prohibited. No person shall operate a motor vehicle on other property open to public travel carelessly and heedlessly in willful or wanton disregard of the rights or safety of others. (Ord. 3629 §52, 1372).

10.12.120 Driving under the influence of intoxicating liquor, dangerous drugs or narcotic drugs prohibited.

A. No person shall operate a motor vehicle on other property open to public travel while under the influence of intoxicating liquor, dangerous drugs, or narcotic drugs.

B. A person charged with an offense under this section shall be advised that he has a right to a chemical test of his blood, saliva or urine at his expense or chemical test of his breath without expense, that he is not required to submit to any such test, and that his refusal will not result in suspension of his driving privileges, and that his refusal to submit or failure to request chemical testing cannot be used against him in any criminal proceeding.

C. As used in this section, "intoxicating liquor," "dangerous drug" and "narcotic drug" mean the same as those terms are defined by state law. (Ord. 3623 §53, 1972).

10.12.130 Damaging or obstructing sidewalks and curbs.

A. The operator of a vehicle shall not drive upon a sidewalk or roadside planting strip except to cross at a permanent or temporary driveway.

B. No unauthorized person shall place dirt, wood or other material in the gutter or space next to the curb of a street with the intention of using it as a driveway.

C. No person shall remove a portion of a curb or move a motor vehicle or device moved by a motor vehicle upon a curb or sidewalk without first obtaining authorization and posting bond if required. A person who causes damage shall be held responsible for the cost of repair. (Ord. 3529 §9, 1972).

10.12.140 Obstructing passage of vehicles or pedestrians.

A. No unauthorized person shall obstruct the free movement of vehicles or pedestrians using the streets.

B. No person shall park or stand a vehicle in such a manner or location that it constitutes a hazard to public safety or an obstruction on the street.

C. No person shall place, implant or erect a device in a grass or planting strip immediately adjacent to a sidewalk, curb or street which impedes the free movement of vehicles or pedestrians in using said sidewalk, curb or street area. The planting of trees and bushes not prohibited by other ordinances is not circumscribed by this section. (Ord. 3629 §20, 1972).

10.12.150 Removing glass and debris. A party to a vehicle accident or a person causing broken glass or other debris to be upon a street shall remove the glass and other debris from the street. (Ord. 3629 §21, 1972).

10.12.160 Crossing private property. No operator of a vehicle shall cross private property or leave the roadway to avoid an intersection or a traffic control device. This provision shall not apply to the operator of a vehicle who stops on the property for the purpose of conducting business or providing services. (Ord. 4758 §1, 2002; Ord. 3629 §13, 1972).

10.12.170 Driving in parks. No person in a park shall drive any vehicle on any area except the paved park roads or parking areas, or such other areas as may on occasion be specifically designated as temporary parking areas by the city manager. (Ord, 3629 §16, 1972).

10.12.180 Sleds and skis on streets. No person shall use the streets for traveling on skis, toboggans, sleds or similar devices, except where authorized. (Ord. 3629 §18, 1972).

10.12.186 Skateboards.

A. Definition. Skateboard means a board of any material (natural or synthetic) with wheels affixed to the underside, designed to be ridden by a person.

B. Prohibited Riding Areas. A skateboard shall not be ridden on a sidewalk in the following areas:

1. Area lying two hundred feet west of Adams Street between First and Fifth Streets;
2. Area bounded by Adams Street, Galloway Street, First Street, and Fifth Street;
3. Area between Davis and Evans and Fifth Street to Sixth Street, including the city of McMinnville parking structure;
4. Area between Evans and Ford Streets and First to Seventh Streets, including the sidewalks and pathways in and around the County Courthouse and Community Center;
5. All other areas specifically posted to prohibit the use of skateboards.

C. Duty to Yield. A person riding a skateboard shall yield the right-of-way to pedestrians, and shall yield the right-of-way to motor vehicles when approaching or crossing a driveway.

D. Duty to Obey Traffic Control Devices. A person riding a skateboard upon a public street shall obey all traffic control devices.

E. Prohibited Riding Times. No person shall ride a skateboard upon any street or sidewalk between one hour after sunset and one hour before sunrise unless the skateboard or rider is equipped with lighting equipment that meets the described requirements:

1. The lighting equipment must be used during limited visibility conditions;
2. The lighting equipment must show a white light visible from a distance of at least five hundred feet to the front of the skateboard;
3. The lighting device must have a red reflector or lighting device or material of such size or characteristic and so mounted as to be visible from all distances up to six hundred feet to the rear when directly in front of lawful lower beams of headlights on a motor vehicle.

F. Seizure of Skateboards. At such time as a citation is issued to a skateboard rider who is in violation of this section, the police may seize the skateboard upon which the violator was riding.

1. A skateboard may be recovered from the McMinnville police department (between the hours of eight a.m. and eight p.m.,) by an adult rider twenty-four hours after being seized.

2. A skateboard may be recovered from the McMinnville police department (between the hours of eight a.m. and eight p.m.) by a juvenile offender twenty-four hours after being seized. A board shall only be released to a juvenile offender when accompanied by a parent or guardian.

G. Procedure. A citation to appear in McMinnville municipal court for violation of this section shall be issued to the alleged violator stating the date, time, and place to appear and the date and place of the alleged offense. At the request of the offender, a trial shall be conducted before the court without a jury. All juvenile violators shall be cited to juvenile court.

H. Penalty. The penalty for violation of any provisions of this section shall be a fine not less than five dollars and not more than one hundred dollars. (Ord. 4365 §1, 1986).

10.12.187 Scooters, unicycles and roller skates.

A. Definitions.

1. "Scooter" means a vehicle consisting of a narrow board mounted between two wheels (or more) with an upright steering handle attached to the front wheel.

2. "Roller skates" means a shoe with a set of wheels attached for skating over a flat surface or a metal frame with wheels attached that can be fitted to the sole of a shoe.

3. Unicycle. Any of various vehicles that have a single wheel.

B. Prohibited Riding Areas. No person shall ride a scooter, unicycle, or roller skates upon a sidewalk in the business district bounded on the west by Adams Street, on the east by Hembree, on the north by Fifth Street, and on the south by First Street. A person riding such a device upon a sidewalk other than in the business district shall yield the right-of-way to pedestrians, (Ord. 4365 §2, 1986).

10.12.190. Trains not to block streets. No person shall direct or operate a train or permit railroad cars to block the use of any street for a period of time longer than five minutes, except that this provision shall not apply to trains or cars in motion other than those engaged in switching. (Ord. 3629 §22, 1972).



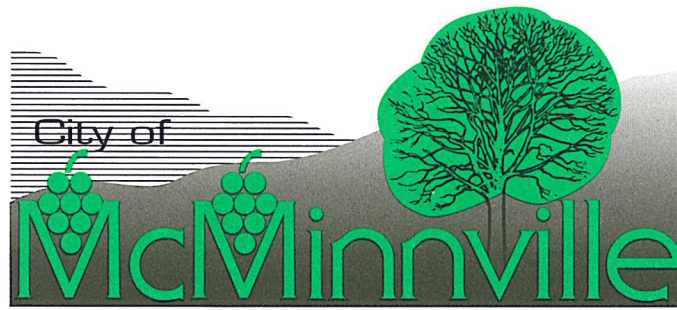
DATE: May 3, 2016
TO: Martha Meeker
FROM: Jay Pearson, Director
McMinnville Parks and Recreation Department
SUBJECT: Update-Summer Park and Downtown Ranger Staffing

Last week, Captain Dennis Marks, Officer Pam Ramsey and I conducted interviews for the upcoming summer Park and Downtown Ranger Program. At this time, we will be adding two new Rangers to our veteran staff of three returning Rangers, for a total of 5 Rangers being available to begin the Ranger season (Mid-May through Mid-October). Initial staff orientation and training will take place Friday, May 5 and Monday May 9 after which training will occur on-site and during weekly scheduled staff meetings. All of our staff will begin working "on-site assignments" next week (May 9-15) in time to provide some assistance during McMinnville's Alien Days celebration and meet the growing "good weather" activities within our parks.

This year, Park Ranger hours will continue as in the past, totaling roughly 2500 hours (about 500/month average). Downtown Ranger hours will be reduced to approximately 600 (from 1200) as the Downtown Association is unable to provide funding assistance as they have the past two years. The City's \$6000 "match" total budgeted last year will be budgeted again this year to provide a modified presence in the downtown core. Daily Ranger downtown assignments will fluctuate between 4-7 hours/day and will be beefed up during major events. It is anticipated that both Park Ranger and Downtown Ranger assignment flexibility will also direct attention to locations (Parks or Downtown) as circumstances dictate.

Despite the reduced hours challenge, we all understand that our Parks and our Downtown environments benefit tremendously (as do our citizens) with a meaningful presence of Rangers and the success of our parks and our downtown are interrelated. With this in mind, we will endeavor to establish the most effective balance of Park and Downtown Ranger assignments and engagement as possible during the upcoming summer.

Because we were able to save some Ranger dollars last year, we will have a strong presence in both parks and downtown areas through the end of the current fiscal year. This should give us a great start to address issues early in our Ranger season which has always been helpful in the long run. Modified hours in the Downtown core will begin in July (new fiscal year.)



230 NE Second Street • McMinnville, Oregon 97128-4831 • www.ci.mcminnville.or.us

MEMO

May 6, 2016

To: Martha Meeker, City Manager

From: David Koch, City Attorney *DK*

Re: Downtown Civil Exclusion Zone

You have requested that I review the City's former Downtown Exclusion Zone Ordinance as well as the "exclusion" ordinances that are currently in effect for the cities of Bend and Ashland, Oregon, and that I offer an opinion and recommendations regarding the possible implementation of a new civil exclusion ordinance covering the City's downtown core. I have completed that review, which included conversations with the Police Chief, City Prosecutor, Municipal Court Judge, Municipal Court staff, the Bend Assistant City Attorney, and the former McMinnville City Attorney.

At this time, it is my opinion that a Civil Exclusion Ordinance, which incorporates adequate Constitutional safeguards, may be adopted and enforced by the City as a means for protecting the public safety and welfare of its citizens. Any such zone must be narrowly defined in scope and reasonably related to addressing a documented threat to public safety and welfare. In addition, the ordinance should be limited in duration, and reviewed by the Council on a periodic basis to determine whether it has been effective at achieving the City's intended purpose and whether it should be continued, modified or suspended.

The following recommendations are offered for consideration by you and the Council, as you develop the policy for a Downtown Civil Exclusion Zone:

1. A Civil Exclusion Zone should be confined to a limited geographic area. For example, the boundaries could track with those of Zone 1 of the Downtown Economic Improvement Assessment District, which is defined as the area between 2nd and 4th Streets, and Adams to the railroad tracks. This is predominantly a commercial district.

2. A person should be issued a Civil Exclusion Order only upon conviction for one of the enumerated offenses occurring within the Zone. The Order would be issued by Municipal Court Staff at the time of conviction, but would not be a part of their criminal sentence nor would it be monitored by the Court as a condition of probation.
3. After receiving an Exclusion Order, a limited administrative appeals process before the Police Chief should be allowed by filing an appeal at the Police Department within 10 days of the conviction. Grounds for appeal could be limited to procedural errors, such as conviction for a non-qualifying crime or a pending appeal of the underlying conviction.
4. A limited variance of the Exclusion Order should also be allowed by the Police Chief, upon application of the excluded person, for the following reasons:
 - a. Employment within the zone;
 - b. Residence of the person or an immediate family member located within the zone;
 - c. Consultation with an attorney within the zone;
 - d. Attendance at religious services within the zone;
 - e. Other reasons deemed not detrimental to the preservation of public safety, at the reasonable discretion of the Police Chief.
5. Appeals from the denial of an exclusion appeal or variance request could be heard by the City Manager.
6. The time period for the exclusion should be based on the number of convictions occurring for crimes within the Exclusion Zone during the preceding 1, 2 or 3 year period from the time of arrest. For example:
 - a. First violation: 30 days
 - b. Second violation or first misdemeanor: 90 days
 - c. Second misdemeanor or combination of any three violations/misdemeanors: 180 days
7. A person found to be in violation of a Civil Exclusion Order should be subject to citation and/or arrest for the crime of Criminal Trespass II, a Class C Misdemeanor.



City Council- Regular

Meeting Date: 08/09/2016

Subject:

From: Rose Lorenzen, Administrative
Assistant / HR Analyst

AGENDA ITEM:

Ordinance No. 5006: Implementing an Exclusion Zone for the downtown area

BACKGROUND:

Attachments

Exclusion Zone Ordinance

ORDINANCE NO. 5006

An Ordinance authorizing the designation of the Downtown Exclusion Zone, establishing boundaries, procedures, charges and penalties therein, and setting a three year sunset clause.

RECITALS

The City Council has previously passed Ordinances enacting an “Enhanced Enforcement Area” in the downtown core of McMinnville. These Ordinances have since been repealed, and alternative methods of enforcement were enacted. The alternative methods of enforcement have proven to be inefficient and the City Council recognizes the need for an updated “Downtown Exclusion Zone.”

The area designated as the Downtown Exclusion Zone (Zone) along the NE Third Street corridor from NE Adams Street to NE Galloway Street, is a 6-block portion of the McMinnville Downtown District that represents a unique mixed use area within the City. The Zone has been the focus of intensive efforts by the City for 30 years to improve the character of the area, and local property owners are subject to a special assessment that supports economic development, livability projects, and tourism promotion. Since 1986, the Zone has experience a reduction in its vacancy rate from 17% to 3%, which is well below the national average of 11%.

The Zone is a pedestrian focused corridor with numerous street level improvements and art displays that are designed to attract visitors and enhance livability within the City. It is host to: numerous festivals, outdoor concerts, a weekly farmers market, and other activities designed to attract visitors and enhance livability within the City; 18 historic downtown buildings, which are promoted to attract visitors to the area; several wineries and tasting rooms that support the regional viticulture industry and attract visitors to the community; and, is home to businesses, including restaurants with outdoor seating and retail shops with outdoor displays that are especially vulnerable to impacts associated with criminal anti-social behaviors, which can negatively impact customer traffic and result in loss of property.

The Zone hosts thousands of out-of-town visitors each year, which are especially vulnerable to negative impacts associated with criminal anti-social behaviors as these visitors are less familiar with their surroundings. The DEZ will benefit the community by keeping the area welcoming to businesses, citizens and tourists.

The Downtown Exclusion Zone is designed to be an effective enforcement tool for the McMinnville Police department. The tool will protect the congested commercial district from persons whose unlawful activities and/or criminal conduct poses a threat to

the public's peace, dignity, safety and welfare of the public at large by providing the ability to temporarily exclude certain repeat offenders from the Zone.

Now, therefore, THE COMMON COUNCIL FOR THE CITY OF McMinnville ORDAINS AS FOLLOWS:

1. The provisions set forth in the Attached Exhibit 1, which are incorporated by this reference, are hereby adopted.

2. This Ordinance shall take effect 30 days after its passage by the Council.

Passed by the Council this 9th day of August 2016, by the following votes:

Ayes: _____

Nays: _____

Approved this 9th day of August 2016.

MAYOR

Attest:

Approved as to form:

CITY RECORDER

CITY ATTORNEY

EXHIBIT 1

9.42 Exclusion Zones

SECTIONS:

9.42.010 Downtown Exclusion Zone

9.42.020 Exclusion

9.42.030 Term of Exclusion

9.42.040 Exclusion Enforcement

9.42.050 Exceptions to Exclusion Order

9.42.060 Sunset Clause

9.42.010 Downtown Exclusion Zone. The McMinnville Downtown Exclusion Zone (DEZ) is designated to protect the public in a congested commercial district from persons whose violation activity or criminal conduct poses a threat to the peace, dignity, safety and welfare of the public at large. The boundaries of the DEZ are described as follows:

Beginning at the northeast corner of the intersection of NE Second Street and NE Adams Street, then north along east side of NE Adams Street to the southeast corner of NE Fourth Street, then east along south side of NE Fourth Street to the southwest corner of NE Galloway Street, then south along the west side of NE Galloway Street to the northwest corner of NE Second Street, then west along the north side of NE Second Street to the point of beginning (as shown on Map A).

9.42.020 Exclusion. As a condition of probation in the Municipal Court, a person may be subject to an Exclusion Order, prohibiting such person from entering or remaining in the DEZ for the period of time described in Section 9.42.030, when that person is convicted of a violation or crime that occurred within the boundaries of the DEZ.

9.42.030 Term of Exclusion.

- A. Unless otherwise provided in the Exclusion Order, the Term of Exclusion shall take effect immediately upon conviction of a violation or crime described in MMC 9.42.020, and shall continue for the number of days described in the Exclusion Order.
- B. The Term of Exclusion shall be recommended by the City Prosecutor and determined by the Municipal Judge based on the nature of the underlying crime, the number of prior violation and criminal convictions the person has received during the 2 year period immediately preceding the date of the underlying crime, the term of probation, and other factors related to the peace, dignity, safety and welfare of the public at large.

- C. The maximum Term of Exclusion that may be imposed as a condition of probation shall be:
1. 180 days, if convicted of a Violation.
 2. 240 days, if convicted of a crime classified as a Class C Misdemeanor.
 3. 300 days, if convicted of a crime classified as a Class B Misdemeanor.
 4. 360 days, if convicted of a crime classified as a Class A Misdemeanor.
- D. If a person is convicted of more than one violation or crime related to the same incident, then the most serious violation or crime shall be used for the purpose of calculating the maximum Term of Exclusion.

9.42.040 Exclusion Enforcement. If a person excluded from the DEZ is found within the DEZ during the Term of Exclusion, that person may be cited, summoned and/or ordered into Municipal Court for a probation violation hearing. A person is not considered to be within the DEZ if the person is within a vehicle that is passing through the DEZ.

9.42.050 Exceptions to Exclusion Order.

- A. In any probation violation hearing in which the violation of an Exclusion Order issued pursuant to this Chapter is a basis for the violation, it is a defense that the person was within the DEZ for one or more of the following reasons:
1. The person owns or rents a residence within the DEZ, and resides at that residence.
 2. The person owns a business or is employed within the DEZ.
 3. The person was visiting the residence of an immediate family member that is located within the DEZ.
 4. The person was consulting with an attorney whose primary office is located within the DEZ.
 5. The person was attending religious services within the DEZ.
 6. The person was receiving social services, government services, or mental health, medical, alcohol or drug treatment services within the DEZ.
 7. The person was conducting banking, investing or other similar financial services activities within the DEZ.
 8. The person was performing court ordered community service obligations within the DEZ.
- B. For the purposes of this Section, the term "immediate family member" shall mean the spouse, parent, stepparent, grandparent, child, grandchild, sibling, stepsibling, son-in-law, or daughter-in-law of the person.

9.42.060 Sunset Clause

The provisions of this Chapter shall be automatically repealed on July 1, 2019.



City Council- Regular

Meeting Date: 08/09/2016

Subject:

From: Rose Lorenzen, Administrative
Assistant / HR Analyst

AGENDA ITEM:

Ordinance No. 5007: An Ordinance of the City of McMinnville describing the method for calculating parking time limits, repealing Ordinance No. 4985, repealing and replacing Section 32 of Ordinance No. 3629, and declaring an emergency

BACKGROUND:

Attachments

Parking Ordinance

ORDINANCE NO. 5007

An Ordinance of the City of McMinnville describing the method for calculating parking time limits, repealing Ordinance 4985, repealing and replacing Section 32 of Ordinance 3629, and declaring an emergency.

RECITALS:

On August 1, 1972, the McMinnville City Council adopted Ordinance 3629, an Ordinance controlling vehicular and pedestrian traffic within the City of McMinnville, including the parking of vehicles. Section 32 of Ordinance 3629 (MMC 10.28.100) provided that “[w]here maximum parking time limits are designated by sign, movement of a vehicle within a block shall not extend the time limits for parking.”

On November 18, 2014, at the request of the McMinnville Downtown Association and others, the McMinnville City Council adopted Ordinance 4985, which amended MMC 10.28.100, in an attempt to clarify the intent of the ordinance and to improve enforcement of the ordinance.

On July 13, 2016, the McMinnville Municipal Court Judge reviewed MMC 10.28.100 during a trial related to the enforcement of two parking tickets and held that the provisions of the ordinance were impermissibly vague and unenforceable.

The proposed revisions of this Ordinance are intended to address the Judge’s concerns by clarifying the method of calculating the maximum parking time limits. Due to the nature of the recent Municipal Court decision, time is of the essence in the adoption of new ordinance language.

Now, therefore, THE COMMON COUNCIL FOR THE CITY OF McMINNVILLE
ORDAINS AS FOLLOWS:

1. Ordinance 4985 is repealed in its entirety.
2. Ordinance 3629, Section 32, is repealed and replaced as follows:

Calculation of Maximum Parking Time Limits. Where a maximum parking time limit is designated by sign, the time period shall begin at the first instance that the vehicle is parked along a block face or within a parking lot during a parking day. Any vehicle parked within the same block face or parking lot after the expiration of the maximum parking time limit during a single parking day shall be in violation of the parking time limit, notwithstanding that the vehicle may have been moved to another location within the same block face or parking lot, or that the vehicle may have departed and returned to the same block face or parking lot during that parking day.

- A. “Block face” is defined as one side of the street between two intersecting streets.
- B. “Parking day” is defined as a single calendar day between the hours of 9 a.m. and 6 p.m.

3. An emergency is hereby declared, making this Ordinance effective immediately upon its passage.

Passed by the Council this 9th day of August 2016, by the following votes:

Ayes: _____

Nays: _____

Approved this 9th day of August 2016.

MAYOR

Attest:

Approved as to form:

CITY RECORDER

CITY ATTORNEY



City Council- Regular

Meeting Date: 08/09/2016

Subject:

From: Rose Lorenzen, Administrative
Assistant / HR Analyst

AGENDA ITEM:

Ordinance No. 5008: An Ordinance amending the McMinnville Municipal code provisions regulating skateboards

BACKGROUND:

Attachments

Skateboarding Ordinance

ORDINANCE NO. 5008

An Ordinance amending the McMinnville Municipal Code provisions regulating skateboards (Ordinance 4365).

RECITALS:

In 1986, the McMinnville City Council passed Ordinance 4356 containing the following language:

B. Prohibited Riding Areas. A skateboard shall not be ridden on a sidewalk in the following areas:

1. Area lying 200 feet west of Adams Street between First and Fifth Streets;
2. Area bounded by Adams Street, Galloway Street, First Street, and Fifth Street;
3. Area between Davis and Evans and Fifth Street to Sixth Street, including the City of McMinnville parking structure;
4. Area between Evans and Ford Streets and First to Seventh Streets, including the sidewalks and pathways in and around the County Courthouse and Community Center.

Because of growing congestion within this area and increasing complaints about near misses between skateboarders and vehicles, it is now prudent to prohibit the riding of skateboards in all City parking lots within this area as well.

Now, therefore, THE COMMON COUNCIL FOR THE CITY OF McMINNVILLE ORDAINS AS FOLLOWS:

1. Ordinance 4356, Section 1 (MMC 10.28.186) is amended as follows:
Prohibited Riding Areas. A skateboard shall not be ridden on a sidewalk **or public parking lot** in the following areas:
2. The provisions of Ordinance 4356, Section 1 (MMC 10.12.186) that are not expressly amended by this Ordinance shall remain in effect.
3. This ordinance will take effect 30 days after passage by the Council.

Passed by the Council this 9th day of August 2016.

Ayes: _____

Nays: _____

Approved this 9th day of August 2016.

MAYOR

Attest:

Approved as to form:

CITY RECORDER

CITY ATTORNEY



City Council- Regular

Meeting Date: 08/09/2016

Subject:

From: Rose Lorenzen, Administrative
Assistant / HR Analyst

AGENDA ITEM:

Ordinance No. 5009: An Ordinance adopting Public Contracting rules; repealing Ordinances 3780 and 4736; and declaring an emergency

BACKGROUND:

Attachments

Contracting Ordinance
Division 48 Model Rules

ORDINANCE NO. 5009

An Ordinance of the City of McMinnville adopting public contracting rules; repealing Ordinance 3780; repealing Ordinance 4736; and, declaring an emergency.

RECITALS

The City of McMinnville last amended its Public Contracting Rules in 2000 through the adoption of Ordinance 4736 (9-12-2000), which amended Ordinance 3780 (12-23-1975).

In 2003, the Oregon Legislature adopted a new Public Contracting Code (HB 2341; 2003 Or. Laws, Chapter 794), which became effective March 1, 2005. The new law repealed most provisions of the former public contracting laws that were set forth at Oregon Revised Statutes Chapter 279, and replaced them with three new chapters: ORS Ch. 279A, 279B, and 279C. By operation of the new Public Contracting Code, all rules and exemptions that had previously been adopted by the City pursuant to ORS Ch. 279, expired on March 1, 2005. This includes Ordinances 3780 and 4736 (codified as McMinnville Municipal Code Chapter 2.20).

Under the Public Contracting Code, the McMinnville City Council is the designated Local Contract Review Board of the City, unless otherwise provided by action of the Council (ORS 279A.060). Absent any action by the Local Contract Review Board to adopt its own rules for public contracting, the City is subject to the Model Rules adopted by the Oregon Attorney General (ORS 279A.065). The Model Rules are set forth at OAR Chapter 137, Divisions 46, 47, 48, and 49.

The City has authority to designate certain service contracts or classes of service contracts as personal services contracts, and to enter into such personal services contracts in accordance with procedures adopted by the City to screen and select persons to perform personal services (ORS 279A.055 and 279A.070).

The Attorney General's Model Rules provide procedures for the selection of consultants to provide architectural, engineering, photogrammetric mapping, transportation planning, land surveying, and related services for the award of certain personal services contracts (OAR Ch. 137, Div. 48). However, the Model Rules do not provide express procedures for the selection of other professionals such as accountants, attorneys, appraisers, facilitators, or related services providers for the award of personal services contracts.

The City desires to designate certain service contracts and classes of service contracts as personal services contracts, and to adopt procedures to screen and select persons to perform personal services contracts that are consistent with the Attorney General's Model Rules for the selection of architects, engineers, and related consultants set forth at OAR Ch. 137, Div. 48.

Now therefore, THE COMMON COUNCIL FOR THE CITY OF McMinnville
ORDAINS AS FOLLOWS:

1. Ordinance 3780 is repealed in its entirety.
2. Ordinance 4736 is repealed in its entirety.
3. The provisions set forth in the Attached Exhibit 1, which are incorporated by this reference, are hereby adopted as the Public Contracting Rules for the City of McMinnville.
4. An emergency is hereby declared, making this Ordinance effective immediately upon its passage.

Passed by the Council this 9th day of August 2016, by the following votes:

Ayes: _____

Nays: _____

Approved this 9th day of August 2016.

MAYOR

Attest:

Approved as to form:

CITY RECORDER

CITY ATTORNEY

EXHIBIT 1

Chapter 2.21

PUBLIC CONTRACTING

Sections:

- 2.21.010. Definitions
- 2.21.020. Public Contracting Rules
- 2.21.030. Local Contract Review Board
- 2.21.100. Personal Services Contracts

PUBLIC CONTRACTING

2.21.010 - Definitions

As used in this Chapter:

- A. "Board" or "Local Contract Review Board" means the Local Contract Review Board for the City of McMinnville, as described in ORS 279A.060.
- B. "City" means the City of McMinnville, Oregon, and its elected and appointed officers, employees, or agents who are authorized to solicit, negotiate and/or award public contracts for the City.
- C. "City Council" means the Mayor and City Councilors of the City.
- D. "Personal Services Contract" include contracts for services that require specialized technical, artistic, creative, professional or communication skills or talent, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the service depends on attributes that are unique to the service provider, other than contracts for professional services described in ORS 279C.100.
- E. "Model Rules" means the Model Rules set forth at OAR Chapter 137, Divisions 46, 47, 48 and 49, adopted by the Oregon Attorney General pursuant to the provisions of the Oregon Public Contracting Code, as they now exist, and as they may be amended in the future.
- F. "Public Contracting Code" means ORS 279A, 279B, and 279C.

2.21.020 - Public Contracting Rules

Except as expressly provided by the provisions of this Chapter, as they now exist, and as they may be amended in the future:

- A. The Model Rules shall apply to public contracts awarded by the City.
- B. Words and phrases used by these rules that are defined the Public Contracting Code and in the Model Rules, have the same meaning as defined in the Public Contracting Code and in the Model Rules.

2.21.030 - Local Contract Review Board

The City Council is designated as the Local Contract Review Board under the Public Contracting Code. The Board may delegate its powers and responsibilities consistent with the Public Contracting Code, the Model Rules, and the McMinnville Municipal Code.

2.21.100 - Personal Services Contracts

A. Personal services contracts will be used to retain the services of independent contractors, other than contracts for architectural, engineering, photogrammetric mapping, transportation planning, land surveying and related services described in ORS 279C.100. Nothing in this section shall apply to the employment of regular city employees.

B. Pursuant to ORS 279A.055(2), the following service contracts or classes of service contracts are designated as contracts for personal services, which shall be subject to the provisions of this Section:

1. Accountant or auditing services;
2. Appraisal services;
3. Information technology programming, data processing or related consulting services;
4. Legal services;
5. Investing or financial consulting services;
6. Human Resources and training services;
7. Advertising, Marketing and/or Graphics consulting services;
8. Public Relations or Communications consulting services;
9. Management Systems consulting services;
10. Any other personal services contracts or classes or contracts that the Local Contract Review Board identifies as personal services contracts.

C. Personal services contracts shall be solicited, negotiated and/or awarded in accordance with the procedures described for the selection of Consultants set forth in Division 48 of the Model Rules.

PRINTED 8-1-2016

DIVISION 48

**MODEL RULES
CONSULTANT SELECTION:
ARCHITECTURAL, ENGINEERING
AND LAND SURVEYING SERVICES
AND RELATED SERVICES
CONTRACTS**

137-048-0100

Application

(1) The Attorney General is required to prepare and maintain model rules of procedure that govern Public Contracting under the Public Contracting Code and that are appropriate for use by all Contracting Agencies. These division 48 rules apply to the screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services, under Contracts and set forth the following procedures:

(a) Procedures through which Contracting Agencies select Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and

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

(2) These division 48 rules apply to any Contracting Agency with independent contracting authority that is seeking the services of a Consultant to perform

Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, if the Contracting Agency has not adopted its own rules of procedure for the screening and selection of Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, as provided in ORS 279A.065(a).

(3) The dollar threshold amounts that are applicable to the Direct Appointment Procedure, 137-048-0200, the Informal Selection Procedure, 137-048-0210, and the Formal Selection Procedure, 137-048-0220, are independent from and have no effect on the dollar threshold amounts that trigger the legal sufficiency review requirement for State Contracting Agencies under ORS 291.047.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0110

Definitions

In addition to the definitions set forth in ORS 279A.010, 279C.100, and OAR 137-046-0110, the following definitions apply to these division 48 rules:

(1) "**Consultant**" means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or provider of Related Services. A Consultant includes a

business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing. Provided, however, when a Contracting Agency is entering into a direct Contract under OAR 137-048-0200(1)(c) or (d), the "Consultant" must be an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor, as required by ORS 279C.115(1).

(2) "**Estimated Fee**" means Contracting Agency's reasonably projected fee to be paid for a Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract. The Estimated Fee shall not be used as a basis to resolve other Public Contracting issues, including without limitation, direct purchasing authority or Public Contract review and approval under ORS 291.047.

(3) "**Price Agreement**," for purposes of this Division 48, is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions, including, but not limited to terms and conditions of later work orders or task orders for Project-specific Services, and which may include Consultant compensation information, with:

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

(b) An initial work order, task order or minimum purchase, combined with a

continuing Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the Contracting Agency does not guarantee a minimum or maximum additional purchase.

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

(5) "**Transportation Planning Services**" are defined in ORS 279C.100.

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

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-

06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0120

List of Interested Consultants; Performance Record

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

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

(3) State Contracting Agencies shall keep a record of all Contracts with Consultants and shall make these records available to the public, consistent with the requirements of the Oregon Public Records Law (ORS 192.410 through 192.505). State Contracting Agencies shall include the following information in the record:

(a) Locations throughout the state where the Contracts are performed;

(b) Consultants' principal office address and all office addresses in the State of Oregon;

(c) Consultants' direct expenses on each Contract, whether or not those direct expenses are reimbursed. "Direct expenses" include all amounts that are directly attributable to Consultants' services performed under each Contract, including personnel travel expenses, and that would not have been incurred but for the services being performed. The record must include all personnel travel expenses as a separate and identifiable expense on the Contract; and

(d) The total number of Contracts awarded to each Consultant over the immediately preceding 10-year period from the date of the record.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065 & 279C.110, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0130

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

(1) When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Contracting Agencies shall follow the applicable selection procedure under either OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure).

Contracting Agencies selecting a Consultant under this section (1) may solicit or use pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a Consultant's compensation only after the Contracting Agency has selected the most qualified Consultant in accordance with the applicable selection procedure; provided, however, this restriction on a Contracting Agency's solicitation or use of pricing policies, pricing Proposals or other pricing information does not apply to selection procedures used by the Contracting Agency to select a Consultant when the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services for the Project do not exceed \$100,000 or in an Emergency, pursuant to ORS 279C.0110(8) and (9). In following the Direct Appointment Procedure under OAR 137-048-0200, a Contracting Agency may base its selection of a Consultant on any information available to the Agency prior to beginning the Direct Appointment Procedure for the Project involved.

(2) Contracting Agencies selecting a Consultant to perform Related Services shall follow one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, Contracting Agencies shall follow the applicable selection procedure under OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure), or 137-048-0220 (Formal Selection Procedure);

(b) When selecting a Consultant on the basis of price competition alone, Contracting Agencies shall follow the applicable

provisions under OAR 137-048-0200 (Direct Appointment Procedure), the applicable provisions of 137-048-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price Proposals and other pricing information, or the applicable provisions of 137-048-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price Proposals and other pricing information; and

(c) When selecting a Consultant on the basis of price and qualifications, Contracting Agencies shall follow the applicable provisions under OAR 137-048-0200 (Direct Appointment Procedure), the applicable provisions of 137-048-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price and qualifications Proposals, or the applicable provisions of 137-048-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price and qualifications Proposals. For selections under the informal selection procedure of OAR 137-048-0210, Contracting Agencies may use abbreviated requests for Proposals that nevertheless meet the requirements of OAR 137-048-0210, when the Contracting Agency determines, in its sole discretion, that the characteristics of the Project and the Related Services required by the Contracting Agency would be adequately addressed by a more abbreviated request for Proposals document, generally comparable to the intermediate Procurement procedures and related documentation under ORS 279B.070 and OAR 137-047-0270. Contracting Agencies subject to this section (2) may request and consider a Proposer's pricing policies and pricing Proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, submitted with a Proposal.

(3) A Contracting Agency is not required to follow the procedures in Section (1) or Section (2) of this rule, when the Contracting Agency has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures the Contracting Agency uses to select a single Consultant, when the Contracting Agency has established Price Agreements with more than one Consultant, must meet the requirements of OAR 137-048-0270 (Price Agreements).

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

(5) For purposes of these division 48 rules, a “mixed” Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. A Contracting Agency’s classification of a procurement that will involve a “mixed” Contract will be determined by the predominant purpose of the Contract. A Contracting Agency will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total

Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the Contracting Agency shall comply with the requirements of ORS 279C.110 and section (1) of this rule. If majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and section (2) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, the Contracting Agency shall comply with the applicable provisions of the Public Contracting Code and divisions 46, 47 and 49 of the Model Rules that match the predominant purpose of the Contract.

(6) In applying these rules, State Contracting Agencies shall support the state’s goal of promoting a sustainable economy in the rural areas of the state.

(7) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to Proposals received by a Contracting Agency for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:

(a) The term “competitive proposal,” for purposes of ORS 279C.107, includes Proposals under OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure), 137-048-0220 (Formal Selection Procedure) or 137-048-0130(2)(c) (selection based on price and qualifications) and any Proposals submitted

in response to a selection process for a work order or task order under 137-048-0270 (Price Agreements).

(b) For purposes of Proposals received by a Contracting Agency under OAR 137-048-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, while a Contracting Agency may make Proposals under 137-048-0200 (Direct Appointment Procedure) open for public inspection following the Contracting Agency's decision to begin Contract negotiations with the selected Consultant, 137-048-0200 Proposals are not required to be open for public inspection until after the Contracting Agency has executed a Contract with the selected Consultant.

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

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

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

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

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

(9) The requirements of ORS 279C.307 and section (8) of this rule apply in the following circumstances, except as provided in section (10) of this rule:

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

construction services under ORS chapter 279C.

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

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

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

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

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

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (9)(a) of this rule.

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

(a) To a Contracting Agency's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in OAR 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and

(b) To a Contracting Agency's Procurement of both pre-construction services and construction services through a single Procurement of Construction Manager/General Contractor Services, as that term is defined in ORS 279C.332(3). Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Services Contract or performance under such a Contract resulting from a Procurement of Construction Manager/General Contractor Services.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279A.065, 279C.100-279C.125, OL 2009, ch. 880, sec. 11, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

Selection Procedures

137-048-0200

Direct Appointment Procedure

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

(a) Emergency. Contracting Agency finds that an Emergency exists; or

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

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

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

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

(C) The Contracting Agency used either the formal selection procedure under OAR 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract; or

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

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied under an earlier Contract with the same Consultant

and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The Contracting Agency used either the formal selection procedure under OAR 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract; and

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

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

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

(2) Contracting Agencies may select a Consultant for a Contract under this rule from the following sources:

(a) The Contracting Agency's list of Consultants that is created under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(b) Another Contracting Agency's list of Consultants that the Contracting Agency has created under OAR 137-048-0120 (List of Interested Consultants; Performance

Record), with written consent of that Contracting Agency; or

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

(3) The Contracting Agency shall direct negotiations with a Consultant selected under this rule toward obtaining written agreement on:

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

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

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

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279C110 & 279C.115, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-

10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0210

Informal Selection Procedure

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

(2) Contracting Agencies using the informal selection procedure on the basis of qualifications alone or, for Related Services, on the basis of price and qualifications shall:

(a) Create a request for Proposals (“RFP”) that includes at a minimum the following:

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

(B) The anticipated Contract performance schedule;

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

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

(E) Criteria upon which the most qualified Consultant will be selected. Selection

criteria may include, but are not limited to, the following:

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

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

(iii) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and Contract administration practices;

(iv) A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and design philosophy, if applicable;

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

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

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

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

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

(G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules; and

(H) A sample form of the Contract.

(b) Provide an RFP to a minimum of five (5) prospective Consultants. If fewer than five (5) prospective Consultants are available, Contracting Agencies shall provide the RFP to all available prospective Consultants and shall maintain a written record of the Contracting Agencies' efforts to locate available prospective Consultants for the RFP. Contracting Agencies shall draw prospective Consultants from:

(A) The Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

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

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

(3) Contracting Agencies using the informal selection procedure for Related Services on the basis of price Proposals and other pricing information alone shall:

(a) Create an RFP that includes at a minimum the following:

(A) A description of the Project for which a Consultant's Related Services are needed and a description of the Related Services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

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

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

(E) Any minimum or pass-fail qualifications that the Proposers must meet, including but not limited to any such qualifications in the subject matter areas described in section (2)(a)(E)(i) through section (2)(a)(E)(vii) of this rule that are related to the Related Services described in the RFP;

(F) Pricing criteria upon which the highest ranked Consultant will be selected. Pricing criteria may include, but are not limited to, the total price for the Related Services described in the RFP, Consultant pricing policies and other pricing information such as the Consultant's estimated number of staff hours needed to perform the Related Services described in the RFP, expenses, hourly rates and overhead;

(G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules; and

(H) A sample form of the Contract.

(b) Provide the RFP to a minimum of five (5) prospective Consultants. If fewer than five (5) prospective Consultants are available, Contracting Agencies shall provide the RFP to all available prospective Consultants and shall maintain a written record of the Contracting Agencies' efforts to locate available prospective Consultants for the RFP. Contracting Agencies shall draw prospective Consultants from:

(A) The Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained

under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that the Contracting Agency reasonably can locate that offer the desired Related Services; and.

(c) Review and rank all responsive Proposals received, according to the total price for the Related Services described in the RFP, Consultant pricing policies and other pricing information requested in the RFP, including but not limited to the number of hours proposed for the Related Services required, expenses, hourly rates and overhead, and select the three highest-ranked Proposers.

(4) When the Estimated Fee in an informal selection procedure is expected not to exceed \$150,000, the Contracting Agency is only required to provide the RFP under sections (2) and (3) of this rule to three (3) prospective Consultants. If fewer than three (3) prospective Consultants are available, the Contracting Agency shall provide the RFP to all available prospective Consultants and shall maintain a written record of the Contracting Agency's efforts to locate available prospective Consultants for the RFP.

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

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

(b) Payment methodology and a maximum amount payable to the Consultant for the

Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

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

(6) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer, if the Contracting Agency and the Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with section (4) of this rule, until negotiations result in a Contract. If negotiations with any of the top three Proposers do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under OAR 137-048-0220 (Formal Selection Procedure).

(7) The Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under OAR 137-048-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$250,000.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279C.110, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-048-0220

Formal Selection Procedure

(1) Subject to OAR 137-048-0130 (Applicable Selection Procedures; Pricing Information; Disclosure of Proposals), Contracting Agencies shall use the formal selection procedure described in this rule to select a Consultant if the Consultant cannot be selected under either 137-048-0200 (Direct Appointment Procedure) or under 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at Contracting Agencies' discretion.

(2) Contracting Agencies using the formal selection procedure shall obtain Contracts through public advertisement of RFPs, or Requests for Qualifications followed by RFPs.

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

publications targeted to reach disadvantaged business enterprise (“DBE”), service-disabled veteran business (“SDVB”), minority business enterprise (“MBE”), women business enterprise (“WBE”) and emerging small business enterprise (“ESB”) audiences.

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

(B) A Contracting Agency shall include a brief description of the following items in the advertisement:

(i) The Project;

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

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

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

(b) In the alternative to advertising in a newspaper as described in subsection (2)(a) of this rule, the Contracting Agency shall publish each RFP and RFQ by one or more of the electronic methods identified in OAR 137-046-0110(14). The Contracting Agency shall comply with subsections (2)(a)(A) and (2)(a)(B) of this rule when publishing advertisements by electronic methods.

(c) A Contracting Agency may send notice of the RFP or RFQ directly to all

Consultants on the Contracting Agency’s list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record).

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

(a) A Contracting Agency shall include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which the Contracting Agency is seeking a Consultant;

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

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant’s ability to provide additional services related to the Project, including but not limited to construction services;

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

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

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

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

(H) A Statement that Consultants responding to the RFQ do so solely at their expense, and that the Contracting Agency is not responsible for any Consultant expenses associated with the RFQ.

(b) A Contracting Agency may include a request for any or all of the following in each RFQ:

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

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

(C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to

meet schedules, cost control and contract administration;

(D) A copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;

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

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

(G) Consultants' geographic proximity to and familiarity with the physical location of the Project;

(H) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(I) If the Contracting Agency is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing Proposals or other pricing information, including the number of hours estimated for the services required, expenses, hourly rates and overhead;

(J) Consultants' ability to assist a State Contracting Agency in complying with art acquisition requirements, pursuant to ORS 276.073 through 276.090;

(K) Consultants' ability to assist a State Contracting Agency in complying with State of Oregon energy efficient design requirements, pursuant to ORS 276.900 through 276.915;

(L) Consultants' ability to assist a Contracting Agency in complying with the energy technology requirements of ORS 279C.527 and 279C.528; and

(M) Any other information the Contracting Agency deems reasonably necessary to evaluate Consultants' qualifications.

(c) RFQ Evaluation Committee. The Contracting Agency shall establish an RFQ evaluation committee of at least two (2) individuals to review, score and rank the responding Consultants according to the evaluation criteria. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Related Services, construction services or Public Contracting. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, photogrammetry, transportation planning, land surveying or related professions. The Contracting Agency shall designate one member of the evaluation committee as the evaluation committee chairperson.

(d) A Contracting Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:

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

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

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

(e) After the evaluation committee reviews, scores and ranks the responding Consultants, the Contracting Agency shall establish a short list of at least three qualified Consultants, if feasible; provided however, if four or fewer Consultants responded to the RFQ or if fewer than three Consultants fail to meet the Contracting Agency's minimum requirements, then:

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

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

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

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

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

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

(A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought will be performed;

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

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

(ii) Experience of Proposers' key staff persons in providing similar Architectural,

Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable projects;

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

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

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

(vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and contract administration;

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

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

(xi) Results from interviews, if conducted;

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

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

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

predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

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

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

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

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

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

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

(J) A statement directing Proposers to the protest procedures set forth in these division 48 rules;

(K) Special Contract requirements, including but not limited to DBE, MBE, WBE, ESB and SDVB participation goals or good faith efforts with respect to DBE, MBE, WBE, ESB and SDVB participation,

and federal requirements when federal funds are involved;

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

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

(N) A sample form of the Contract.

(b) RFP Contents for Related Services Selections Based on Price Only. Contracting Agencies using the formal selection procedure shall include at least the following in each RFP, whether or not the RFP is preceded by an RFQ, when the formal selection procedure is for Related Services selected on the basis of price Proposals and other pricing information only:

(A) General background information, including a description of the Project and the specific Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Related Services sought will be performed;

(B) The RFP evaluation process and the price criteria which will be used to select the highest ranked Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation price criteria may include, but are not limited to, the total price for the Related Services described in the RFP, Consultant pricing policies, and other pricing information such as the Consultant's estimated number of staff hours needed to perform the Related Services described in the RFP, expenses, hourly rates and overhead;

(C) Any minimum or pass-fail qualifications that the Proposers must meet, including but not limited to any such qualifications in the subject matter areas described in section (4)(a)(B)(i) through section (4)(a)(B)(xii) of this rule; and

(D) The information listed in section (4)(a)(C) through section (4)(a)(N) of this rule pertaining to the Related Services described in the RFP.

(c) RFP Evaluation Committee. The Contracting Agency shall establish a committee of at least three individuals to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Contracting Agency may include the same members who served on the RFQ evaluation committee. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public

Contracting. At least one member of the evaluation committee must be a Contracting Agency employee. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The Contracting Agency shall designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.110,
279C.527, OL 2015, ch 565 (HB 3303)

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15; DOJ 18-2015, f. 12-31-15, cert. ef. 1-1-16

137-048-0230

Ties Among Proposers

(1) If a Contracting Agency is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the Contracting Agency may select a candidate through any process that the Contracting Agency believes will result in the best value for the Contracting Agency taking into account the scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services. Provided, however, the tie breaking process established by the Contracting Agency under this section (1) cannot be based on the Consultant's pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead. The process must be designed to instill public confidence through ethical and fair dealing, honesty and good faith on the part of the Contracting Agency and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the Contracting Agency and the selected Proposer shall proceed with negotiations under OAR 137-048-0210(3) or 137-048-0220(4)(c), as applicable.

(2) If a Contracting Agency is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the Contracting Agency shall follow the procedure set forth in OAR 137-046-0300, (Preferences for Oregon Goods and Services), to select the Consultant.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279C.110, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0240

Protest Procedures

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

(2) Protest of Consultant Selection.

(a) **Single Award.** In the event of an award to a single Proposer, the Contracting Agency

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

(b) Multiple Award. In the event of an award to more than one Proposer, the Contracting Agency shall provide to all Proposers copies of the selection notices that the Contracting Agency sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of

higher ranked Proposers, are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(c) **Effect of Protest Submission Deadline.** A Contracting Agency may not consider any protest that is submitted after the submission deadline.

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

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065 & 279C.110, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0250

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

A Contracting Agency may cancel, delay or suspend a solicitation, RFQ or other preliminary Procurement document, whether related to a Direct Appointment Procedure (OAR 137-048-0200), the Informal

Selection Procedure (OAR 137-048-0210), and the Formal Selection Procedure (OAR 137-048-0220), or reject all Proposals, responses to RFQs, responses to other preliminary Procurement documents, or any combination of the foregoing, if the Contracting Agency believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the Contracting Agency is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection. Consultants responding to either solicitations, RFQs or other preliminary Procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs or responses to other preliminary Procurement documents.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, 279C.110

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0260

Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement Projects

(1) If a Local Contracting Agency requires an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for a public improvement owned and maintained by that Local Contracting Agency, and a State Agency

will serve as the lead Contracting Agency and will enter into Contracts with Architects, Photogrammetrists, Transportation Planners, Engineers or Land Surveyors for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for that public improvement, the State Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors.

(2) Tier One. A State Contracting Agency shall, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP that was issued under the applicable selection procedures described in OAR 137-048-0210 (Informal Selection Procedure) and 137-048-0220 (Formal Selection Procedure), or from among Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors identified under 137-048-0200 (Direct Appointment Procedure), and shall notify the Local Contracting Agency of the Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors selected.

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

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

(b) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement through an alternative process adopted by the Local Contracting Agency, consistent with the provisions of the applicable RFP, if any, and these division 48 rules. The Local Contracting Agency's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the particular Local Contracting Agency and may include provisions to allow the Local Contracting Agency to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The Local Contracting Agency's alternative process may include, but is not limited to, one or more of the following methods:

(A) A general written direction from the Local Contracting Agency to the State Contracting Agency, prior to the advertisement of a Procurement or series of Procurements or during the course of the Procurement or series of Procurements, that the Local Contracting Agency's tier two selection shall be the highest-ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the Local Contracting Agency is required. However, the Local Contracting Agency may provide written notice to the State Contracting Agency that the Local Contracting Agency's general written direction is not to be applied for a particular Procurement and describe the process that the Local Contracting Agency will utilize for the particular Procurement. In order for a written direction from the Local Contracting

Agency consistent with this subsection to be effective for a particular Procurement, it must be received by the State Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the Procurement. In the event of a multiple award under the terms of the applicable Procurement, the written direction from the Local Contracting Agency may apply to the highest ranked firms that are selected under the terms of the Procurement document.

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

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

(4) The State Contracting Agency shall thereafter begin Contract negotiations with the selected Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor in accordance with the negotiation provisions in OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure) as applicable.

(5) Nothing in these division 48 rules should be construed to deny or limit a Local Contracting Agency's ability to enter into a Contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4), through a selection process established by that Local Contracting Agency.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279C.110, 279C.125, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0270

Price Agreements

(1) A Contracting Agency may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, when the Contracting Agency cannot determine the precise quantities of those Services which the Contracting Agency will require over a specified time period.

(2) When establishing Price Agreements under this rule, a Contracting Agency shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with OAR 137-048-0130(1) or 137-048-0130(2), as applicable. Contracting Agencies may select a single Consultant, when a Price Agreement is awarded to obtain services for a specific Project or a closely-related group of Projects.

(3) In addition to any other applicable solicitation requirements set forth in these division 48 rules, solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:

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

(b) Specify whether the Contracting Agency intends to award a Price Agreement to one Consultant or to multiple Consultants. If the Contracting Agency will award a Price Agreement to more than one Consultant, the solicitation document and Price Agreement shall describe the criteria and procedures the Contracting Agency will use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at the Contracting Agency's sole discretion;

provided, however, in circumstances where a direct contract is not permitted under OAR 137-048-0200, the selection criteria cannot be based on pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the Services required, expenses, hourly rates and overhead. In accordance with OAR 137-048-0130(2) applicable to Related Services procurements, the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information may include the number of hours proposed for the Related Services required, expenses, hourly rates, overhead and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of OAR 137-048-0200; and

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

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

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

(b) The payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation

Planning or Land Surveying Services or Related Services required under the work order or task order that is fair and reasonable to the Contracting Agency, as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;

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

(d) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest.

Stat. Auth.: ORS 279A.065 & OL 2011, ch 458

Stats. Implemented: ORS 279A.065, 279C.110, 279C.120 & OL 2011, ch 458

Hist.: DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

Post-Selection Considerations

137-048-0300

Prohibited Payment Methodology; Purchase Restrictions

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

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

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

(2) Except as otherwise allowed by law, a Contracting Agency shall not enter into any Contract in which:

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

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

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

(a) The Consultant is providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under a Contract with a Contracting Agency to perform Design-Build services or Energy Savings Performance Contract services (see OAR 137-049-0670 and 137-049-0680); or

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

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0310

Expired or Terminated Contracts; Reinstatement

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

(a) Expired Contracts. If the Contract has expired as the result of Project delay caused by the Contracting Agency or caused by any other occurrence outside the reasonable control of the Contracting Agency or the Consultant, and if no more than one year has passed since the Contract expiration date, the Contracting Agency may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract

to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the Contracting Agency and the Consultant shall continue performance under the Contract as amended; or

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

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

(a) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency;

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

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

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065 & 279C.110, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0320

Contract Amendments

(1) A Contracting Agency may amend any Contract if the Contracting Agency, in its sole discretion, determines that the amendment is within the scope of the Solicitation Document and that the amendment would not materially impact the field of competition for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the final form of the original Procurement document. In making this determination, the Contracting Agency shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the Solicitation Document, if the Contracting Agency reasonably believes that the number of Proposers would not significantly increase if the Procurement document were re-issued to include the additional services.

(2) The Contracting Agency may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal,

state or local agencies, which affect performance of the original Contract.

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

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065, 279C.110, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Archives Division, 800 Summer St. NE, Salem, Oregon 97310. Any discrepancies with the published version are satisfied in favor of the Administrative Order. The Oregon Administrative Rules and the Oregon Bulletin are copyrighted by the Oregon Secretary of State.



City Council- Regular

Meeting Date: 08/09/2016

Subject:

From: Rose Lorenzen, Administrative
Assistant / HR Analyst

AGENDA ITEM:

Resolution No. 2016 - 58: Entering into an agreement to provide funds to assist in the provision of a public portable toilet facility

BACKGROUND:

Attachments

Port Toilet Resolution
Portable Toilet Funding Agreement

RESOLUTION NO. 2016 - 58

A Resolution entering into an agreement to provide funds to assist in the provision of a public portable toilet facility.

RECITALS:

The First Baptist Church of McMinnville provides a public portable toilet facility at 1st and Cows and has requested funding from the City to continue its availability. As a measure to reduce problems in the downtown area and in continuing to aid individuals experiencing homelessness, the City agrees it would be beneficial for the facility's availability to continue.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, as follows:

1. That the Funding Agreement with The First Baptist Church of McMinnville, in the amount of \$100.00 per month through June 30th, 2017 is hereby approved.
2. The City Manager is hereby authorized and directed to execute the funding agreement with The First Baptist Church of McMinnville.

Adopted by the Common Council of the City of McMinnville at a meeting held the 9th day of August 2016 by the following votes:

Ayes: _____

Nays: _____

Approved this 9th day of August 2016.

MAYOR

Approved as to form:

CITY ATTORNEY

FUNDING AGREEMENT
CITY OF McMinnville, Oregon

The City of McMinnville, a municipal corporation of the State of Oregon (City) and The First Baptist Church of McMinnville, a religious nonprofit corporation (Recipient), agree as follows:

1. PURPOSE. This agreement sets out the terms of funding provided by the City to the Recipient to assist Recipient in providing a public portable toilet facility on its property.
2. TERM OF AGREEMENT. This agreement will be in effect from the day it is fully executed through June 30, 2017.
3. LIAISON. The City's Project Manager for this agreement is City Manager Martha Meeker. The Recipient's Project Manager is Don Watson, Treasurer, The First Baptist Church of McMinnville.
4. FUNDS PROVIDED/METHOD OF PAYMENT.
 - a. The funding provided to the Recipient will be for \$100 per month.
 - b. The City agrees to provide these funds to the Recipient solely to be used to implement the described in Section 1. Payment of the full amount of the grant funds awarded to the Recipients will be made within 30 days of the date this agreement is fully executed.
5. REQUIREMENTS.
 - a. The public portable facility and immediate surrounding property will comply with the City's municipal code. Should the area constitute a nuisance at any point as dictated by municipal code sections 8.16.158 (Nuisances Affecting Public Health) or 8.16.168 (Scattering Rubbish) the contact will be voided.
 - b. The Recipient agrees that it will comply with all federal, state, and local non-discriminations laws and regulations in effect as of the date this agreement is fully executed.
 - c. The Recipient agrees that the grant funds will not be used to provide religious instruction or counseling, conduct religious worship or services, or to in any way exert religious influence.
6. MODIFICATION OF THIS AGREEMENT. This agreement may be modified only if the modification is in writing and is signed by both parties to the agreement.

7. **ADDITIONAL WORK/CHANGE ORDERS.** Work in addition to or different from that proposed in Section 1 will only be allowed if authorized in writing, as a modification to this agreement.
8. **RECORD KEEPING.** The Recipient agrees to keep records of all financial matters pertaining to this agreement in accordance with generally accepted accounting principles and to retain the same for a period of three years after termination of this agreement. This time period may be extended if circumstances require an extension. These financial records will be made available to representatives of the City at reasonable times and places, upon request of the City.
9. **EARLY TERMINATION.**
 - a. Should either the City or the Recipient believe that the other party has failed to perform, or is likely to be unable to substantially perform, all or a material part of its obligations under this agreement, the City or the Recipient will deliver written notice to that effect to the other party, specifying the alleged default and giving the other party fifteen (15) days to cure the default. If the default is not remedied in that time (or, if appropriate, if the party in default has not made substantial progress toward addressing the default), to the satisfaction of the City or the Recipient, this agreement may be terminated upon seven (7) days written notice, delivered by certified mail.
 - b. In the event of an early termination under this section, the parties agree to meet to discuss an equitable accounting of the grant funds. If the defaulting party is the City, the City will pay the Recipient an amount which takes into account the actual costs incurred by the Recipient in performing the project work to the date of termination. The Recipient will not be paid an amount for anticipated profit, nor an amount based on any unperformed work. If the defaulting party is the Recipient, the Recipient will reimburse the City in an amount equivalent to the funds which have not reasonably been expended for actual costs incurred by the Recipient in performing the project work to the date of termination. The Recipient will not hold back an amount for anticipated profit, nor an amount based on any unperformed work.
 - c. When either party provides the seven (7) day written notice of termination, the Recipient will immediately begin winding down its services in anticipation of the termination. On the effective date of termination, the Recipient will deliver to the City all uncompleted work and related documentation.
10. **ASSIGNMENT.** Neither party will assign or delegate any or all interests in this agreement, in any manner outside of what is specified in the Recipient's application, without first obtaining the written consent of the other party.

11. VENUE. This agreement will be governed by the laws of the State of Oregon. Any action in law or equity or any judicial proceeding for the enforcement of this agreement or any of the provisions contained in this agreement will be instituted and maintained in Oregon courts.
12. INDEPENDENT CONTRACTOR. Neither Recipient nor any employees or contractors of Recipient will acquire any rights in or to City employment, nor will they be deemed employees or agents of the City for any purpose other than as grant recipients. Recipient will be deemed an independent contractor and will be responsible in full for payment of its employees, including insurance, payroll, all related costs, and maintenance of worker's compensation coverage as required by law.
13. NOTICE. Notice may be provided in person, by e-mail, by "fax," or by United States mail. Notice made in person or by e-mail is effective immediately upon successful delivery. Notice by fax is effective immediately upon receipt of verification of successful delivery. Notice by United States mail is effective three days after deposit in the United States mail, appropriately addressed and with appropriate postage attached.

Notice to the City will be addressed to:
Martha Meeker
City Manager
230 NE Second Street, McMinnville, OR 97128
e-mail Martha.Meeker@ci.mcminnville.or.us
fax 503 472-4104

Notice to the Recipient will be addressed to:
Don Watson
FBC Treasurer
125 COWLS ST
McMinnville, OR 97128

14. MERGER. This agreement and the attached exhibits constitute the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement will bind either party unless in writing and signed by both parties. There are no unspecified understandings, agreements, or representations, oral or written, regarding this agreement. By its signature, Recipient acknowledges it has read and understood this agreement and agrees to be bound by its terms and conditions.

CITY OF McMinnville

RECIPIENT

Martha Meeker
City Manager/Project Manager

Donald J. Watson
Treasurer, First Baptist Church of
McMinnville

DATE_____

DATE_____

Approved as to form:

City Attorney



City Council- Regular

Meeting Date: 08/09/2016

Subject:

From: Rose Lorenzen, Administrative
Assistant / HR Analyst

AGENDA ITEM:

Financing Update - 2016 Issuance of Debt

BACKGROUND:

Please see attached memorandum from Finance Director Marcia Baragary regarding 2016 Issuance of debt.

Attachments

Financing Memorandum



DATE: Jul 30th, 2016

TO: Mayor and City Council

FROM: Marcia Baragary, Finance Director

SUBJECT: 2016 Issuance of Debt

PERS Transition Liability

When the PERS State and Local Government Rate Pool (SLGRP) was created in 2001, PERS actuaries calculated a transition surplus or liability for each employer joining the SLGRP. The transition liability or surplus for the employer was not absorbed by the SLGRP, but remained the responsibility of the employer. When the City joined the SLGRP, PERS determined that the City (including McMinnville Water & Light) had a transition liability. Currently, the PERS transition liability for the City and McMinnville Water & Light is approximately \$5.2 million. The City intends to contract with PERS actuaries to calculate the amount of the transition liability that is attributable to the City and the amount attributable to Water & Light.

City staff has consulted with our municipal advisor, Ms. Kieu-Oanh Nguyen of Western Financial Group, and determined that it is in the City's best interest to make a lump sum payment to PERS, eliminating the transition liability and reducing the City's employer contribution rate.

PERS is currently charging 7.5% interest on the balance of the transition liability. Ms. Nguyen has advised that the City can issue debt with an interest rate of approximately 3.0% and use the proceeds to pay off the transition liability. In effect, the City would be substituting debt service payments at a much lower interest rate for our monthly contributions toward the PERS transition liability at a higher interest rate. We are working with Ms. Nguyen to determine the amount of savings the City will realize by "refinancing" the transition liability at a lower interest rate.

City staff will continue to work with Water & Light to take advantage of this opportunity and to coordinate pay off of the liability with PERS.

Financing for Urban Renewal (UR) Portion of Alpine Avenue Street Improvement

A portion of the 2015 transportation bond proceeds are being used to fund street improvements on Alpine Avenue, which is in the Urban Renewal District. City Council has indicated the desire to use urban renewal tax revenue to extend Alpine Avenue street improvements beyond the improvements funded by bond proceeds.

Our municipal advisor, Ms. Nguyen, has advised that the City can issue approximately \$2.0 million in debt for the urban renewal portion of the Alpine Avenue improvements, using urban renewal tax revenue to repay the debt. Because Alpine Avenue improvements qualify as a capital project, the debt would be tax exempt and Ms. Nguyen estimates the interest rate would be approximately 2.0%.

Ms. Nguyen also recommends issuing debt to pay off the PERS liability and fund the Alpine Avenue project simultaneously, thereby achieving significant savings in issuance costs. Staff intends to continue to work with our municipal advisor and bond counsel to firm up the details of the debt issuance and will advise the City Council as more detailed information becomes available. At this time, it is anticipated that debt issuance would take place in late October, providing loan proceeds for the Alpine Avenue construction contract and for payment of the PERS liability prior to December 31, 2016.



City Council- Regular

Meeting Date: 08/09/2016

Subject:

From: Rose Lorenzen, Administrative
Assistant / HR Analyst

AGENDA ITEM:

City County Dinner - Hosted by City of Dundee - August 18, 2016

BACKGROUND:

Please see attached invitation. Please let Rose know if you will be attending - RSVPs must be in no later than August 10th.

Attachments

Invitation

**YOU ARE CORDIALLY INVITED TO THE
AUGUST 2016 CITY / COUNTY DINNER**

at Domaine Roy Winery

8351 NE Worden Hill Road
Dundee, OR 97115

THURSDAY, AUGUST 18, 2016

SOCIAL HOUR: 6:30 PM

DINNER: 7:00 PM

NO HOST WINE BAR: DOMAINE ROY WINERY

Dinner In Wine Country
By

Red Hills Market

COST: \$30.00 PER PERSON

**PLEASE RSVP NO LATER THAN AUGUST 10TH
TO MELISSA LEMEN
AT MELISSA.LEMEN@DUNDEECITY.ORG
OR BY CALLING 503.538.8299**

Menu

Appetizers

Cheese Assortment

Main Course

Wood Fired Chicken with a Pinot
and Local Berry Reduction Sauce

Side Dishes

Wood fired Macaroni & Cheese
with Padron Peppers
Local Green Salad with House
Dressing

Dessert

Oregon Berry Cobbler Topped
with a Basil Chantilly Cream



red hills market



CITY of
DUNDEE
Oregon

DOMAINE ROY
— & FILLS —