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## CHAPTER 1 GOVERNMENT

### GENERAL PROVISIONS

#### Definitions

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

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

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

#### Penalty and Violation Provisions

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

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

**1.010 Penalties.**

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

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

- (c) Violation of Sections 6.360 is punishable by a minimum fine of \$50.00 and not to exceed \$80.00, to be paid within 168 hours (seven days) of issuance of a parking ticket. If this fine is not paid within the 168-hour (seven days) period, the fine shall increase to \$60.00 for each violation, and a Courtesy Notice will be sent to the violator or, registered owner of the vehicle. If the \$60.00 fine is not paid within ten days of the date of the Courtesy Notice, the fine shall increase to \$80.00 and a warrant for arrest may be issued by the Municipal Court.
  - (d) When a warrant of arrest issued by the Municipal Court is served, the amount of bail shall be increased \$100.”
- (5) Remedies for unlawful structures or land use.
- (a) In case any land, building or other structure is used, advertised for use, or proposed to be used or, located, constructed, maintained, repaired, altered, or used, in violation of a city ordinance or regulation designated to implement the city’s comprehensive plan, the City Council may, in addition to other remedies provided by law or ordinance, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use. The City can also pursue action in Municipal Court or State Circuit Court.
  - (b) The court may allow the City reasonable attorney fees and expenses in a judicial proceeding authorized by this section.
  - (c) Nothing in this section requires the City Council to avail itself of a remedy allowed by this section or by any other law.
  - (d) The City can pursue revocation of any permit issued.

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

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

### **Rules of Interpretation**

**1.020 Intent of City Council.**

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

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

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

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

**1.040 Number and Gender.** In this code, words in the singular number may include the plural and words in the plural number may include the singular. Words in this code in the masculine gender may include the feminine and the neuter.

**1.045 Computation of Time.** The time within which an act is to be done is computed by excluding the first day and including the last day unless the last day falls upon any legal holiday or on Saturday, in which case the last day is also excluded.

**1.047 Readoption of Oregon Revised Statutes.** Oregon Revised Statutes adopted either referentially or directly in the Astoria Code, including but not limited to Astoria Code Sections 1.010, 1.015, 1.085, 1.211, 1.230, 1.345, 1.365, 1.555, 1.602, 1.608, 1.620, 1.632, 1.638, 1.640, 1.705, 1.900, 1.960, 1.961, 1.962, 1.963, 1.964; 1.965, 1.967, 1.970, 1.971, 2.220, 2.360, 2.700, 2.705; 2.710, 3.010, 3.015, 3.118, 5.000, 5.010, 5.100, 5.110, 5.255, 5.260, 5.300, 5.335, 5.385, 5.425, 5.726, 5.740, 5.925, 5.931, 5.933, 6.005, 6.010, 6.025, 6.030,

6.060, 6.135, 6.220, 6.250, 6.255, 6.305, 6.400, 6.500, 6.510, 6.520, 6.530, 6.550, 7.000, 7.005, 8.045.15, 8.045.17, 8.045.18, 8.104, 8.138, 9.005, 9.025, 9.030, 9.090, and 9.160, are hereby readopted to include all amendments, repeals, and additions made by legislative action of the State of Oregon, up to and including those of the 2016 legislative session. *[Section 1.047 amended by Ordinance No. 99-22, passed November 1, 1999; amended by Ordinance No. 02-02, passed February 4, 2002; amended by Ordinance No. 04-01, passed January 20, 2004; amended by Ordinance No. 06-01, passed March 6, 2006; amended by Ordinance No. 08-02, passed February 19, 2008; amended by Ordinance No. 10-02, passed January 25, 2010; amended by Ordinance No. 12-05, passed February 21, 2012; amended by Ordinance No. 13-03, passed February 4, 2013; amended by Ordinance No. 15-01, adopted January 20, 2015; amended by Ordinance No. 16-01, adopted January 19, 2016; amended by Ordinance 17-01, adopted January 17, 2017; amended by Ordinance 18-01, adopted January 16, 2018.]*

**1.050 Section Titles Not Part of Law.** Section titles in this code are not part of the substance of the code.

**1.055 Amendment and Repeal of Code Sections.** This code is the general and permanent law of the city. The city council may enact three types of general ordinances to affect this code. Such ordinances may (a) amend the code to change existing provisions or (b) may add new provisions to the code, or (c) may repeal existing code provisions. A general ordinance shall specifically amend or repeal a particular section of this code and a general ordinance creating a new code section shall integrate the new section into the numbering system and organization of this code.

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

**1.065 Service and Proof of Notice.**

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

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

- (a) Within 10 days after the day on which he is notified of the administrative decision from which appeal is requested the appellant shall file with the city auditor a written notice of appeal together with a written statement listing the reason for requesting the revocation or modification of the decision.
- (b) If the city council is to hear the appeal or if an authorized appellate board has a regularly scheduled meeting time, it shall hear the appeal at the next regularly scheduled meeting of the body after the city auditor receives the notice and statement of appeal.
- (c) If an appellate board which does not hold a regularly scheduled meeting is to hear the appeal, it shall hold a hearing on the matter within 10 days after the city auditor receives the notice and statement of appeal.
- (d) The city auditor shall notify the appellant of the time and place of the hearing and shall notify other persons who have an interest in the subject matter of the hearing.
- (e) At the hearing the appellant or other persons may present witnesses and offer evidence in support of its case and, in the discretion of the city council or appellate board, evidence may be heard to sustain the administrative decision.
- (f) The city council or appellate board shall make written findings, recommendations or orders on any matter heard by it, and the city auditor shall send a copy thereof to the appellant.
- (g) The city council may review the official action of any city official, city employee, city board, city commission or other official city body. A person requesting such city council review shall follow the procedure established in this section, unless this code provides a special appeal procedure applicable to such an appeal.

**1.075 Official Seal.**

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

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

Beginning at a point in the center of the main ship channel of the Columbia River at its intersection with the east line of the Robert Shortess donation land claim extended Northerly, in Clatsop County, in the State of Oregon; and running South along said extended line to a point on said line 4408.67 feet north of the north line of Birch Street in the town of Alderbrook; thence S44°39'E 2689.43 feet to a point on the meander line; thence S47°15'W along said meander line to the line between Government Lots 3 and 4, Township 8 North, Range 9 West, Willamette Meridian; thence easterly along said line between Government Lots 3 and 4 to the northeasterly corner of said Government Lot 4; thence southerly along the line common to Government Lots 4 and 5, Township 8 North, Range 9 West, Willamette Meridian to the north right-of-way line of the Old Columbia River Highway 60.00 feet distant from the centerline of said highway; thence southeasterly along said right-of-way line to an intersection with the south line of said Government Lot 5; thence easterly along said south line of Government Lot 5 to an intersection with the east right-of-way of the Burlington Northern Railroad; thence northerly along said railroad right-of-way to a 5/8" iron rod and cap at the northwest corner of the tract shown on a survey drawing dated December, 1981 by the Oregon Division of State Lands; thence N72° 13' 41"E 58.5 feet to a point; thence N17° 41' 27"W 30.0 feet to a point; thence N72° 13' 41"E 305.60 feet to a point; thence S17° 31' 00"E 30.0 feet to a point; thence N72° 15' 12"E 2344.89 feet to a



point; thence S32° 45' 00"E 394.68 feet to a point; thence S12° 20' 00"E 1544.4 feet to a point; thence S26° 50' 00"E 988.7 feet to the southeast corner of Parcel 2 as shown on a Record of Survey filed February, 1991, as CS No. B-9939 at the office of the Clatsop County Surveyor; thence N72° 21' 59"E 560.00 feet to a point; thence S35° 13' 00"E 1700.0 feet to a point; thence S73° 30' 07"E 784.79 feet to a point; thence S27° 40' 00"E 1650.00 feet to a point; thence S17° 20' 00"W 707.11 feet to a point; thence S27° 40' 00"E 1500.00 feet to a point; thence S89° 34' 08"W 2105.00 feet to a point on the east right-of-way of the Burlington Northern Railroad; thence northwesterly along said east railroad right-of-way to Mill Creek; thence southwestly along Mill Creek to a line 100 feet southerly and paralleling the centerline of the Columbia River Highway Number 30; thence northwesterly along said line paralleling the Columbia River Highway centerline to an intersection with the east right-of-way of Eleventh Street in the Town of Van Dusen's Astoria; thence south along the east line of said Eleventh Street to a point where, if the same were extended, it would intersect a line drawn through the center of sections 14 and 15 of Township 8 North, Range 9 West, Willamette Meridian; thence west along the extension of a line drawn through the center of said sections 14 and 15, to the point of its intersection with the east boundary line of the John M. and Susan L. Shively donation land claim; thence south along the east boundary line of said Shively donation land claim to the southeast corner thereof; thence west, along the south boundary of said Shively donation land claim to its intersection with the east line of the town of Williamsport; thence south along the east line of said Williamsport to the southeast corner of Lot 5, Block 26, of said Williamsport; thence west, along the south line of said Lot 5 and an extension thereof to its intersection with the pierhead line of Young's Bay; thence westerly along said pierhead line to its intersection with the southerly extension of the easterly line of Dresden Avenue, in the town of Taylor's Astoria; thence southerly along said southerly extension of the east line of Dresden Avenue to its intersection with the main channel of Young's River; thence down said channel to its intersection with the main channel of the Columbia River; thence due north across said main channel of the Columbia River to the north side thereof; thence up and along the north side of said main channel of the Columbia River to a point due north of the beginning; thence south to the point of beginning.

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

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**SPECIAL PROVISIONS AND PROCEDURES**

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

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

### **Audit Procedures**

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

### **Reapportionment**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Jury Trial Procedures**

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

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

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

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

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

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

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

**1.250 Selection of Jury.**

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

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

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

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

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

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

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

### **Cemetery Regulations**

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

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

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



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

**1.300 Rules and Regulations.**

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

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

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

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

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

**1.355 Duties of the Finance Director.**

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

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

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

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

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

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

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

**1.375 Sections Reserved for Veterans.**

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

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

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

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

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

### **Initiative and Referendum Procedures**

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

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

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

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

### **Real Property Sale Procedures**

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

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

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

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

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

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

**1.507 Notice and Hearing.**

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

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

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

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



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

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

### **Public Records**

**1.560 Copy of Public Records.**

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

### **Ambulance Franchise Program**

- 1.600 Short Title.** Sections 1.600 to 6.640 shall be known as the "Ambulance Franchise Ordinance" and may be so pleaded and shall be cited therein as "this ordinance."

**1.602 Jurisdiction.** Except as specifically provided herein, this ordinance shall not apply within the unincorporated areas of Clatsop County unless agreed to pursuant to ORS 190.003 through 190.250 between city and county.

**1.604 Agreement for Joint or Multiple Governmental Entity Franchise.** The city council may enter into agreements with any other city, the county or other public agency for joint or regional franchising of ambulance service and administration thereof.

**1.606 Purpose and Policy.** To protect the health, safety and welfare of the people of the city of Astoria and acting pursuant to the city charter and to provide for a high level quality of ambulance service to the people of Astoria at a reasonable cost, it is declared to be the public policy of the city of Astoria to franchise and regulate ambulance services within the city limits.

**1.608 General Definitions.**

- (1) "Ambulance" means any privately or publicly owned vehicle that is especially designed, constructed, equipped, maintained or used for the transportation of patients, and which is offered as part of an ambulance service for compensation.
- (2) "Ambulance services" means any person, as hereinafter defined, who operates an ambulance for compensation which is either stationed within or without the city of Astoria and dispatched from within or without the city to pick up and transport patients from within the city; provided, however, that the provision of this chapter shall not apply to any ambulance which shall pass through the city in the delivery of patients picked up at points beyond the limits of the city nor an ambulance which is bringing patients to a location in the city when the origination of such patient's transportation was from outside the city.
- (3) "Ambulance service emergency medical technician" hereinafter sometimes referred to as ambulance service E.M.T., means ambulance service personnel who meet the requirements of Sections 1.630 and 1.632 and who are responsible for the operation of an ambulance and the care of the patients; the ambulance service E.M.T. who operates the ambulance shall have an operator's or chauffeur's license as required by ORS Chapter 482.
- (4) "Board" means the board of county commissioners for Clatsop County, Oregon.
- (5) "City" means the city of Astoria.

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- (6) "Communication system" means two-way radio communications between ambulances, dispatchers, hospitals and other agencies as needed. A two-channel multifrequency capacity is minimally required.
- (7) "Compensation" means any type of consideration paid for service including, but not limited to, direct or indirect consideration from patients or some person acting on their behalf.
- (8) "Council" means the city council of the city of Astoria.
- (9) "Employee applicant" means the employee or prospective employee of the franchise applicant or franchise holder.
- (10) (Reserved)
- (11) "Franchise" means a franchise which is required to operate an ambulance service within the city and which is issued by the council pursuant to this ordinance.
- (12) "Franchise applicant" means a person who is attempting to obtain through the procedures set forth in this ordinance a franchise to operate an ambulance service within this city under the provisions of this ordinance.
- (13) "Franchise holder" means a person who has been granted a franchise under the provisions of this ordinance and who is operating an ambulance service within this city in accordance with the provisions of this ordinance.
- (14) "Health officer" means the Clatsop County health officer.
- (15) (Reserved)
- (16) "Mobile intensive care unit," hereinafter sometimes called M.I.C.U., means an ambulance equipped with advance life support equipment and staffed by appropriately trained personnel.
- (17) "Patient" means an individual who is sick, injured, wounded or otherwise incapacitated or helpless.
- (18) "Person" means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose or organization of any kind, including any governmental agency other than the United States or the state of Oregon.
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- (19) "Regulations" means regulations adopted pursuant to this ordinance and promulgated by the council by resolution or order.
- (20) (Reserved)
- (21) "Rules" means rules promulgated by state agencies pursuant to Oregon Revised Statutes, as amended.
- (22) "Physician advisor" means that physician who is licensed in the state of Oregon to practice medicine, and that advises, instructs and gives medical orders to ambulance service E.M.T.'s.

**1.610 Administration.**

- (A) The council shall be responsible for the administration and enforcement of this ordinance.
- (B) In order to carry out the duties imposed by this ordinance, the council shall have the authority to administer oaths; certify to all official acts; subpoena and require the attendance of witnesses at public hearings before the council; require production of relevant documents at public hearings; swear witnesses; take testimony of any persons by deposition; and to obtain a search warrant to enter or authorize personnel to enter upon the premises, and to examine into the records and operations of any persons regulated by this ordinance to determine compliance with this ordinance and the regulations promulgated by the council pursuant thereto.

**1.612 Regulations.** The council may supplement the operation of this ordinance by promulgating reasonable regulations pertaining to the administration of this ordinance, and for the operation of ambulance service within the city, relating, but not limited to standards of service to be provided to the public.

**1.614 Persons, Practices and Activities Regulated.**

- (A) Except as otherwise provided in this Section and Section 1.618, it shall be unlawful for any person to engage in the business of operating any ambulance or ambulance service or to operate any ambulance to carry or transport any patient or patients from the scene of any accident, disaster, home, hospital, nursing home, building or other place within the city, for consideration, who is not the franchise holder or employee of the franchise holder entitled to provide the service to the area from which the transportation of a patient originates.

- (B) Subsection A hereinabove shall not apply to the following:
- (1) Operation of ambulances or ambulance service meeting the requirements of Section 1.632 by municipal entities.
  - (2) Ambulances or ambulance services owned and operated by state or federal agency, but only insofar as the ambulance services are performed exclusively by and for said state or federal agency or agencies.
  - (3) Enlisting non-franchised ambulance services as warranted to meet unusual and unforeseen emergency circumstances when it is determined by the franchise holder or a duly authorized agency of the city that, due to such unusual and unforeseen emergency circumstances, services are required that exceed the ambulance service facilities of the franchise holder.

**1.616 Franchising of Ambulance Service.**

- (A) Unless exempted by Section 1.614(B) of this code or franchised pursuant to this Section and Section 1.618 through 1.634 of this code, no person shall provide ambulance service for compensation or offer to provide ambulance service within the city.
- (B) The issuance of a franchise shall be for a specified area and shall provide the exclusive right to provide ambulance service within the territory of the franchise area upon the council's determination that the applicant is able to perform adequate service within the defined service area.
- (C) Franchise term and renewals.
- (1) The term for an ambulance service franchise shall be 10 years unless the council finds that a longer or shorter term is required to provide for the public's best interests.
  - (2) Unless grounds exist for refusal to renew a franchise under Section 1.624 of this code, a franchise may be renewed upon filing of an application for renewal on forms provided by the finance director which application shall be reviewed by the council for continued compliance with this ordinance.
- (D) Persons providing ambulance service within the city on the effective date of this ordinance shall be granted a franchise upon compliance with Section

1.618 of this code and the provisions of this subsection. A person in the business of providing ambulance service shall be granted a franchise for the ambulance service he is providing within the area of the city that he certifies to the council he is and has been providing the majority of all ambulance service in, on the effective date of this ordinance. Said persons must supply certification to the council within 30 days after the effective date of this ordinance, setting forth the boundaries of the areas he has been supplying service to, and establishing that his service has been of a regular and continued nature, is the predominate source of ambulance service for said area, and that such service meets the requirements of and is qualified under Section 1.620 (B (1 and 3)) and Section 1.632 of this code. If areas are disputed, the council shall require compliance with Subsection Section 1.620.

**1.618 Franchise Application.** Any person desiring to obtain a franchise to engage in the business of operating an ambulance or ambulances within the city shall file with the city an application therefor, accompanied by a sworn statement containing the following information.

- (1) Name and address of the person, firm or corporation desiring license.
- (2) A list of vehicles to be used in connection with such business, including the make, model and equipment of each vehicle.
- (3) A list of all personnel to be engaged as employees in the business, with a general description of the duties of each such employee.
- (4) The distinguishing colors, scheme, design and/or dress, including any monogram or insignia to be used on each ambulance and worn by ambulance service E.M.T.'s
- (5) Whether or not any owner of the business (or any officer if applicant is a corporation) has ever been charged with or convicted of any felony or misdemeanor, including violations of city ordinances and moving traffic violations; and, if so, details as to when, where and for what offense.
- (6) Schedule of all rates and service charges proposed to be charged by franchise applicant.

**1.620 Requirements for Franchise Approval.**

- (A) Certificate of public convenience and necessity. No franchise, except as provided in Section 1.616(D) hereinabove, shall be issued to any person to engage in the business of operating an ambulance service within the city,

unless the applicant for such franchise shall have first obtained a certificate of public convenience and necessity from the council.

- (B) Application for certificate of public convenience and necessity: An application for a certificate of public convenience and necessity shall be filed with the city of Astoria in a form approved by the city, and said application shall be verified under oath and shall furnish the following information.
- (1) Proof that each of the ambulances proposed to be used by the franchise applicant is certified under ORS 485.500 to 485.595 and 485.992.
  - (2) Any facts which the franchise applicant believes tend to prove that public convenience and necessity require the granting of a franchise certificate to this applicant.
  - (3) The adequacy of the applicant's experience and equipment to provide for the transportation and care of patients from the proposed franchise area.
  - (4) The number of vehicles to be operated or controlled by the franchise applicant and the location of the proposed depots and terminals to be operated within the city.
  - (5) A proposal of operation that demonstrates that the franchise applicant has adequate facilities and equipment to meet the identified public convenience and necessity.
- (C) Public hearing: Upon the filing of an application, the council shall fix a time and place for a public hearing thereon. Notice of such hearing shall be given to the franchise applicant, current franchise holders and to all persons to whom certificates of public convenience and necessity have theretofore been issued or applied for. Due notice shall also be given to the general public by posting a notice of such hearing on the bulletin board in the city hall by one publication in a newspaper of general circulation within the city not more than 15 nor less than two days prior to the date of the proposed hearing. Any interested person may appear and/or file with the council a memorandum in support or opposition to the issuance of a certificate.
- (D) Issuance of franchise for ambulance service:
- (1) If the council finds that ambulance service or further ambulance service in the city is required by the public convenience and necessity and that the applicant is fit, willing and able to perform such ambulance service to conform to the provisions of this ordinance and applicable state law, then

- (2) the council shall issue a franchise stating the name and address of the franchise applicant, a definition of the area or areas to be subject to the franchise, the number of vehicles authorized under said franchise and the date of issuance; otherwise the franchise applicant shall be denied.
  
- (2) In making the above findings, the council shall take into consideration the number of ambulances already in service; whether existing ambulance service is adequate to meet the public need; the probable effect of increased service on local traffic conditions; the financial impact of increased ambulance service within the city on existing service which may tend to lessen the ability of existing and proposed franchise holders to provide a high level quality of service; and the character, experience and responsibility of the applicant.

**1.622 Franchise Fees.** Upon issuance of the franchise, the franchise holder shall pay a fee in the sum of \$10.00. All franchises issued pursuant to this ordinance shall be stamped by the city of Astoria with the city seal and show the expiration date of the franchise.

**1.624 Revocation of Franchise.**

- (A) Any franchise issued pursuant to this ordinance shall be subject to revocation by the council upon demonstration and determination that the franchise holder has failed to meet the public convenience and necessity as those requirements are defined hereinabove in Section 1.620 Prior to initiation of revocation, the council shall provide franchise holder with 30 days' notice of any alleged failure to meet the public convenience and necessity; provided, however, such action shall not proceed if within said 30 days the franchise holder has corrected the said identified failure to the satisfaction of the council.
  
- (B) No such franchise shall be revoked or suspended, unless charges in writing shall first be filed with the city of Astoria setting forth with reasonable certainty the nature of such charges against said franchise holder. Upon the filing of charges as aforesaid, the council shall fix a time and place for the hearing of said charges by the council and provide that a copy of the charges as filed, together with notice of time and place of the hearing, shall be served upon the franchise holder at least 10 days prior to the date fixed by the council for hearing.
  
- (C) Any notice provided for in this ordinance shall be served either by delivery of a copy of the said charges and notification of hearing personally to the franchise holder affected, or by leaving same with some person of suitable



age and discretion at the place of business of the franchise holder, or, if no such person can be found at any such place of business, then by leaving such notice of hearing and charges in a conspicuous place on the business premises and mailing same to the franchise holder at the address set forth in his application for a franchise and to any other address known to the council to be more probable to provide actual notice to the franchise holder. At the hearing on said charges, the franchise holder shall have the right to appear and defend against the charges, and, if he so desires, to be represented by counsel.

**1.626 Transfer of Franchise.** A franchise holder may transfer his franchise, or a portion thereof, to another person only upon written notice to and approval by the council. After a recommendation and finding by the council, it shall approve the transfer if it finds the transferee meets all applicable requirements that must be met by an applicant for the same franchise. The council shall approve or disapprove any application for a transfer of a franchise within 30 days after receipt of written notice of the application for transfer. The council may extend this time if it finds there is substantial question of public health or safety involved which requires additional time for investigation and decision. The council may permit a franchise to be pledged as security for the purchase of land, equipment or facilities needed to provide ambulance service or to finance purchase of a business providing service under this ordinance. The council may attach whatever conditions it deems appropriate to guarantee maintenance of service in compliance with this ordinance.

**1.628 Rate Regulation.**

(A) The council may by resolution or order, and after public hearing held in accordance with the procedures set forth in Section 1.620 hereinabove, regulate ambulance rates as follows.

- (1) Approve or modify rates filed by a franchise holder;
- (2) Establish uniform rates by service area or other reasonable classifications;
- (3) Establish interim or final rates; and (4) Review and adjust rates. Franchise holders and applicants may apply for rate adjustment based on one or more of the following reasons.
  - (a) A total business cost increase or decrease of 2-1/2 percent since the previous rate adjustment; or

- (b) An extraordinary cost increase or cost decrease; or
  - (c) Addition of a new or special service not previously applied for; or
  - (d) A reduction in volume of business; or
  - (e) Changes in other governmental regulations affecting the ambulance business; or
  - (f) An adjustment to become effective one year (twelve months) from the effective date of the last rate adjustment.
- (5) The establishment of beginning rates shall be determined upon consideration of rate standards contained in Subsection C hereinbelow.
- (B) Emergency interim rate. Where no rate has been established for a particular service, the council may establish an interim rate until final action is taken pursuant to this section.
- (C) Rate standards.
- (1) Equitable charges may be made to users of ambulance services that are just, fair, reasonable and adequate to provide necessary service to the public; justify investment and ambulance service management systems; and provide for improved equipment and systems modernization to meet medical and service requirements.
  - (2) Rates for similar service under similar service conditions in the state and other areas may be considered.
  - (3) Rates and adjustments shall be based upon the cost of doing business, including, but not limited to, direct costs, value of owners and family services, equipment at replacement cost, capital budget for equipment to meet growth and reasonable return to the owner based upon a percentage of the gross receipts from service provided under the franchise.
- (D) Requirements for franchise holder. After not less than 90 days' written notice from the council, franchise holder shall make available records of income and expense for ambulance service including a reasonable allocation of value of owners and family services, and all overhead expense.

- (E) Initial rates. The council shall approve and establish existing rates filed by all applicants under Section 1.618 who meets the requirements of a franchise holder under the provisions of Section 1.616(D) of this code unless it finds that such rates are demonstrably unreasonable and are substantially higher than those charged generally in comparable situations within the state of Oregon under similar requirements and for the same or similar quality of service. In determining whether such rates are unreasonable under this section, the council shall consider the volume of business, the number and occasion of potential patients to be served, and such other factors as may, in the opinion of the council, justifiably affect the rates charged.

**1.630 Ambulance Service Emergency Medical Technician.**

- (A) Every person applying with a franchise holder for the position of ambulance service E.M.T. must submit, if required, to fingerprinting and photographing by the county sheriff or city police chief. Upon request by the franchise holder, the sheriff or police chief may review the ambulance service E.M.T.'s application and may investigate the statements contained therein and obtain such other information as he deems necessary concerning the applicant's character, integrity, personal habits, past conduct and general qualifications, as will show the applicant's personal qualifications to be an ambulance service E.M.T. and an ambulance operator. If the sheriff or police chief shall find that sufficient data cannot reasonably be obtained to make a determination of the applicant's fitness within one week after said application is filed, the sheriff or police chief may issue to said franchise holder a temporary approval for said ambulance service E.M.T. applicant to work. Said approval may be revoked at any time at the discretion of the sheriff or police chief or the franchise holder. Said temporary approval shall be valid only until final action is taken with reference to the issuance of an ambulance service E.M.T. approval by the sheriff or police chief and the franchise holder. In no event shall the temporary approval be valid for a period of more than 30 days.
- (B) The franchise operator shall terminate the employment of any ambulance service E.M.T. who fails to meet any of the above standards of Sections 1.630 to 1.632 during the course of employment.
- (D) Each applicant for the position of any ambulance service E.M.T., and annually thereafter, shall be examined by a doctor licensed by the State Board of Medical Examiners to ascertain whether or not the medical and health requirements for this ordinance are met. The applicant must demonstrate to the satisfaction of the examining physician his physical, emotional and professional ability to perform duties that might reasonably be expected

to be performed by the applicant within the scope of his employment as an ambulance service E.M.T. Any cost of such examination shall be borne by the applicant therefor.

- (E) All ambulance service E.M.T.'s regularly and continuously employed in the city upon the date of the enactment of this ordinance shall, upon certification of such employment by a franchise holder, be issued a permit to work without further compliance with the initial application provisions of this section.

**1.632 Ambulance Operation.**

- (A) All ambulances must be manned by a crew of not less than two persons, one of whom shall hold the current certification of an E.M.T. I, II, III or IV, and the others all hold the current certification of an E.M.T. II, III, IV, or be a registered nurse, physicians' assistant or physician licensed in the state of Oregon. The person responsible for driving the ambulance must be licensed as a chauffeur under the provisions of ORS Chapter 482.
- (B) The ambulance service E.M.T.'s must keep themselves and their clothing neat and clean. One ambulance service E.M.T. shall ride in attendance of the patient while transporting a patient. Ambulance service E.M.T.'s will wear name tags with their name and E.M.T. rating inscribed on it.
- (C) All ambulances shall be equipped as required by ORS 485.525. In addition thereto, each ambulance shall carry the following minimum equipment.
  - (1) Intravenous equipment and supplies.
  - (2) Orthopedic scoop-type stretcher.
  - (3) Communications equipment.
  - (4) K-Bar-T extraction-type tool.
  - (5) 115-volt auxiliary power.
- (D) Each franchise holder shall have sufficient numbers of mobile intensive care unit ambulances to provide adequate service for the areas it serves, but in no event shall any franchise holder have less than one such conveniently available to the area of the franchise.

(E) All mobile intensive care unit ambulances shall have equipment including, but not limited to:

- (1) Electrocardiographic equipment.
- (2) Intubation supplies.
- (3) Medications as directed by physician advisors.

**1.634 Duty to Transport Patients.** It shall be the duty of the ambulance service E.M.T. to discharge the patients at the hospital selected by the patient, his physician or a person or agency of proper authority, unless, in the professional judgment of the ambulance service E.M.T.'s and/or physician, circumstances of the injury or illness indicate otherwise.

**1.636 Penalties for Violation.**

- (A) Any person who shall violate or fail to comply with any other provisions of this ordinance, or who shall counsel, aid or abet any such violation shall be prohibited from being a franchise holder or ambulance service E.M.T. under the provisions of this ordinance. Revocation of a franchise under the provisions of this section shall comply with the procedural requirements of Section 1.624 hereinabove.
- (B) Upon its own motion, the council may suspend, modify, revoke or refuse to renew a franchise, upon finding that the franchise holder has, after notice and reasonable opportunity to comply:
- (1) Violated this ordinance or the terms of the franchise or the conditions thereunder or other laws or regulations promulgated and herein applicable; or
  - (2) Materially misrepresented facts or information given in the application for the franchise, or materially misrepresented facts and justification for rate adjustments; or
  - (3) Willfully refused to provide adequate service in a defined service area; or
  - (4) Misrepresented the gross receipts from the franchise service area or such other reports required by this ordinance or by order of the council; or

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- (5) Willfully charge rates in excess of those authorized pursuant to this ordinance and rate orders issued by the council thereunder; or
- (6) Fail to conscientiously comply with all requirements of this ordinance.
- (C) In lieu of immediate suspension, modification, revocation or refusal to renew a franchise, the council may order compliance and make the suspension, modification, revocation or refusal to renew, contingent upon compliance with the order of the council within the time or period stated therein.
- (D) If the council suspends, modifies, revokes or refuses to renew the franchise permit, the action shall not become effective until 30 days after the date of the order, unless the council finds that there is a serious and immediate danger to the public health, welfare and convenience. In the latter case, the order will be made effective immediately. The franchise holder may request a public hearing before the council on the order by filing a written request for such hearing with the council within 30 days after the date of the order. Upon filing of a request for a hearing, the council shall set a time and place of the public hearing within 30 days of the request. Notice of such hearing shall be given as provided in Section 1.620(C) hereinabove. The franchise holder and other interested persons, or affected public agencies or public bodies, may submit oral or written evidence to the council relevant to the council's order. The council may, following the public hearing, affirm, amend or rescind its prior order and shall do so within 30 days of the public hearing. Subject to court appeal as provided in this ordinance, the determination of the council shall be final.
- (E) Restraining order. The council may issue temporary restraining orders enjoining the alleged violation of any of the terms of this ordinance or franchises or regulations issued pursuant thereto, which order shall be directed to the alleged violator to immediately cease and desist from an act or acts described in said order until the council determines whether or not a violation has occurred. Before issuing a temporary restraining order, the council must have reasonable grounds to believe that the violation has occurred. In no event shall the council make or issue such an order without having first received a written complaint containing specific allegations of a violation of this ordinance, which complaint shall specify the alleged violator of the act or acts to be enjoined. The restraining order shall direct the alleged violator to appear at a time and place stated in said order and show cause, if any there be, why the alleged violator should not be immediately enjoined from doing the act or acts specified in the order. If the council determines that the alleged violator has committed a violation of this ordinance, the council may make and enter an order permanently enjoining further violations.
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(F) Penalties. The violation of Section 1.614(A) of this code may be deemed to be a misdemeanor and shall be punishable upon conviction in the municipal or district court by a fine of not less than \$250.00, nor more than \$500.00. Each incident of violation shall be a separate offense. Failure to comply with a restraining order issued pursuant to Subsection E of this section shall be a separate offense and, in addition to fine for violation of Section 1.614(A) may be deemed a misdemeanor and shall be punishable upon conviction by fine of not less than \$250.00, nor more than \$500.00, per incident of failure to comply.

**1.638 Conformance with State Law**. This ordinance shall in no way be a substitute nor eliminate the necessity of conforming with any and all state and other municipal laws, rules and regulations which are now or may in the future be in effect, which relate to the ambulance service. This ordinance is in addition to said state and municipal laws, rules and regulations.

**1.640 Review of Council's Actions**. All decisions of the council under this ordinance shall be reviewed by the circuit court of the state of Oregon for the County of Clatsop under the provisions of ORS Chapter 34.010 to 34.100. Said provisions shall be the sole and exclusive remedy for reviewing any and all actions of the council under this ordinance.

*[Sections 1.600 to 1.640 added by Ordinance No. 76-14, passed August 16, 1976.]*

### **Housing Practices**

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

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

- (1) "Real Property" includes buildings, structures, lands, tenements, leaseholds, cooperatives and condominiums.
- (2) "Discrimination" or "Discriminatory Housing Practice" means any difference in treatment based upon color, religion, sex, or national origin; or any act that is unlawful under Sections 1.700 to 1.725.

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- (3) "Person" includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups or combinations.
  - (4) "Owner" includes a lessee, sublessee, co-tenant, assignee, managing agent or other person having the right of ownership or possession, or the right to sell, rent or lease any housing accommodation.
  - (5) "Financial Institution" includes any person, as defined herein, engaged in the business of lending money or guaranteeing losses.
  - (6) "Real Estate Broker" or "Real Estate Salesman" includes any individual, qualified by law, who, for a fee, commission, salary or for other valuable consideration, or who with the intention or expectation of receiving or collecting same, lists, sells, purchases, rents, or leases any housing accommodations, including options thereupon, who negotiates or attempts to negotiate such activities; who advertises or holds himself out as engaged in such activities; or who negotiates or attempts to negotiate a loan, secured by a mortgage or other encumbrance, upon transfer of any housing accommodation; or who is engaged in the business of charging an advance connection with a contract whereby he undertakes to promote the sale, purchase, rental or lease of any housing accommodation through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.
  - (7) "Housing Accommodation" or "Dwelling" means any building, mobile home or trailer, structure, or portion thereof which is occupied as, or designed, or intended for occupancy, as, a residence by one or more families, and any vacant land which is offered to sale or lease for the construction or location thereon of any such building, mobile home or trailer, structure, or portion thereof or any real property, as defined herein, used or intended to be used for any of the purposes set forth in this subsection.
  - (8) "Mortgage Broker" means an individual who is engaged in or who performs the business or services of a mortgage broker as the same are defined by Oregon Statutes.
  - (9) "Open Market" means the market which is informed of the availability for sale, purchase, rental or lease of any housing accommodation, whether informed through a real estate broker or by advertising by publication, signs or by any other advertising methods directed to the public or any portion thereof, indicating that the property is available for sale, purchase, rental or lease.
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**1.710 Unlawful Practices.** In connection with any of the transactions set forth in this section which affect any housing accommodation on the open market, or in connection with any public sale, purchase, rental or lease of any housing accommodation, it shall be unlawful within the City of Astoria for a person, owner, financial institution, real estate broker or real estate salesman, or any representative of the above, to:

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

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

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

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

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

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

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

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

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

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### **Parks and Recreation Board**

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

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

### **NEIGHBORHOOD ASSOCIATIONS**

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

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

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

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

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

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

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

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

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

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

## **REAL PROPERTY COMPENSATION**

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

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

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



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

**1.910 Claim Filing Procedures.**

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

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

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

**1.915 City Manager Investigation and Recommendation.**

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

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

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

**1.925 City Council Action on Claim.**

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

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

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

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

**1.935 Processing Fees.**

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

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

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

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**LOCAL GOVERNMENT PUBLIC CONTRACTING REGULATIONS****1.960 Public Contracts – City of Astoria Policy.**

- A. **Short Title.** The provisions of this Ordinance and all rules adopted under this Ordinance may be cited as the City of Astoria’s Public Contracting Regulations.
- B. **Purpose of Public Contracting Regulations.** It is the policy of the City of Astoria in adopting the Public Contracting Regulations to utilize public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by:
- (1) Promoting impartial and open competition;
  - (2) Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
  - (3) Taking full advantage of evolving procurement methods that suit the contracting needs of the City of Astoria as they emerge within various industries.
- C. **Interpretation of Public Contracting Rules.** In furtherance of the purpose of the objectives set forth in subsection B, it is the City of Astoria’s intent that the City of Astoria Public Contracting Regulations be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B and 279C.

**1.961 Application of Public Contracting Regulations.** In accordance with ORS 279A.025, the City of Astoria’s public contracting regulations and the Oregon Public Contracting Code do not apply to the following classes of contracts.

- A. **Between Governments.** Contracts between the City of Astoria and a public body or agency of the State of Oregon or its political subdivisions, or between the City of Astoria and an agency of the federal government.
- B. **Grants.** A grant contract is an agreement under which the City of Astoria is either a grantee or a grantor of moneys, property or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, for the purpose of supporting or stimulating a program or activity of the grantee and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant

conditions. The making or receiving of a grant is not a public contract subject to the Oregon Public Contracting Code; however, any grant made by City of Astoria for the purpose of constructing a public improvement or public works project shall impose conditions on the grantee that ensure that expenditures of the grant to design or construct the public improvement or public works project are made in accordance with the Oregon Public Contracting Code and these regulations.

- C. **Legal Witnesses and Consultants.** Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City of Astoria is or may become interested.
- D. **Real Property.** Acquisitions or disposals of real property or interests in real property.
- E. **Textbooks.** Contracts for the procurement or distribution of textbooks.
- F. **Oregon Corrections Enterprises.** Procurements from an Oregon corrections enterprises program.
- G. **Finance.** Contracts, agreements or other documents entered into, issued or established in connection with:
  - (1) The incurring of debt by the City of Astoria, including any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;
  - (2) The making of program loans and similar extensions or advances of funds, aid or assistance by the City of Astoria to a public or private Person for the purpose of carrying out, promoting or sustaining activities or programs authorized by law other than for the construction of public works or public improvements;
  - (3) The investment of funds by the City of Astoria as authorized by law, or
  - (4) Banking, money management or other predominantly financial transactions of the City of Astoria that, by their character, cannot practically be established under the competitive contractor selection procedures, based upon the findings of the Purchasing Manager.

- H. **Employee Benefits.** Contracts for employee benefit plans as provided in ORS 243.105(1)., 243.125 (4)., 243.221, 243.275, 243.291, 243.303 and 243.565.
- I. **Exempt Under State Laws.** Any other public contracting specifically exempted from the Oregon Public Contracting Code by another provision of law.
- J. **Federal Law.** Except as otherwise expressly provided in ORS 279C.800 to 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the Oregon Public Contracting Code or these regulations, or require additional conditions in public contracts not authorized by the Oregon Public Contracting Code or these regulations.

**1.962 Public Contracts – Regulation by City of Astoria.** Except as expressly delegated under these regulations, the Astoria City Council reserves to itself the exercise of all of the duties and authority of a contract review board and a contracting agency under state law, including, but not limited to, the power and authority to:

- A. **Solicitation Methods Applicable to Contracts.** Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;
- B. **Brand Name Specifications.** Exempt the use of brand name specifications for public improvement contracts;
- C. **Waiver of Performance and Payment Bonds.** Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a public improvement, other than in cases of emergencies;
- D. **Electronic Advertisement of Public Improvement Contracts.** Authorize the use of electronic advertisements for public improvement contracts in lieu of publication in a newspaper of general circulation;
- E. **Appeals of Debarment and Prequalification Decisions.** Hear properly filed appeals of the Purchasing Manager's determination of debarment, or concerning prequalification;
- F. **Rulemaking.** Adopt contracting rules under ORS 279A.065 and ORS 279A.070 including, without limitation, rules for the procurement,

management, disposal and control of goods, services, personal services and public improvements; and

- G. **Award.** Award all contracts that exceed the authority of the Purchasing Manager.

**1.963 Public Contracts – Model Rules.** The Model Rules adopted by the Attorney General under ORS 279A.065 (Model Rules) are hereby adopted as the public contracting rules for the City of Astoria, to the extent that the Model Rules do not conflict with the provisions of this Ordinance including any amendments to this Ordinance.

**1.964 Public Contracts – Authority of Purchasing Manager.**

- A. **General Authority.** The City Manager shall be the purchasing manager for the City of Astoria and is hereby authorized to issue all solicitations and to award all City of Astoria contracts for which the contract price does not exceed \$50,000. Subject to the provisions of this Ordinance, the purchasing manager may adopt and amend all solicitation materials, contracts and forms required or permitted to be adopted by contracting agencies under the Oregon Public Contracting Code or otherwise convenient for the City of Astoria's contracting needs. The purchasing manager shall hear all solicitation and award protests. *[Section 1.964A amended by Ordinance No. 06-03, passed June 5, 2006; amended by Ordinance No. 17-04, passed February 6, 2017.]*

- B. **Solicitation Preferences.** When possible, the purchasing manager shall use solicitation documents and evaluation criteria that:

- (1) Give preference to goods and services that have been manufactured or produced in the State of Oregon if price, fitness, availability and quality are otherwise equal; and
- (2) Give preference to goods that are certified to be made from recycled products when such goods are available, can be substituted for non-recycled products without a loss in quality, and the cost of goods made from recycled products is not significantly more than the cost of goods made from non-recycled products.

- B. **Delegation of Purchasing Manager's Authority.** Any of the responsibilities or authorities of the purchasing manager under this Ordinance may be delegated and sub-delegated by written directive.



- D. **Mandatory Review of Rules.** Whenever the Oregon State Legislative Assembly enacts laws that cause the attorney general to modify its Model Rules, the Purchasing Manager shall review the Public Contracting Regulations, other than the Model Rules, and recommend to the City of Astoria any modifications required to ensure compliance with statutory changes.

**1.965 Public Contracts – Definitions.** The following terms used in these regulations shall have the meanings set forth below.

**Award** means the selection of a person to provide goods, services or public improvements under a public contract. The award of a contract is not binding on the City of Astoria until the contract is executed and delivered by City of Astoria.

**Bid** means a binding, sealed, written offer to provide goods, services or public improvements for a specified price or prices.

**Concession agreement** means a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from real property owned or managed by the City of Astoria, and under which the concessionaire makes payments to the City of Astoria based, at least in part, on the concessionaire's revenues or sales. The term "concession agreement" does not include a mere rental agreement, license or lease for the use of premises.

**Contract price** means the total amount paid or to be paid under a contract, including any approved alternates, and any fully executed change orders or amendments.

**Contract review board or local contract review board** means the Astoria City Council.

**Cooperative procurement** means a procurement conducted by or on behalf of one or more contracting agencies.

**Debarment** means a declaration by the Purchasing Manager under ORS 279B.130 or ORS 279C.440 that prohibits a potential contractor from competing for the City of Astoria's public contracts for a prescribed period of time.

**Disposal** means any arrangement for the transfer of property and interest therein by the City of Astoria under which the City of Astoria relinquishes ownership or an interest therein.

**Emergency** means circumstances that create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and require prompt execution of a contract to remedy the condition.

**Energy savings performance contract** means a contract with a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures that guarantee energy savings or performance.

**Findings** are the statements of fact that provide justification for a determination. Findings may include, but are not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in public contracts; quality and aesthetic considerations, value engineering; specialized expertise needed; public safety; market conditions; technical complexity; availability, performance and funding sources.

**Goods** means any item or combination of supplies, equipment, materials or other personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto.

**Informal solicitation** means a solicitation made in accordance with the City of Astoria's Public Contracting Regulations to a limited number of potential contractors, in which the Solicitation Agent attempts to obtain at least three written quotes or proposals.

**Invitation to bid** means a publicly advertised request for competitive sealed bids.

**Model Rules** means the public contracting rules adopted by the Attorney General under ORS 279A.065.

**Offeror** means a person who submits a bid, quote or proposal to enter into a public contract with the City of Astoria.

**Oregon Public Contracting Code** means ORS chapters 279A, 279B and 279C.

**Person** means a natural person or any other private or governmental entity, having the legal capacity to enter into a binding contract.

**Proposal** means a binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on the evaluation of factors other than, or in addition to, price. A Proposal may be made in response to a request for proposals or under an informal solicitation.

**Personal services contract** means a contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of appraisers, architects, artists, attorneys, auditors, computer programmers, consultants, designers, engineers, geologists, health care professionals, hydrologists, landscape architects, land surveyors, land use consultants, performers, property managers, realtors, urban renewal consultants, and other licensed professionals. The Astoria City Council shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

**Public contract** means a sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of Astoria of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

**Public improvement** means a project for construction, reconstruction or major renovation on real property by or for the City of Astoria. "Public improvement" does not include:

- (1) Projects for which no funds of the City of Astoria are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
- (2) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

**Purchasing Manager** means the City Manager, or designee appointed by the City Manager, to exercise the authority of the purchasing manager under these public contracting regulations.

**Qualified pool** means a pool of vendors who are pre-qualified to compete for the award of contracts for certain types of contracts or to provide certain types of services.

**Quote** means a price offer made in response to an informal or qualified pool solicitation to provide goods, services or public improvements.

**Request for proposals** means a publicly advertised request for sealed competitive proposals.

**Services** means and includes all types of services (including construction labor) other than personal services.

**Solicitation** means an invitation to one or more potential contractors to submit a bid, proposal, quote, statement of qualifications or letter of interest to the City of Astoria with respect to a proposed project, procurement or other contracting opportunity. The word "solicitation" also refers to the process by which the City of Astoria requests, receives and evaluates potential contractors and awards public contracts.

**Solicitation Agent** means with respect to a particular solicitation, the City Manager, or person designated by the City Manager, to conduct the solicitation and make an award.

**Solicitation documents** means all informational materials issued by the City of Astoria for a solicitation, including, but not limited to advertisements, instructions, submission requirements and schedules, award criteria, contract terms and specifications, and all laws, regulations and documents incorporated by reference.

**Standards of responsibility** means the qualifications of eligibility for award of a public contract. An offeror meets the standards of responsibility if the offeror has:

- (1) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the offeror to meet all contractual responsibilities;
- (2) A satisfactory record of performance. The Solicitation Agent shall document the record of performance of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;

- (3) A satisfactory record of integrity. The Solicitation Agent shall document the record of integrity of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;
- (4) Qualified legally to contract with the City of Astoria;
- (5) Supplied all necessary information in connection with the inquiry concerning responsibility. If an offeror fails to promptly supply information requested by the Solicitation Agent concerning responsibility, the Solicitation Agent shall base the determination of responsibility upon any available information or may find the offeror non-responsible; and
- (6) Not been debarred by the City of Astoria, and, in the case of public improvement contracts, has not been listed by the Construction Contractors Board as a contractor who is not qualified to hold a public improvement contract.

**Surplus property** means personal property owned by the City of Astoria which is no longer needed for use by the department to which such property has been assigned.

**1.966 Public Contracts - Process for Approval of Special Solicitation Methods and Exemptions.**

- A. **Authority of City of Astoria.** In its capacity as contract review board for the City of Astoria, the City of Astoria, upon its own initiative, or upon request of the purchasing manager, may create special selection, evaluation and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this Section 1.966.
- B. **Basis for Approval.** The approval of a special solicitation method or exemption from competition must be based upon a record before the City of Astoria that contains the following:
  - (1) The nature of the contract or class of contracts for which the special solicitation or exemption is requested;
  - (2) The estimated contract price or cost of the project, if relevant;
  - (3) Findings to support the substantial cost savings, enhancement in quality or performance or other public benefit anticipated by the

proposed selection method or exemption from competitive solicitation;

- (4) Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations;
- (5) A description of the proposed alternative contracting methods to be employed; and
- (6) The estimated date by which it would be necessary to let the contract(s).

In making a determination regarding a special selection method, the Astoria City Council may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.

**C. Hearing.**

- (1) The City of Astoria shall approve the special solicitation or exemption after a public hearing before the Astoria City Council following notice by publication in at least one newspaper of general circulation in the City of Astoria area.
- (2) At the public hearing, the City of Astoria shall offer an opportunity for any interested party to appear and present comment.
- (3) The Astoria City Council will consider the findings and may approve the exemption as proposed or as modified by the Astoria City Council after providing an opportunity for public comment.

**D. Special Requirements for Public Improvement Contracts.**

- (1) Notification of the public hearing for exemption of a public improvement contract, or class of public improvement contracts, shall be published in a trade newspaper of general statewide circulation at least 14 days prior to the hearing.

- (2) The notice shall state that the public hearing is for the purpose of taking comments on the City of Astoria's draft findings for an exemption from the standard solicitation method. At the time of the notice, copies of the draft findings shall be made available to the public.

- E. **Commencement of Solicitation Prior to Approval.** A solicitation may be issued prior to the approval of a special exemption under this Section 1.966, provided that the closing of the solicitation may not be earlier than five days after the date of the hearing at which the Astoria City Council approves the exemption. If the Astoria City Council fails to approve a requested exemption, or requires the use of a solicitation procedure other than the procedures described in the issued solicitation documents, the issued solicitation may either be modified by addendum, or cancelled.

**1.967 Public Contracts - Solicitation Methods for Classes of Contracts.** The following classes of public contracts and the method(s) that are approved for the award of each of the classes are hereby established by the Astoria City Council.

- A. **Purchases from Nonprofit Agencies for Disabled Individuals.** The City of Astoria shall give a preference to goods, services and public improvements available from qualified nonprofit agencies for disabled individuals in accordance with the provisions of ORS 279.835 through 279.850.
- B. **Public Improvement Contracts.**
  - (1) **Any Public Improvement.** Unless otherwise provided in these regulations or approved for a special exemption, public improvement contracts in any amount may be issued only under an invitation to bid.
  - (2) **Non-Transportation Public Improvements Up to \$100,000.** Public improvement contracts other than contracts for a highway, bridge or other transportation project for which the estimated contract price does not exceed \$100,000 may be awarded using an informal solicitation for quotes.
  - (3) **Transportation Public Improvements Up to \$50,000.** Contracts for which the estimated contract price does not exceed \$50,000 for highways, bridges or other transportation projects may be awarded using an informal solicitation for quotes.

(4) **City of Astoria-Funded Privately-Constructed Public Improvements.** The City of Astoria may contribute funding to a privately-constructed public improvement project without subjecting the project to competitive solicitation requirements if all of the following conditions are met with respect to the entire public improvement project:

- (a) The City of Astoria's contribution to the project may not exceed 25% of the total cost of the project;
- (b) The City of Astoria must comply with all applicable laws, if any, concerning the reporting of the project to the Bureau of Labor and Industries as a public works project;
- (c) The general contractor for the project must agree in writing to comply with all applicable laws, if any, concerning reporting and payment of prevailing wages for the project;
- (d) The funds contributed to the project may not provide a pecuniary benefit to the owner of the development for which the project is being constructed, other than benefits that are shared by all members of the community;
- (e) The performance of the general contractor and the payment of labor for the project must be secured by performance and payment bonds or other cash-equivalent security that is acceptable to the Purchasing Manager to protect the City of Astoria against defective performance and claims for payment; and
- (f) The contract for construction of the project must be amended, as necessary, to require the general contractor to maintain adequate workers compensation and liability insurance and to protect and provide indemnification to the City of Astoria for all claims for payment, injury or property damage arising from or related to the construction of the project.

C. **Personal Services Contracts.** Except as otherwise provided in these regulations, personal services contracts may be awarded in the same manner as contracts for services under ORS 279B.050, and 279B.060 to 279B.085.



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- (1) **Any Personal Services Contract.** Personal services contracts in any amount may be awarded under a publicly advertised request for competitive sealed proposals.
  - (2) **Personal Service Contracts Not Exceeding \$100,000.** Contracts for personal services for which the estimated contract price does not exceed \$100,000 may be awarded using an informal solicitation for proposals.
  - (3) **\$75,000 Award from Qualified Pool.** Contracts for personal services for which the estimated contract price does not exceed \$75,000 may be awarded by direct appointment without competition from a Qualified Pool.
  - (4) **Personal Service Contracts Not Exceeding \$20,000 Per Year.** Contracts for which the Solicitation Agent estimates that payments will not exceed \$20,000 in any fiscal year or \$100,000 over the full term, including optional renewals, may be awarded under any method deemed in the City of Astoria's best interest by the Solicitation Agent, including by direct appointment.
  - (5) **Personal Service Contracts for Continuation of Work.** Contracts of not more than \$100,000 for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition if the prior contract was awarded under a competitive process and the Solicitation Agent determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.
  - (6) **Criteria for Selection of Personal Service Contractors.** In the selection of a personal services contractor under this section, the following criteria shall be used in evaluation and selection:
    - (a) Specialized experience in the type of work to be performed.
    - (b) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.
    - (c) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work,
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ability to meet schedules, and contract administration, where applicable; and

(d) Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where application.

(e) Any other factors relevant to the particular contract.

(7) **Appointive Officers under City Charter.** Pursuant to the City of Astoria Charter, Chapter III, Section 3.6 and Chapter V, Section 5.2, the City Council appoints the city officers of City Manager, City Attorney, and Municipal Judge. The appointment of those officers and method of selection may be by any method deemed suitable by the City Council, including direct appointment.

D. **Hybrid Contracts.** The following classes of contracts include elements of construction of public improvements as well as personal services and may be awarded under a request for proposals, unless exempt from competitive solicitation.

(1) **Design/Build and CM/GC Contracts.** Contracts for the construction of public improvements using a design/build or construction manager/general contractor construction method shall be awarded under a request for proposals. The determination to construct a project using a design/build or construction manager/general contractor construction method must be approved by the Astoria City Council or designee, upon application of the Solicitation Agent, in which the Solicitation Agent submits facts that support a finding that the construction of the improvement under the proposed method is likely to result in cost savings, higher quality, reduced errors, or other benefits to the City of Astoria.

(2) **Energy Savings Performance Contracts.** Unless the contract qualifies for award under another classification in this Section 1.967, contractors for energy savings performance contracts shall be selected under a request for proposals in accordance with the City of Astoria's Public Contracting Regulations.

E. **Contracts for Goods and Services.**

- (1) **Any Procurement.** The procurement of goods or services, or goods and services in any amount may be made under either an invitation to bid or a request for proposals.
- (2) **Procurements Up to \$100,000.** The procurement of goods or services, or goods and services, for which the estimated contract price does not exceed \$100,000 may be made under an informal solicitation for either quotes or proposals.

F. **Contracts Subject to Award at Solicitation Agent's Discretion.** The following classes of contracts may be awarded in any manner which the Solicitation Agent deems appropriate to the City of Astoria's needs, including by direct appointment or purchase. Except where otherwise provided the Solicitation Agent shall make a record of the method of award.

- (1) **Advertising.** Contracts for the placing of notice or advertisements in any medium.
- (2) **Amendments.** Contract amendments shall not be considered to be separate contracts if made in accordance with the Public Contracting Regulations.
- (3) **Animals.** Contracts for the purchase of animals.
- (4) **Contracts Up to \$1,000.** Contracts of any type for which the contract price does not exceed \$1,000 without a record of the method of award.
- (5) **Copyrighted Materials; Library Materials.** Contracts for the acquisition of materials entitled to copyright, including, but not limited to works of art and design, literature and music, or materials even if not entitled to copyright, purchased for use as library lending materials.
- (6) **Equipment Repair.** Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.

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- (7) **Government Regulated Items.** Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
  - (8) **Insurance.** Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.
  - (9) **Non-Owned Property.** Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the City of Astoria.
  - (10) **Sole Source Contracts.** Contracts for goods or services which are available from a single source may be awarded without competition. The Purchasing Manager is authorized to determine which goods or services are only available from a single source.
  - (11) **Specialty Goods for Resale.** Contracts for the purchase of specialty goods by City of Astoria for resale to consumers.
  - (12) **Sponsor Agreements.** Sponsorship agreements, under which the City of Astoria receives a gift or donation in exchange for recognition of the donor.
  - (13) **Structures.** Contracts for the disposal of structures located on City of Astoria owned property.
  - (14) **Renewals.** Contracts that are being renewed in accordance with their terms are not considered to be newly issued Contracts and are not subject to competitive procurement procedures.
  - (15) **Temporary Extensions or Renewals.** Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract, other than a contract for public improvements.
  - (16) **Temporary Use of City of Astoria Owned Property.** The City of Astoria may negotiate and enter into a license, permit or other contract for the temporary use of City of Astoria owned property without using a competitive selection process if:
    - (a) The contract results from an unsolicited proposal to the City of Astoria based on the unique attributes of the property or the unique needs of the proposer;
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- (b) The proposed use of the property is consistent with the City of Astoria's use of the property and the public interest; and
  - (c) The City of Astoria reserves the right to terminate the contract without penalty, in the event that the City of Astoria determines that the contract is no longer consistent with the City of Astoria's present or planned use of the property or the public interest.
- (17) **Used Property.** A Solicitation Agent, for procurements up to \$20,000, and the Purchasing Manager, for procurements in excess of \$20,000 may contract for the purchase of used property by negotiation if such property is suitable for the City of Astoria's needs and can be purchased for a lower cost than substantially similarly new property. For this purpose the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the City of Astoria. The Purchasing Manager shall record the findings that support the purchase.
- (18) **Utilities.** Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.

G. **Contracts Required by Emergency Circumstances.**

- (1) **In General.** When the City Manager determines that immediate execution of a contract is necessary to prevent substantial damage or injury to persons or property, the City Manager may execute a contract not to exceed \$50,000 without competitive selection and award or City of Astoria approval, but, where time permits, the City Manager shall attempt to use competitive price and quality evaluation before selecting an emergency contractor. *[Section 1.967 G (1) amended by Ordinance No. 06-03, passed June 5, 2006.]*
- (2) **Reporting.** An official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances, (1) document the nature of the emergency; the method used for selection of the particular contractor and the reason why the selection method was deemed in the best interest of the City of Astoria and the public, and (2) notify the Astoria City Council of the facts and circumstances surrounding the emergency execution of the contract.

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- (3) **Emergency Public Improvement Contracts.** A public improvement contract may only be awarded under emergency circumstances if the Astoria City Council has made a written declaration of emergency. Any Public Improvement Contract award under emergency conditions must be awarded within 60 Days following the declaration of an emergency unless the Astoria City Council grants an extension of the emergency period. Where the time delay needed to obtain a payment or performance bond for the contract could result in injury or substantial property damage, the Astoria City Council may waive the requirement for all or a portion of required performance and payment bonds.
- H. **Federal Purchasing Programs.** Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration (“GSA”) as provided in this subsection.
- (1) The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the Purchasing Manager. The Solicitation Agent shall provide the Purchasing Manager with a copy of the letter, memorandum or other documentation from GSA establishing permission to the city to purchase under the federal program. *[Section 1.967 H (1) amended by Ordinance No. 05-16, passed October 3, 2005.]*
- (2) The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.
- (3) The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the City of Astoria.
- (4) If a single purchase of goods or services exceeds \$100,000, the Solicitation Agent must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for the City of Astoria. This paragraph does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.
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- I. **Cooperative Procurement Contracts.** Cooperative procurements may be made without competitive solicitation as provided in the Oregon Public Contracting Code.
- J. **Surplus Property.**
- (1) **General Methods.** Surplus property may be disposed of by any of the following methods upon a determination by the Solicitation Agent that the method of disposal is in the best interest of the City of Astoria. Factors that may be considered by the Solicitation Agent include costs of sale, administrative costs, and public benefits to the City of Astoria. The Solicitation Agent shall maintain a record of the reason for the disposal method selected, and the manner of disposal, including the name of the person to whom the surplus property was transferred.
- (a) **Governments.** Without competition, by transfer or sale to another City of Astoria department or public agency.
- (b) **Auction.** By publicly advertised auction to the highest bidder.
- (c) **Bids.** By public advertised invitation to bid.
- (d) **Liquidation Sale.** By liquidation sale using a commercially recognized third-party liquidator selected in accordance with rules for the award of personal services contracts.
- (e) **Fixed Price Sale.** The Solicitation Agent may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.
- (f) **Trade-In.** By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
- (g) **Donation.** By donation to any organization operating within or providing a service to residents of the City of Astoria which is recognized by the Internal Revenue Service as an
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organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

- (2) **Disposal of Property with Minimal Value.** Surplus property which has a value of less than \$500, or for which the costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost-effective, including by disposal as waste. The official making the disposal shall make a record of the value of the item and the manner of disposal.
- (3) **Personal-Use Items.** An item (or indivisible set) of specialized and personal use, other than police officer's handguns, with a current value of less than \$100 may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the Purchasing Manager.
- (4) **Police Officers' Handguns.** Upon honorable retirement from service with the City of Astoria, a police officer may purchase the handgun that she or he was using at the time of retirement. The purchase price shall be the fair market value of the handgun as determined by an independent appraisal performed by a qualified weapons appraiser. An officer electing to exercise this option shall notify the City of Astoria at least 30 days prior to his or her expected retirement date and request an appraisal of the handgun. Upon receipt of the appraisal fee from the officer the City of Astoria shall arrange for the appraisal. A copy of the completed appraisal shall be provided to the officer, who shall have up to 30 days from the date of retirement to purchase the handgun for the appraised fair market value.
- (5) **Restriction on Sale to City of Astoria Employees.** City of Astoria employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property, but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.
- (6) **Conveyance to Purchaser.** Upon the consummation of a sale of surplus personal property, the City of Astoria shall make, execute and deliver, a bill of sale signed on behalf of the City of Astoria, conveying the property in question to the purchaser and delivering



possession, or the right to take possession, of the property to the purchaser.

K. **Concession Agreements.**

- (1) **General.** No part of a Concession Agreement shall contain or constitute a waiver of any generally applicable rules, code provisions or requirements of the City of Astoria concerning regulation, registration, licensing, inspection, or permit requirements for any construction, rental or business activity.
- (2) **Classes of Contracts Eligible for Award Without Competition.** The following concession agreements may be awarded by any method deemed appropriate by the Solicitation Agent, including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.
  - (a) **Contracts Under \$5,000.** Contracts under which the Solicitation Agent estimates that receipts by the City of Astoria will not exceed \$5,000 in any fiscal year and \$50,000 in the aggregate.
  - (b) **Single Event Concessions.** Concessions to sell or promote food, beverages, merchandise or services at a single public event shall be awarded based on any method determined by the Purchasing Manager to provide a fair opportunity to all persons desiring to operate a concession, but in which the promotion of the public interest and success of the event shall be of predominant importance.
- (3) **Competitive Award.** Concession agreements solicited by the City of Astoria for the use of designated public premises for a term greater than a single event shall be awarded as follows:
  - (a) **Small Concessions.** For Concession Agreements for which the concessionaire's projected annual gross revenues are estimated to be \$500,000 or less, the Purchasing Manager has discretion to use either an informal solicitation or formal request for proposals process applicable to contracts for personal services. If the proposals received indicate a probability that the concessionaire's annual gross revenues will exceed \$500,000, the Solicitation Agent may, but shall

not be required to, reissue the solicitation as a request for proposals.

- (b) **Major Concessions.** Concession agreements for which the concessionaire's projected annual gross revenues under the contract are estimated to exceed \$500,000 annually shall be awarded using a request for proposals.

**1.968 Public Contracts – Informal Solicitation Procedures.** The City of Astoria may use the following procedure for informal solicitations in lieu of the procedures set forth in the Model Rules.

A. **Informally Solicited Quotes and Proposals.**

- (1) **Solicitation of Offers.** When authorized by these regulations, an informal solicitation may be made by general or limited advertisement to a certain group of vendors, by direct inquiry to persons selected by the Solicitation Agent, or in any other manner which the Solicitation Agent deems suitable for obtaining competitive quotes or proposals. The Solicitation Agent shall deliver or otherwise make available to potential offerors, a written scope of work, a description of how quotes or proposals are to be submitted and description of the criteria for award.
- (2) **Award.** The Solicitation Agent shall attempt to obtain a minimum of three written quotes or proposals before making an award. If the award is made solely on the basis of price, the Solicitation Agent shall award the contract to the responsible offeror that submits the lowest responsive quote. If the award is based on criteria other than, or in addition to, price, the Solicitation Agent shall award the contract to the responsible offeror that will best serve the interest of the City of Astoria, based on the criteria for award.
- (3) **Records.** A written record of all persons solicited and offers received shall be maintained. If three offers cannot be obtained, a lesser number will suffice, provided that a written record is made of the effort to obtain the quotes.

B. **Qualified Pools.**

- (1) **General.** To create a qualified pool, the Purchasing Manager may invite prospective contractors to submit their qualifications to the City of Astoria for inclusion as participants in a pool of contractors

qualified to provide certain types of goods, services, or projects including personal services, and public improvements.

- (2) **Advertisement.** The invitation to participate in a qualified pool shall be advertised in the manner provided for advertisements of invitations to bid and requests for proposals by publication in at least one newspaper of general statewide circulation. If qualification will be for a term that exceeds one year or allows open entry on a continuous basis, the invitation to participate in the pool must be re-published at least once per year and shall be posted at the City of Astoria's main office and on its website.
- (3) **Contents of Solicitation.** Requests for participation in a qualified pool shall describe the scope of goods or services or projects for which the pool will be maintained, and the minimum qualifications for participation in the pool, which may include, but shall not be limited to qualifications related to financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are important to the contracting needs of the City of Astoria.
- (4) **Contract.** The operation of each qualified pool may be governed by the provisions of a pool contract to which the City of Astoria and all pool participants are parties. The Contract shall contain all terms required by the City of Astoria, including, without limitation, terms related to price, performance, business registration or licensure, continuing education, insurance, and requirements for the submission, on an annual or other periodic basis, of evidence of continuing qualification. The qualified pool contract shall describe the selection procedures that the City of Astoria may use to issue contract job orders. The selection procedures shall be objective and open to all pool participants and afford all participants the opportunity to compete for or receive job awards. Unless expressly provided in the contract, participation in a qualified pool will not entitle a participant to the award of any City of Astoria contract.
- (5) **Use of Qualified Pools.** Subject to the provisions of these regulations concerning methods of solicitation for classes of contracts, the Astoria City Council shall award all contracts for goods or services of the type for which a qualified pool is created

from among the pool's participants, unless the Solicitation Agent determines that best interests of the City of Astoria require solicitation by public advertisement, in which case, pool participants shall be notified of the solicitation and invited to submit competitive proposals.

- (6) **Amendment and Termination.** The Purchasing Manager may discontinue a qualified pool at any time, or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the qualified pool.
- (7) **Protest of Failure to Qualify.** The Purchasing Manager shall notify any applicant who fails to qualify for participation in a pool that it may appeal a qualified pool decision to the Astoria City Council in the manner described in Section 1.973.

**1.969 Public Contract – Use of Brand Name Specifications for Public Improvements.**

- A. **In General.** Specifications for contracts shall not expressly or implicitly require any product by one brand name or mark, nor the product of one particular manufacturer or seller, except for the following reasons:
  - (1) It is unlikely that such exemption will encourage favoritism in the awarding of Public improvement Contracts or substantially diminish competition for Public improvement Contracts; or
  - (2) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the City of Astoria or
  - (3) There is only one manufacturer or seller of the product of the quality required; or
  - (4) Efficient utilization of existing equipment, systems or supplies requires the acquisition of compatible equipment or supplies.
- B. **Authority to Determine Brand Name Exemption.** The Astoria City Council shall have authority to determine whether an exemption for the use of a specific brand name specification should be granted by recording findings that support the exemption based on the provisions of subsection A.

- C. **Brand Name or Equivalent.** Nothing in this Section 1.969 prohibits the use of a “brand name or equivalent” specification, from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the City of Astoria, or from establishing a qualified product list.

**1.970 Notice of Intent to Award Bid.**

- A. At least three days before the award of a public contract, the City Manager or his designee shall post or provide to each proposer or bidder, a notice of intent to award. The City may provide a shorter notice period if the City Manager determines that circumstances require prompt execution of the contract.
- B. This Section does not apply to a contract awarded as a small procurement under ORS 279B.065, an intermediate procurement under ORS 279B.070, a sole-source procurement under ORS 279B.075, an emergency procurement under ORS 279B.080 or a special procurement under ORS 279B.085.
- C. **Procedure.** A Notice of Intent to award may be posted or provided to each proposer or bidder by e-mail, fax, US mail, or any method designed to provide actual notice that is reasonable under the circumstances. Posting may be via the City’s website.

**1.971 Public Contracts – Bid, Performance and Payment Bonds.**

- A. **Solicitation Agent May Require Bonds.** The Solicitation Agent may require bid security and a good and sufficient performance and payment bond even though the contract is of a class that is exempt from the requirement.
- B. **Bid Security.** Except as otherwise exempted, the solicitations for all contracts that include the construction of a public improvement and for which the estimated contract price will exceed \$50,000 shall require bid security. Bid security for a request for proposal may be based on the City of Astoria’s estimated contract price.
- C. **Performance Bonds.**
- (1) **General.** Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a performance bond.

- (2) **Contracts Involving Public Improvements.** Prior to executing a contract for more than \$50,000 that includes the construction of a public improvement, the contractor must deliver a performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond must be solely for the protection of the City of Astoria and any public agency that is providing funding for the project for which the contract was awarded.
- (3) **Cash-in-Lieu.** The City of Astoria may permit the successful offeror to submit a cashier's check in lieu of all or a portion of the required performance bond.

D. **Payment Bonds.**

- (1) **General.** Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a payment bond.
- (2) **Contracts Involving Public Improvements.** Prior to executing a contract for more than \$50,000 that includes the construction of a public improvement, the contractor must deliver a payment bond equal to the full contract price, solely for the protection of claimants under ORS 279C.600.

E. **Design/Build Contracts.** If the public improvement contract is with a single person to provide both design and construction of a public improvement, the obligation of the performance bond for the faithful performance of the contract must also be for the preparation and completion of the design and related services covered under the contract. Notwithstanding when a cause of action, claim or demand accrues or arises, the surety is not liable after final completion of the contract, or longer if provided for in the contract, for damages of any nature, economic or otherwise and including corrective work, attributable to the design aspect of a design-build project, or for the costs of design revisions needed to implement corrective work.

F. **Construction Manager/General Contractor Contracts.** If the public improvement contract is with a single person to provide construction manager and general contractor services, in which a guaranteed maximum price may be established by an amendment authorizing construction period services following preconstruction period services, the

contractor shall provide the bonds required by subsection A. of this section upon execution of an amendment establishing the guaranteed maximum price. The City of Astoria shall also require the contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.

- G. **Surety; Obligation.** Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Oregon. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to the City of Astoria or to the public agency or agencies for whose benefit the bond is issued, as specified in the solicitation documents, and shall be in a form approved by the Purchasing Manager.
- H. **Emergencies.** In cases of emergency, or when the interest or property of the City of Astoria probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient performance bond and a good and sufficient payment bond for the faithful performance of any public improvement contract may be excused, if a declaration of such emergency is made in accordance with the provisions of section 1.967 G, unless the Astoria City Council requires otherwise. *[Section 1.971 H amended by Ordinance No. 05-16, passed October 3, 2005.]*

**1.972 Public Contracts – Electronic Advertisement of Public Improvement Contracts.** In lieu of publication in a newspaper of general circulation in the City of Astoria metropolitan area, the advertisement for an invitation to bid or request for proposals for a contract involving a public improvement may be published electronically by posting on the City of Astoria’s website, provided that the following conditions are met:

- A. The placement of the advertisement is on a location within the website that is maintained on a regular basis for the posting of information concerning solicitations for projects of the type for which the invitation to bid or request for proposals is issued; and
- B. The Solicitation Agent determines that the use of electronic publication will be at least as effective in encouraging meaningful competition as publication in a newspaper of general circulation in the City of Astoria metropolitan area and will provide costs savings for the City of Astoria, or that the use of electronic publication will be more effective than

publication in a newspaper of general circulation in the City of Astoria metropolitan area in encouraging meaningful competition.

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

- A. **Right to Hearing.** Any person who has been debarred from competing for City of Astoria contracts or for whom prequalification has been denied, revoked or revised may appeal the City of Astoria's decision to the Astoria City Council as provided in this Section 1.973. *[Section 1.973 A amended by Ordinance No. 05-16, passed October 3, 2005.]*
- B. **Filing of Appeal.** The person must file a written notice of appeal with the City of Astoria's Purchasing Manager within three business days after the prospective contractor's receipt of notice of the determination of debarment, or denial of prequalification.
- C. **Notification of Astoria City Council.** Immediately upon receipt of such notice of appeal, the Purchasing Manager shall notify the Astoria City Council of the appeal.
- D. **Hearing.** The procedure for appeal from a debarment or denial, revocation or revision of prequalification shall be as follows:
- (1) Promptly upon receipt of notice of appeal, the City of Astoria shall notify the appellant of the time and place of the hearing;
  - (2) The Astoria City Council shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal from the Purchasing Manager; and
  - (3) At the hearing, the Astoria City Council shall consider de novo the notice of debarment, or the notice of denial, revocation or revision of prequalification, the standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.
- E. **Decision.** The Astoria City Council shall set forth in writing the reasons for the decision.
- F. **Costs.** The Astoria City Council may allocate the Astoria City Council's costs for the hearing between the appellant and the City of Astoria. The allocation shall be based upon facts found by the Astoria City Council and



stated in the Astoria City Council's decision that, in the Astoria City Council's opinion, warrant such allocation of costs. If the City of Astoria does not allocate costs, the costs shall be paid as by the appellant, if the decision is upheld, or by the City of Astoria, if the decision is overturned.

- G. **Judicial Review.** The decision of the Astoria City Council may be reviewed only upon a petition in the circuit court of Clatsop County filed within 15 days after the date of the Astoria City Council's decision.”

*[Sections 1.960 to 1.973 added by Ordinance No. 05-03, passed March 7, 2005.]*