

## **Title 3**

### **REVENUE AND FINANCE**

#### **Chapters:**

- 3.04 Electric Power Distribution System Tax**
- 3.08 Cable Television Communications System Tax**
- 3.12 Transient Room Tax**
- 3.16 Telecommunications Utility Tax**
- 3.20 Garbage Hauling and Collection Tax**
- 3.24 Improvement Revolving Fund**
- 3.28 Equipment and Construction Fund**
- 3.32 Certificates of Lien Search**
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**Chapter 3.04****ELECTRIC POWER DISTRIBUTION  
SYSTEM TAX**

## Sections:

- 3.04.010 Imposed.
- 3.04.020 Payment due.
- 3.04.030 Record keeping.
- 3.04.040 Applicability.

**3.04.010 Imposed.**

There is hereby imposed and levied upon all persons, firms and corporations using the streets, alleys and public easements within the city of North Bend for an electric power distribution system a fee and tax equivalent to five percent of such user's "gross operating revenue," which is defined as the gross revenue from the sale and use of electricity and electric service within the corporate limits of the city of North Bend, after deducting therefrom revenues derived from business done with the United States of America, or any agency therefrom, and after deducting therefrom any amounts paid by the grantee to the United States or to the state of Oregon as excise, occupation or business taxes upon the sale or distribution of electric service in the city. (Ord. 1741 § 1, 1989; Ord. 1476 § 1, 1974)

**3.04.020 Payment due.**

The fees and taxes herein levied shall be paid to the city on or before the twentieth day of each month for the gross operating revenue accruing during the previous calendar month, or portion thereof. (Ord. 1476 § 2, 1974)

**3.04.030 Record keeping.**

Any person, firm or corporation upon whom a tax is imposed under the terms of this chapter shall keep and make available to the city of North Bend such books and records as shall be necessary or useful for computing and determining the fees and taxes herein imposed, but such information shall not become a part of the public records of the city of North Bend and shall be kept confidential except when made a matter of public record by reason of a dispute over the amount or payment of such tax. (Ord. 1476 § 3, 1974)

**3.04.040 Applicability.**

The fee and tax levied by this chapter shall apply to gross operating revenues accruing on and after March 12, 1974. (Ord. 1476 § 4, 1974)

**Chapter 3.08****CABLE TELEVISION COMMUNICATIONS  
SYSTEM TAX**

## Sections:

- 3.08.010 Imposed.  
3.08.020 Payment due.  
3.08.030 Record keeping.

**3.08.010 Imposed.**

There is hereby imposed and levied upon all persons, firms and corporations using the streets, alleys and public easements within the city of North Bend for the operation of a cable television communications system a fee and tax equivalent to five percent of the gross subscriber revenues from such cable communications system received from subscribers within the corporate limits of the city, including separate amounts received from subscribers for the transmission of motion picture films, sporting events, or other special charges or contracts. Gross subscriber revenues shall include gross receipts from all cable communications system installation, service and special charges before any deductions are made therefrom. (Ord. 1737 § 1, 1989; Ord. 1639 § 1, 1981; Ord. 1485 § 1, 1974)

**3.08.020 Payment due.**

The fees and taxes herein levied shall be paid to the city on or before the fifteenth day of each month for the gross subscriber revenues accruing during the previous calendar month, or portion thereof. (Ord. 1485 § 2, 1974)

**3.08.030 Record keeping.**

Any person, firm or corporation upon whom a tax is imposed under the terms of this chapter shall keep and make available to the city of North Bend such books and records as shall be necessary or useful for computing and determining the fees and taxes herein imposed, but such information shall not become a part of the public records of the city of North Bend and shall be kept confidential except when made a matter of public record by reason of a dispute over the amount or payment of such tax. (Ord. 1485 § 3, 1974)

**Chapter 3.12****TRANSIENT ROOM TAX**

## Sections:

- 3.12.010 Definitions.  
3.12.020 Tax imposed.  
3.12.030 Exemptions.  
3.12.040 Rules for collection of tax by operator.  
3.12.050 Operator's duties.  
3.12.060 Operator's registration form.  
3.12.070 Certificate of authority.  
3.12.080 Collections, returns, and payments.  
3.12.090 Delinquency penalties.  
3.12.100 Deficiency determinations.  
3.12.110 Redemption petition.  
3.12.120 Fraud, refusal to collect, evasion.  
3.12.130 Notice of determination.  
3.12.140 Operator delay.  
3.12.150 Redetermination.  
3.12.160 Liens.  
3.12.170 Refunds by city to operator.  
3.12.180 Refunds by city to transient.  
3.12.190 Refunds by operator to transient.  
3.12.200 Records required from operators.  
3.12.210 Examination of records.  
3.12.220 Confidentiality.  
3.12.230 Initial expenses.  
3.12.240 Appeals to the city council.  
3.12.250 Civil penalties.  
3.12.260 Fund created.

**3.12.010 Definitions.**

For the purposes of this chapter, terms shall have the following meaning:

(1) "Accrual accounting" means a system of accounting in which the operator enters the rent due from a transient into the record when the rent is earned, whether or not it is paid.

(2) "Cash accounting" means a system of accounting in which the operator does not enter the rent due from a transient into the record until the rent is paid.

(3) "Motel" means a part of a structure that is occupied or designed for occupancy by transients for lodging or sleeping including a hotel, inn, tourist home or house, apartment house, dormitory, public or private club, mobile home or house trailer in a fixed location, or other similar structure.

(4) "Occupancy" means use or possession of, or the right to use or possess, a room in a motel for lodging or sleeping.

(5) "Operator" means a person who is the proprietor of a hotel in any capacity. When an operator's functions are performed through a managing agent of a type other than an employee, the managing agent shall also be considered an operator. For purposes of this chapter, compliance by either the operator or the managing agent shall be considered compliance by both.

(6) "Person" means an individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or another group or combination acting as a unit.

(7) "Rent" means the gross rent, exclusive of other services.

(8) "Tax" means either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which the operator is required to report collections.

(9) "Transient" means an individual who occupies or is entitled to occupy space in a motel for a period of 30 consecutive days or less, counting portions of days as full days. The day a transient checks out of a motel shall not be included in determining the 30-day period if the transient is not charged rent for that day. A person occupying space in a motel shall be considered a transient until a period of 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy or the tenant actually extends occupancy more than 30 consecutive days. A person who pays for lodging on a monthly basis, regardless of the number of days in the month, shall not be considered a transient. (Ord. 1650 § 1, 1982)

### **3.12.020 Tax imposed.**

A transient shall pay a tax in the amount of seven percent of the rent charged for the privilege of occupancy in a motel in the city. The tax constitutes a debt owed by the transient to the city and the debt is extinguished only when the tax is remitted by the operator to the city. The transient shall pay the tax to the operator at the time rent is paid. The operator shall enter the tax into the record when rent is collected if the operator keeps records on the cash accounting basis and when earned if the operator keeps records on the accrual accounting basis. If the rent is paid in installments a proportionate share of the tax shall be paid by the transient to the operator with each installment. In all cases, rent

paid or charged for occupancy shall exclude the sale of goods, services or commodities. (Ord. 1801, 1993; Ord. 1650 § 2, 1982)

### **3.12.030 Exemptions.**

The tax shall not be imposed on:

(1) An occupant staying for more than 30 days.

(2) An occupant whose rent is less than \$3.00 per day.

(3) A person who rents a private home, vacation cabin, or similar facility from an owner who personally rents the facility incidentally to the owner's personal use.

(4) An occupant of a hospital, nursing home, medical clinic, home of the aged, or a convalescent home. (Ord. 1650 § 3, 1982)

### **3.12.040 Rules for collection of tax by operator.**

(1) Every operator renting space for lodging or sleeping shall collect a tax from the occupant. The tax collected or accrued constitutes a debt owed by the operator to the city.

(2) In cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made. Adjustments may be made for uncollectible accounts.

(3) The city recorder shall enforce this chapter and may adopt rules and regulations necessary for enforcement.

(4) For rent collected on portions of a dollar, fractions of a penny of tax shall not be remitted. (Ord. 1650 § 4, 1982)

### **3.12.050 Operator's duties.**

An operator shall collect the tax when the rent is collected from the transient. The amount of tax shall be stated separately in the operator's records and on the receipt given by the operator. An operator shall not advertise that the tax will not be added to the rent, that a portion of it will be assumed or absorbed by the operator, or that a portion will be refunded, except in the manner provided by this chapter. (Ord. 1650 § 5, 1982)

### **3.12.060 Operator's registration form.**

(1) An operator of a motel shall register with the city recorder, on a form provided by the recorder, within 15 days after beginning business or within 30 calendar days after passage of the ordinance codified in this chapter.

(2) The registration shall include:

- (a) The name under which the operator transacts or intends to transact business.
- (b) The location of the motel.
- (c) Any other information the city recorder may require to facilitate collection of the tax.
- (d) The signature of the operator.

(3) Failure to register does not relieve the operator from collecting the tax or a person from paying the tax. (Ord. 1650 § 6, 1982)

### **3.12.070 Certificate of authority.**

(1) The city recorder shall issue a certificate of authorization to the registrant within 10 days after registration.

(2) Certificates are nonassignable and non-transferable and shall be surrendered immediately to the city recorder on cessation of business at the location named or when the business is sold or transferred.

(3) Each certificate shall state the place of business to which it applies and shall be prominently displayed.

(4) The certificate shall state:

- (a) The name of the operator.
- (b) The address of the motel.
- (c) The date when the certificate was issued.
- (d) "This Transient Occupancy Registration Certificate signifies that the person named on the certificate has fulfilled the requirements of the Transient Room Tax Ordinance of the City of North Bend by registering with the City Recorder for the purpose of collecting the room tax imposed by the City and remitting the tax to the City recorder." (Ord. 1650 § 7, 1982)

(3) Each certificate shall state the place of business to which it applies and shall be prominently displayed.

### **3.12.080 Collections, returns, and payments.**

(1) The taxes collected by an operator are payable to the city recorder on a quarterly basis on the fifteenth day of the following month for the preceding three months and are delinquent on the last day of the month in which they are due. The initial return may be for less than the three months preceding the due date. The quarters are:

1st Quarter	January, February, March
2nd Quarter	April, May, June
3rd Quarter	July, August, September
4th Quarter	October, November, December

(2) A return showing tax collections for the preceding quarter shall be filed with the city recorder, in a form prescribed by the city recorder, before the

sixteenth day of the month following each collection quarter.

(3) Returns shall show the amount of tax collected or due for the related period. The city recorder may require returns to show the total rentals on which the tax was collected or is due, gross receipts of the operator for the period, a detailed explanation of any discrepancy between the amounts, and the amount of rentals exempt.

(4) The operator shall deliver the return and the tax due to the city recorder's office. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

(5) For good cause, the city recorder may extend the time for filing a return or paying the tax for not more than one month. Further extension may be granted only by the city council. An operator to whom an extension is granted shall pay interest at the rate of one percent per month on the amount of tax due, without proration for a fraction of a month. If a return is not filed and if the tax and interest due are not paid by the end of the extension granted, the interest shall become a part of the tax for computation of penalties prescribed in NBCC 3.12.090.

(6) The city recorder may require returns and payment of the taxes for other than quarterly periods in individual cases to ensure payment or to facilitate collection by the city. (Ord. 1650 § 8, 1982)

### **3.12.090 Delinquency penalties.**

(1) An operator who has not been granted an extension of time for remittance of tax due and who fails to remit the tax prior to delinquency shall pay a penalty of 10 percent of the tax due in addition to the tax.

(2) An operator who has not been granted an extension of time for remittance of tax due and who fails to pay a delinquent remittance before the expiration of 31 days following the date on which the remittance became delinquent shall pay a second delinquency penalty of 15 percent of the tax due, the amount of the tax, and the 10 percent penalty first imposed.

(3) If the city recorder determines that nonpayment of a remittance is due to fraud or intent to evade the tax, a penalty of 25 percent of the tax shall be added to the penalties stated in subsections (1) and (2) of this section.

(4) In addition to the penalties imposed by this section, an operator who fails to remit the required tax shall pay interest at the rate of one percent per

month without proration for portions of a month on the tax due, exclusive of penalties from the date on which the tax first became delinquent until paid.

(5) Each penalty imposed and the interest accrued under provisions of this section shall be merged with and become part of the tax required to be paid.

(6) An operator who fails to remit the tax within the required time may petition the city council for waiver and refund of the penalty or a portion of it. The city council may, if good cause is shown, direct a refund of the penalty or a portion of it. (Ord. 1650 § 9, 1982)

### **3.12.100 Deficiency determinations.**

(1) In making a determination that the returns are incorrect, the city recorder may determine the amount required to be paid on the basis of the facts contained in the return or on the basis of any other information.

(2) Deficiency determination may be made on the amount due for one or more than one period. The determined amount shall be payable immediately on service of notice after which the determined amount is delinquent. Penalties on deficiencies shall be applied as provided in NBCC 3.12.090.

(3) In making a determination, the city recorder may offset overpayments that have been made against a deficiency for a subsequent period or against penalties and interest on the deficiency. The interest on the deficiency shall be computed as provided in NBCC 3.12.090. (Ord. 1650 § 10, 1982)

### **3.12.110 Redemption petition.**

A determination becomes payable immediately upon receipt of notice and becomes final within 10 days after the city recorder has given notice. However, the operator may petition for redemption and refund by filing a petition before the determination becomes final. (Ord. 1650 § 11, 1982)

### **3.12.120 Fraud, refusal to collect, evasion.**

(1) If an operator fails or refuses to collect the tax, make the report or remit the tax, or makes a fraudulent return or otherwise willfully attempts to evade the tax payment, the city recorder shall obtain facts and information on which to base an estimate of the tax due. After determining the tax due and the interest and penalties, the city recorder shall give notice of the total amount due.

(2) Determination and notice shall be made and mailed within three years after discovery of fraud, intent to evade, failure or refusal to collect the taxes, or failure to file a return. The determination becomes payable immediately upon receipt of notice and becomes final 10 days after the city recorder has given notice.

(3) The operator may petition for redemption and refund if the petition is filed before the determination becomes final. (Ord. 1650 § 12, 1982)

### **3.12.130 Notice of determination.**

(1) The city recorder shall give the operator a written notice of the determination. If notice is mailed it shall be addressed to the operator at the address that appears on the records of the city recorder and service is complete when the notice is deposited in the post office.

(2) Except in the case of fraud or intent to evade the tax, a deficiency determination shall be made and notice mailed within three years after the last day of the month following the close of the quarterly period for which the determination has been made or within three years after the return is filed, whichever is later. (Ord. 1650 § 13, 1982)

### **3.12.140 Operator delay.**

If the city recorder believes that collection of the tax will be jeopardized by delay, or if the determination will be jeopardized by delay, the city recorder shall determine the tax to be collected and note facts concerning the delay on the determination. The determined amount is payable immediately after service of notice. After payment has been made, the operator may petition for redemption and refund of the determination if the petition is filed within 10 days from the date of service of notice by the city recorder. (Ord. 1650 § 14, 1982)

### **3.12.150 Redetermination.**

(1) An operator against whom a determination is made under NBCC 3.12.100 or a person directly interested may petition for a redetermination, redemption and refund within the time required in NBCC 3.12.140. If a petition for redetermination and refund is not filed within the time required, the determination is final on expiration of the allowable time.

(2) If a petition for redetermination and refund is filed within the allowable period, the city recorder shall reconsider the determination and, if the operator requested a hearing in the petition, shall grant the hearing and give the operator 10

days' notice of the time and place of the hearing. The city recorder may continue the hearing if necessary.

(3) The city recorder may change the amount of the determination as a result of the hearing. If an increase is determined, the increase is payable immediately after the hearing.

(4) The decision of the city recorder on a petition for redetermination becomes final 10 days after service of notice on the petitioner unless appeal of the decision is filed with the city recorder within 10 days after notice is served.

(5) A petition for redetermination or on appeal is not effective unless the operator has complied with the payment provisions. (Ord. 1650 § 15, 1982)

### **3.12.160 Liens.**

(1) The tax, interest, penalty, and filing fees paid to the city recorder and any advertising costs incurred when the tax becomes delinquent shall be a lien from the date of its recording with the county clerk until the tax is paid. The lien shall be superior to all subsequently recorded liens on all tangible personal property in the operator's motel. The lien may be foreclosed and the necessary property may be sold to discharge the lien.

(2) Notice of the lien shall be issued by the city recorder when the operator has defaulted in payment of the tax, interest and penalty. A copy of the notice shall be sent by certified mail to the operator.

(3) Personal property subject to the lien may be sold at public auction after 10 days' notice published in a newspaper of general circulation in the city.

(4) A lien for the tax, interest and penalty shall be released by the city recorder when the full amount has been paid to the city. The operator or person making the payment shall receive a receipt stating that the full amount of the tax, interest and penalty has been paid, that the lien is released and that the record of the lien is satisfied. (Ord. 1650 § 16, 1982)

### **3.12.170 Refunds by city to operator.**

When the tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the city recorder, it may be refunded if a written verified claim stating the specific reason for the claim is filed within three years from the date of payment. The claim shall be submitted on forms provided by the city recorder. If

the claim is approved, the excess amount may be refunded to the operator or it may be credited to an amount payable by the operator and any balance refunded. (Ord. 1650 § 17, 1982)

### **3.12.180 Refunds by city to transient.**

If the tax has been collected by the operator and deposited with the city recorder and it is later determined that the tax was erroneously or illegally collected or received by the city recorder, it may be refunded to the transient if a written verified claim stating the specific reason for the claim is filed with the city recorder within three years from the date of payment. (Ord. 1650 § 18, 1982)

### **3.12.190 Refunds by operator to transient.**

(1) If the tax has been collected by the operator and it is later determined that the transient occupied the motel for a period exceeding 30 days without interruption, the operator shall refund the tax to the transient. The operator shall account for the collection and refund to the city recorder.

(2) If the operator has remitted the tax prior to refund or credit to the transient, the operator shall be entitled to a corresponding refund. (Ord. 1650 § 19, 1982)

### **3.12.200 Records required from operators.**

Every operator shall keep guest records, accounting books, and records of room rentals for a period of three years and six months. (Ord. 1650 § 20, 1982)

### **3.12.210 Examination of records.**

During the normal business hours and after notifying the operator, the city recorder may examine the books, papers, and accounting records related to room rentals to verify the accuracy of a return or, if no return is made, to determine the amount to be paid. (Ord. 1650 § 21, 1982)

### **3.12.220 Confidentiality.**

The city recorder or a person having an administrative or clerical duty under the provisions of this chapter shall not make known in any manner the business affairs, operations, or information obtained by an investigation of records and equipment of a person required to file a return or pay a transient occupancy tax or a person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, or expenditures contained in a statement or application, or permit a statement or application, or a copy

of either, or a book containing an abstract or particulars to be seen or examined by any person. However, nothing in this section shall be construed to prevent:

(1) Disclosure to, or examination of, records and equipment by a city official, employee or agent for collecting taxes for the purpose of administering or enforcing the provisions or collecting the taxes imposed by this chapter.

(2) Disclosure, after filing a written request to the taxpayer, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information concerning tax paid, unpaid tax, amount of tax required to be collected, or interest and penalties. However, the city attorney shall approve each disclosure and the city recorder may refuse to make a disclosure referred to in this subsection when, in the city recorder's opinion, the public interest would suffer.

(3) Disclosure of names and addresses of persons making returns.

(4) Disclosure of general statistics regarding taxes collected or business done in the city. (Ord. 1650 § 22, 1982)

### **3.12.230 Initial expenses.**

The operator may withhold five percent of the tax collected during the first year that the tax is in effect to apply toward the initial costs of the operation. (Ord. 1650 § 23, 1982)

### **3.12.240 Appeals to the city council.**

A person aggrieved by a decision of the city recorder may appeal to the city council by filing a notice of appeal with the city recorder within 10 days of service or mailing of the notice of a decision. The city council shall hold a hearing on the appeal within 40 days from the time that the appeal is filed. Council may recess the hearing on appeal to a time specified by the council at the time that the recess is taken. The decision of the city council on such appeal shall be final and conclusive. (Ord. 1650 § 24, 1982)

### **3.12.250 Civil penalties.**

Upon conviction of a violation of any of the provisions of this chapter, the court may impose a civil penalty not to exceed \$500.00. (Ord. 1650 § 25, 1982)

### **3.12.260 Fund created.**

A fund is hereby created to be known as "transient room tax fund," and there shall be deposited

in such fund all taxes, interest, and penalties collected by the city under the provisions of this chapter. Said fund shall be used for payment of any costs of administering this chapter, for promoting or advertising the city of North Bend or the community of which said city is a part, and for such other purposes that the council may budget and authorize. (Ord. 1904 § 1, 2003; Ord. 1650 § 27, 1982)

**Chapter 3.16****TELECOMMUNICATIONS UTILITY TAX**

## Sections:

- 3.16.010 Imposed.  
 3.16.020 Payment due – Record keeping.

**3.16.010 Imposed.**

There is hereby levied and imposed upon all telecommunications utilities operating within the city of North Bend and using the streets, alleys and highways, or all of them, for other than travel, a privilege tax for the use of those streets, alleys or highways, or all of them, in an amount equal to six percent of the gross revenues of the telecommunications utility earned within the boundaries of the city of North Bend. As used in this section, “gross revenues” has the meaning given that term in ORS 221.515, as it now exists or may hereafter be amended. (Ord. 1759 § 1, 1990)

**3.16.020 Payment due – Record keeping.**

Taxes levied and imposed by this chapter shall be paid to the city of North Bend on or before the end of each month for the gross revenue accruing during the previous calendar month. It will be the duty of the city recorder to request and receive from the taxpayer sufficient information for determining the amount of the tax imposed by this chapter, and it will also be the duty of the city recorder to collect such tax. The taxpayer shall make available to the city recorder such books and records as may be necessary for the computation of the tax provided for in this chapter; provided, that such information will not become a part of the public records of the city of North Bend and will be kept confidential except where the use of such information may be necessary to resolve a dispute over the amount or payment of such tax. (Ord. 1759 § 2, 1990)

**Chapter 3.20****GARBAGE HAULING AND COLLECTION TAX**

## Sections:

- 3.20.010 Imposed.  
 3.20.020 Payment due.  
 3.20.030 Record keeping.

**3.20.010 Imposed.**

There is hereby imposed and levied on all persons, firms and corporations using the streets, alleys and public easements of the city of North Bend for the operation of a business of hauling and collecting garbage a fee and tax equivalent to five percent of the gross revenue from such garbage collection business received from subscribers within the corporate limits of the city. (Ord. 1787 § 1, 1992)

**3.20.020 Payment due.**

Fees and taxes herein levied shall be paid to the city on or before the fifteenth day of each month for the gross revenues accruing during the previous calendar month, or portion thereof. (Ord. 1787 § 2, 1992)

**3.20.030 Record keeping.**

Any person, firm or corporation upon whom a tax is imposed under the terms of this chapter shall keep and make available to the city of North Bend such books and records as are necessary or useful for computing and determining the fees and taxes herein imposed, but such information will not become a part of the public records of the city of North Bend and will be kept confidential except when made a matter of public record by reason of a dispute over the amount or payment of such tax. (Ord. 1787 § 3, 1992)

**Chapter 3.24****IMPROVEMENT REVOLVING FUND**

## Sections:

- 3.24.010 Special reserve fund.
- 3.24.020 Sources of funds.
- 3.24.030 Continuing authorization.

**3.24.010 Special reserve fund.**

There is hereby created a special reserve fund to be known as the “improvement revolving fund” which may be used by the city for the interim financing of improvement districts and the financing of applications to pay assessments in installments for local improvement districts in the city of North Bend. None of such funds shall revert to the general fund or be transferred to any other fund except as authorized by a resolution of the North Bend city council. (Ord. 1763 § 1, 1990)

**3.24.020 Sources of funds.**

There shall be deposited in the improvement revolving fund the following:

(1) All assessments received by the city from improvement districts which were financed or funded through the improvement revolving fund and all assessments received from improvement districts which were funded by improvement bonds or transfers from other funds; provided, that such bonds or other funds have been repaid or retired.

(2) All of the net proceeds received from the sale of real property which was acquired by the city through the payment or foreclosure of assessment liens if all improvement bonds, other obligations and liens thereon are fully paid and satisfied.

(3) The council may, from time to time, budget or authorize the transfer of other resources to the improvement revolving fund. (Ord. 1763 § 2, 1990)

**3.24.030 Continuing authorization.**

This chapter will constitute a continuing authorization for the city recorder to deposit all funds as provided in this chapter in the improvement revolving fund unless the council, by resolution, provides for specified receipts or funds to be otherwise transferred or deposited. (Ord. 1763 § 3, 1990)

**Chapter 3.28****EQUIPMENT AND CONSTRUCTION FUND**

## Sections:

- 3.28.010 Created – Purpose.
- 3.28.020 Sources of funds.

**3.28.010 Created – Purpose.**

There is hereby created a special reserve fund to be known as the “equipment and construction fund” which may be used by the city of North Bend to pay all, or a part of, the cost of the purchase of equipment or the construction of public improvements. (Ord. 1764 § 2, 1990; Ord. 1074 § 1, 1957)

**3.28.020 Sources of funds.**

The council may budget, transfer or receive funds from various sources for deposit in the equipment and construction fund, and it may authorize expenditure from such fund for the purposes provided in this chapter. Amounts remaining in said fund at the end of a fiscal year shall not revert to the general fund or be expended or transferred for any purpose not provided in this chapter except as authorized by resolution of the city council. (Ord. 1764 § 2, 1990; Ord. 1074 § 2, 1957)

## Chapter 3.32

### CERTIFICATES OF LIEN SEARCH

#### Sections:

- 3.32.010 Authorization.
- 3.32.020 Contents.
- 3.32.030 Fee.
- 3.32.040 Separate for each parcel.
- 3.32.050 Liability.

#### **3.32.010 Authorization.**

The recorder of the city of North Bend is hereby authorized and directed to make searches of the lien records of the city of North Bend and to issue certificates concerning the existence of liens upon property within said city after receiving applications for such certificates and the fees provided for in this chapter. (Ord. 1359 § 1, 1967)

#### **3.32.020 Contents.**

The certificates of lien search authorized by this chapter shall contain a description of the property involved, shall set forth any lien or liens that may be recorded in the lien records of the city of North Bend on the date that such certificate is issued, and shall be directed and issued to the applicants for such certificate. (Ord. 1359 § 2, 1967)

#### **3.32.030 Fee.**

Before any certificate of lien search shall be issued, there shall first be paid to the city of North Bend the sum of \$15.00 for each certificate, and the fees collected shall be deposited one-half to the general fund and one-half to the improvement revolving fund of the city of North Bend. (Ord. 1799, 1993; Ord. 1359 § 3, 1967)

#### **3.32.040 Separate for each parcel.**

The city recorder shall issue a separate certificate and shall collect a separate fee for each distinct and contiguous parcel of land for which an application for certificate is made. (Ord. 1359 § 4, 1967)

#### **3.32.050 Liability.**

No person, firm or corporation, other than the party to whom a certificate shall be directed and issued, shall be entitled to rely upon any information contained in a certificate of lien in the city of North Bend, and the city of North Bend shall assume no responsibility and shall have no liability to any third person as a result of issuing any certificate of lien. There shall be no liability for an error

in a certificate in excess of the actual loss to the party to whom a certificate has been issued, and such damages shall in no event exceed the amount of the omitted lien or liens existing upon the property in question on the date of the issuance of the certificate. There shall also be no liability where any of the persons to whom a certificate has been issued has knowledge or notice of the lien or has suffered a loss through their own neglect or carelessness. In any case where the city shall be liable for damages in the issuance of a certificate of lien search, it shall, upon payment of such damage, become subrogated to all of the rights of the damaged party and shall be entitled to an assignment of such rights against any and all third parties who may be liable for such damage. (Ord. 1359 § 5, 1967)

## Chapter 3.36

### PUBLIC CONTRACTING

Sections:

- 3.36.010 Findings.
- 3.36.020 Repeal of former code.
- 3.36.030 Definitions.
- 3.36.040 Authority.
- 3.36.050 Procurement of goods and services.
- 3.36.060 Personal services contracts.
- 3.36.070 Disposition of surplus personal property.
- 3.36.080 Public improvements and construction services.

#### **3.36.010 Findings.**

(1) The Oregon Legislature adopted HB 2341 (2003 Oregon Laws, Chapter 794) and codified as ORS Chapters 279A, 279B, and 279C. The bill was signed by the Governor, and became effective March 1, 2005. The Attorney General's Office has developed Model Public Contract Rules which became effective March 1, 2005. The statutes and the model rules will be referred to as the "state code."

(2) The state code requires repeal of the city of North Bend's former public contracting rules and procedures enacted pursuant to Resolution No. 2924. The state code requires the designation of a local contract review board and the adoption of certain rules which will combine with the state code to comply with the terms of the new statute and provide a sound and responsive public contracting system.

(3) The state code divides the powers and duties related to public contracting into two categories: those that must be performed by the local "contract review board"; and those that must be performed by the city's "contracting agency."

(4) The state code distinguishes between public contracting for the procurement of goods and services and public contracting for public improvements and construction services for public improvements by setting out separate requirements for each. (Ord. 1933 § 1, 2005)

#### **3.36.020 Repeal of former code.**

The city of North Bend Resolution No. 2924 dated January 23, 2001, is hereby repealed. (Ord. 1933 § 2, 2005)

#### **3.36.030 Definitions.**

The city of North Bend adopts the definitions contained in the state code. (Ord. 1933 § 3, 2005)

#### **3.36.040 Authority.**

(1) City Council as Local Contract Review Board.

(a) Pursuant to ORS 279.055, the city council is designated as the local contract review board for the city. The city council shall exercise all the powers and duties conferred upon it by state law, except to the extent that such powers and duties have been delegated by these rules, or by a separate ordinance, to others.

(b) The procedural rules of the city council sitting as the local contract review board shall be the same as those regulating the city council as provided in the "Rules of the City Council of North Bend" adopted pursuant to Resolution No. 2923 on January 9, 2001.

(c) The Attorney General's Model Public Contracting Rules only apply to the city's procurement of goods, services, and certain construction services where they are specifically referenced. Similarly, the Attorney General's Model Public Contracting Rules for construction only apply where they are specifically referenced. Other than those specific references, the Attorney General's Model Public Contracting Rules do not apply. It is the intent of these rules to permit the city to act to the full extent permitted by state law. To the extent that the rules adopted in this chapter appear to give the city less authority than state law, the state law shall prevail and the city may act to the full extent permitted by state law.

(2) Authority of Contracting Agency – City Administrator.

(a) For contracts covered by this chapter, and for revenue-producing contracts, the city administrator or designee is authorized to:

(i) Advertise for bids or proposals without specific authorization from the city council when the proposed purchase or contract is included within the current fiscal year budget;

(ii) Award and execute contracts for the purchase or lease of goods and services, and revenue-producing services, without specific authorization from the city council whenever the contract amount is \$5,000 or less;

(iii) Recommend the award of a contract, including revenue-producing services, by report to the city council for contracts in excess of \$5,000;

(iv) Authorize and execute contract amendments up to 25 percent of the original contract amount;

(v) Authorize final payment for a contract after confirming that all work is completed and accepted by the city, and the final contract amount is no more than 25 percent greater than the original contract amount;

(vi) Adopt forms, procedures, computer software, and administrative policies for all city procurements and contracts. The city shall use the forms, software, procedures and administrative rules unless they conflict with city ordinance;

(vii) Perform such other duties as directed by the ordinances of the city, the city council, or the state code;

(viii) Resolve protests of contract award decisions and other matters as required by city ordinance.

(b) The city administrator is responsible for and shall make all purchases and contracts in accordance with state law, the city charter, and this chapter.

(c) The city administrator may execute intergovernmental agreements for cooperative procurements only with specific authorization by the city council. (Ord. 1933 § 4, 2005)

### **3.36.050 Procurement of goods and services.**

(1) Application. The provisions of this section are applicable to all purchases of goods and services except the following:

(a) Contracts or agreements to which the state code, ORS Chapters 279A, 279B, and 279C, do not apply.

(b) Contracts, intergovernmental and interstate agreements executed pursuant to ORS Chapter 190 between the city and other public contracting agencies. Such contracts or agreements shall be approved by the city council.

(c) Contracts pursuant to 10 USC Section 381 (relating to law enforcement equipment suitable for counter-drug activities through the Department of Defense), the Electronic Government Act of 2002 (relating to automated data processing equipment, including firmware, software, supplies, support equipment, and services from federal supply schedules), or other federal laws that the city council determines are similar to those acts in effectuating or promoting transfers of property to the city.

(d) Professional, technical and expert contracts governed by NBCC 3.36.060 and other con-

tracts specifically designated as personal service contracts by the city council.

(e) Change orders or contract amendments reasonably related to the scope of work under the original contract up to 25 percent. Change orders or other amendments that increase the initial price of the contract by more than 25 percent must be separately approved by the city council.

(f) Sole source expenditures when rates are set by law or ordinance for purposes of these rules concerning source selection.

(g) Revenue-generating contracts whose primary purpose is generating revenue and are typically awarded to the offeror proposing the most advantageous or highest monetary offer to the city, or both. The city council may designate a particular contract as a revenue-generating contract.

(h) An emergency contract, provided the city administrator adheres to the requirements of ORS 279B.080 or 279C.335(5) and the Attorney General's Model Public Contracting Rules applicable to this type of contract.

(i) Contracts for sale of advertising in city publications. The right to advertise in city publications may be sold without competitive bidding. The city may utilize this exclusion when it publishes material and wants to recoup part of the cost by selling advertising to be placed in that publication. Revenue generated from the sale of advertising shall be applied to the cost of the publication.

(j) Contracts for public improvements which are governed by NBCC 3.36.080.

(k) Any other contract (including sole source and brand name specification contracts) where the public interest would be promoted by exempting the contract from the competitive bidding process; provided, that the city council adheres to the state code in making the exemption.

(l) The city council finds that use of special procurement procedures for the contracts contained in this section will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts and will result in a substantial cost savings to the city and the public.

(2) Source Selection. The city shall award a public contract for goods and services covered by this chapter using any method authorized by state statute or city code. Such different methods are called "methods of source selection." Source selection methods include cooperative procurements, competitive sealed bidding, competitive sealed

proposals, and small, intermediate, sole source, emergency and special procurements.

(a) Once the appropriate source selection method has been chosen, the city may consider the best method of selecting a contractor within the source selection method it has chosen, provided the method is amenable to such discretion.

(b) The city may employ methods of contractor selection for the procurement of goods and services by using any process authorized by state statute, including multi-tiered processes as set forth in ORS 279.060(6)(b) including, but not limited to:

(i) An award or awards based solely on the ranking of proposals;

(ii) Discussions leading to the best and final offers in which the city may not disclose private discussions leading to the best and final offers;

(iii) Discussions leading to the best and final offers in which the city may not disclose information derived from proposals submitted by competing proposers;

(iv) Serial negotiations, beginning with the highest-ranked proposer;

(v) Competitive simultaneous negotiations;

(vi) Multiple-tiered competition designed to identify, at each level, a class of proposers which fall within a competitive range or to otherwise eliminate from consideration a class of lower rank proposers;

(vii) A multi-step request for proposals requesting the submission of unpriced technical submittals, and then later issuing a request for proposals limited to the proposers whose technical submittals the contracting city had determined to be qualified under the criteria set forth in the initial requests for proposals;

(viii) Any combination of methods set out in subsections (2)(b)(i) through (vii) of this section, or as otherwise adopted by the city council.

(c) The methods of contractor selection identified in the preceding section shall conform to the procedures identified in these rules.

(d) The city administrator or his or her designee is authorized to waive any nonconformity with the rules of contractor selection if he or she determines that the defect was minor and likely would not have an effect on the outcome of the selection process.

### (3) Sole Source Procurements.

(a) The city may award a public contract without competition as a sole source procurement

if the city administrator, the city administrator's designee, or the city council, depending on the amount of the contract, makes a written finding that:

(i) Efficient utilization of existing goods requires the acquisition of compatible goods or services;

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

(iii) The goods or services are for use in a pilot or experimental project;

(iv) Any other findings that support the conclusion that the goods or services are available from only one source.

(b) Negotiation with a sole source contractor is desirable. The city is entitled to negotiate with any sole source provider to obtain a favorable price, terms, or conditions.

(c) Public Notice. The city shall give notice of a determination that the goods or services or class of goods or services are available from only one source when the contract will be greater than \$25,000 by publishing a notice at least once in at least one newspaper of general circulation in the area where the contract is to be performed. The public notice shall describe the goods and services to be acquired by a sole source procurement and identify the prospective contractor and include the time due for protests and where. The city shall give such public notice at least seven days before the award of the contract.

### (4) Emergency Procurements.

(a) The city may award a public contract as an emergency procurement without the use of competitive sealed bidding or competitive sealed proposals as authorized by ORS 279B.050(2) when the requirements of ORS 279B.080 and this rule are met.

(b) The council or person authorizing the emergency procurement shall document the nature of the emergency and describe the method used for the selection of the particular contractor. The city shall encourage competition for emergency procurement to the extent reasonable under the circumstances.

(c) The authority to declare an emergency and authorize an emergency procurement shall be as follows:

(i) The city administrator or his or her designee may declare the existence of an emer-

gency and authorize the city to enter into an emergency procurement contract under \$75,000.

(ii) The city administrator or his or her designee may declare the existence of an emergency and authorize the city to enter into an emergency procurement contract over \$75,000.

(A) Following the declaration of emergency, the city administrator or his or her designee shall immediately prepare an ordinance for approval of the emergency procurement contract by the city council at its next regularly scheduled session or as soon as possible thereafter. That contract shall be added to the regular agenda without the need for approval for inclusion on the agenda by the council.

(B) If the council adopts the ordinance, the city will pay for the work required by the contract. If the council disapproves the ordinance, the city will only pay for work performed prior to the date that the council considered the ordinance for approval. If for any reason presentation of the ordinance to the council is delayed, the city still will only be liable for work performed prior to the time when the ordinance was first presented to the council.

(d) Any contract awarded under this section shall be awarded within 60 days.

(e) All emergency procurement contracts awarded when there was no emergency or reasonable perception of emergency are void unless the contract was otherwise valid under another portion of this chapter.

(5) Cooperative Procurements.

(a) The city may participate in, sponsor, conduct or administer cooperative procurements.

(b) The city may participate in, sponsor, conduct or administer joint cooperative procurements to establish contracts or price agreements for goods or services, as defined in these rules, that use source selection methods substantially equivalent to those set forth in ORS 279B.055, 279B.060, or 279B.085.

(c) The city may participate in, sponsor, conduct or administer permissive cooperative agreements to establish contracts or price agreements for the acquisition of goods or services, as defined in these rules, that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or 279B.060.

(d) The city may participate in, sponsor, conduct or administer interstate cooperative procurements to establish contracts or price agreements for the acquisition of goods or services, as

defined in these rules, that use source selection methods substantially equivalent to those set forth in ORS 279B.085 or 279B.060.

(e) The solicitation and award process uses source selection methods substantially equivalent to those identified in ORS 279B.055, 279B.060, or 279B.085 if the solicitation and award process:

(i) Calls for an award of a contract on the basis of a lowest responsible bidder or a lowest and best bidder determination in the case of competitive bids on the basis of a determination of the proposer whose proposal is most advantageous based on evaluation factors set forth in the request for proposals in the case of competitive proposals;

(ii) Does not permit the application of any geographic preference that is more favorable to bidders or proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120(2);

(iii) Uses reasonably clear and precise specifications that promote suitability for the purposes intended and that reasonably encourage competition.

(f) The city shall determine, in writing, whether the solicitation and award process for an original contract arising out of a cooperative agreement is substantially equivalent to those identified in ORS 279B.055, 279B.060, or 279B.085, in accordance with ORS 279A.200(2) and this rule.

(g) Protests. Protests regarding the use of all types of cooperative procurements shall be governed by subsection (10) of this section.

(h) If the city is the administering contracting agency, then:

(i) It may charge a fair and reasonable fee to purchasing contract agencies that represents the excess costs of administering the contract in light of the purchasing contracting agency's use of that contract.

(ii) Determine whether the purchasing contract agency must enter into a written agreement with it.

(i) If the city is a purchasing contracting agency, it is authorized to pay a fee to the administering contracting agency that the city administrator or his or her designee determines is fair and reasonable in light of all the circumstances surrounding the procurement, including the savings that may be obtained if a cooperative procurement is used, the cost of the procurement in relationship to the fee, and other factors as may be considered.

(6) Small Procurements.

(a) For procurements of goods and services not exceeding \$5,000, the city may award a public contract as a small procurement pursuant to ORS 279B.065. The city may choose any method of selecting such contractors, including, but not limited to, offering the contract to only one firm, or conducting a competition for the contract.

(b) State law prohibits a procurement from being artificially divided or fragmented so as to constitute a small procurement under this section.

(c) Notwithstanding any other provisions of this chapter, small procurements shall not be amended beyond \$5,000 without prior approval of the city administrator.

(7) Intermediate Procurements.

(a) For procurements of goods and services not exceeding \$150,000, the city may award a public contract as an intermediate procurement pursuant to ORS 279B.070. A procurement shall not be artificially divided or fragmented so as to constitute an intermediate procurement under this section.

(i) For procurement of goods and services that cost \$50,000 or less, the city may award a public contract after obtaining three oral price quotations.

(ii) For procurement of goods or services anticipated to cost more than \$50,000 up to \$150,000, the city may award a contract after obtaining three written quotes, bids or proposals.

(b) For all intermediate procurements, the city shall seek at least three informally solicited competitive price quotations or competitive proposals from prospective contractors, and shall keep written records of the sources of the quotations or proposals received. If three quotations or proposals are not reasonably available, the city may proceed with the procurement, but only after making a written record of the effort made to obtain the quotations or proposals.

(c) The city may negotiate with an offeror to clarify its quote or proposal or to effect modifications that will make the quote or proposal acceptable or make the quote or proposal more advantageous to the city; provided, that all offerors contacted are able to compete on the same basis. The city may procure goods and services by competitive sealed bidding as set forth in the procedures in ORS 279B.055.

(8) Competitive Sealed Proposals. The city may procure goods and services by competitive sealed proposals as set forth in ORS 279B.060.

(9) Special Procurements. The city may award a public contract as a special procurement pursuant to the requirements of ORS 279B.085, which permits class special procurements. Such procurements allow the city to enter into a series of contracts over time without following the requirements of competitive sealed bidding, competitive sealed proposals, or intermediate procurements.

(a) The city council declares the following as classes of special procurements:

(i) Manufacturer-Direct Supplies. The city may purchase goods directly from a manufacturer without competitive bidding if a large volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributors. Procurements of this type are made on a contract-by-contract basis and are not requirement contracts.

(ii) Advertisements. The city may purchase advertising in newspapers and written publications.

(iii) The city may purchase copyrighted materials where there is only one known supplier available for such goods.

(iv) Financial Products. The city may directly purchase financial products such as bond insurance, surety bonds for city bond reserves and liquidity facilities such as letters of lines of credit.

(v) Insurance Contracts. Contracts for insurance, including employee benefit insurance, may be awarded directly to an insurer after the city obtains proposals from an insurance consultant. The consultant shall be selected pursuant to NBCC 3.36.060.

(vi) Purchase of used personal property or equipment. The city may directly purchase used personal property and equipment. Used property and used equipment is property or equipment that has been placed in use by a previous owner or user for a period of time, and which is recognized in the relevant trade or industry, if there is one, as qualifying the personal property or equipment as "used."

(vii) Hazardous materials removal and oil cleanup. The city may directly acquire services to remove or clean up hazardous material or oil from any vendor when ordered to do so by the Oregon Department of Environmental Quality pursuant to its authority under ORS Chapter 466. In so doing, to the extent reasonable under the circumstances, the city will encourage competition by attempting to obtain informal price quotations or

proposals from potential suppliers of goods and services.

(viii) Amendments to contracts and price agreements. The city may execute contract amendments in the following circumstances:

(A) When an original valid contract exists between the parties.

(B) When unit prices or “add alternates” were provided in a solicitation document that established the cost basis for the additional work or product, or in a lump sum contract the contract has provided an estimate of additional cost which has been verified by the city.

(C) The solicitation document provided for such amendments.

(D) When the original contract was let pursuant to an emergency declared under this chapter.

(E) When the additional work is required by reason of existing regulations or ordinances of federal, state or local agencies dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the original contract and such regulations or ordinances either were not cited in the original contract, or were enacted or amended after submission of the successful bid or proposal.

(ix) Use of Existing Contractor. When a public improvement is in need of minor alteration, repair or maintenance at or near the site of work being performed by another city contractor, the city may hire that contractor to perform the work.

(b) The city shall give public notice of (i) its request for approval, and (ii) the city’s approval of the special procurement in a similar manner as provided for in the public notice of competitive sealed bids under ORS 279B.055(4). The public notice shall describe the goods or services or class of goods or services to be acquired through the special procurement. The city shall give public notice of its request for approval of the special procurement at least 14 days prior to the approval of the special procurement by the city council.

(c) If the city plans to conduct competitive special procurement, it shall give notice of intent to award to all prequalified offerors who sought the award of a contract in the manner provided for competitive sealed bids.

(10) Legal Remedies. Any protest of an action by this city under this section of this chapter for a violation of these rules or ORS Chapter 279A or 279B will be administered pursuant to ORS 279B.400 through 279B.425 and OAR 137-047-

0700 through 137-047-0760, which are made a part of this chapter by this reference. (Ord. 1933 § 5, 2005)

### **3.36.060 Personal services contracts.**

(1) A personal services contract is a contract primarily for the provision of services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary 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 architects, engineers, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. The city administrator or his or her designee shall have discretion to determine whether a particular type of contract or service falls within the foregoing definitions.

(2) Procedure. The following procedures shall apply to the solicitation and award of personal services contracts:

(a) Personal Services Contracts Where the Estimated Fee to Be Paid Under the Contract Does Not Exceed \$25,000. Personal services contracts involving an anticipated fee not to exceed \$25,000 per fiscal year shall be awarded by the city administrator or their designee following a solicitation of offers made by the city administrator in any manner deemed to be practical or convenient. The city administrator or designee may choose any method of selecting such contractors as he/she, in his/her discretion, determines to best suit the needs of the city, including but not limited to direct solicitation and negotiation with contractors, obtaining oral quotes or obtaining written quotes. The city administrator shall determine the selection criteria to be used in any solicitation for a personal service contract falling under this section and shall have authority to negotiate and enter into the contract.

(b) Personal Services Contracts in Excess of \$25,000. Personal services contracts to which subsection (2)(a) of this section does not apply, and having an anticipated fee in excess of \$25,000 per fiscal year, shall be awarded by the city council following solicitation of offers based on the procedure and selection criteria adopted by the city council before offers are solicited.

(c) Except as otherwise provided in this chapter, for all other personal services contracts, including amendments to and annual renewals of

existing contracts and emergencies, the city administrator or his or her designee may enter into the contract without a solicitation of offers. A personal services contract shall not be artificially divided or fragmented to qualify for the award of procedures provided by this subsection.

(d) The following criteria shall be considered in the evaluation and selection of a personal services contractor. This section does not preclude the use of additional criteria as may be necessary for a particular contract:

(i) Total cost to the city for the delivery of services.

(ii) Specialized experience in the type of work to be performed.

(iii) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.

(iv) Education and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable.

(v) Utilization of locally procured goods, services, or personnel.

(vi) Other criteria specifically listed in the solicitation document on a case-by-case basis. (Ord. 1969 § 3, 2009; Ord. 1933 § 6, 2005)

### **3.36.070 Disposition of surplus personal property.**

(1) The city administrator or his or her designee shall have the authority to determine when personal property owned by the city is surplus.

(2) The city administrator or his or her designee shall select the method of disposal which maximizes the value the city will realize from the disposal of the surplus property. Surplus personal property shall be disposed of as follows:

(a) Sold to the highest qualified buyer meeting the sale terms when the value of each item so offered is less than \$2,000 and the sale has been advertised at least once in a newspaper of general circulation not less than one week prior to the sale.

(b) Traded in on the purchase of replacement equipment or supplies.

(c) Sold at public auction advertised at least once in a newspaper of general circulation not less than one week prior to the auction. The published notice shall specify the time, place and terms upon which the personal property shall be offered and a

general description of the personal property to be sold.

(d) Sold at a fixed-price retail sale if doing so will result in substantially greater net revenue to the city.

(e) Contracted for use, operation or maintenance by one or more private or public entities. Prior to approval of such a contract, the city administrator or his or her designee shall determine that the contract will promote the economic development of the city.

(3) All personal property sold pursuant to this section shall be sold as is without any warranty, either expressed or implied, of any kind.

(4) Sales and surplus personal property may be conducted electronically. (Ord. 1933 § 7, 2005)

### **3.36.080 Public improvements and construction services.**

This section applies to the award of contracts for public improvements and construction services for public improvements.

(1) Contracts for minor alteration, ordinary repair or maintenance of public improvements, as well as other contracts that are not defined as a public improvement under ORS 279A.010, shall be awarded and executed pursuant to NBCC 3.36.050.

(2) Source Selection. The city shall award a public contract for public improvements pursuant to this section using any method authorized by state law or city ordinance. Such different methods are called methods of "source selection." Source selection methods for public improvements include:

(a) Emergency procurements;

(b) Substitution of contractors by a surety;

(c) Cooperative procurements;

(d) Competitive quotations;

(e) Competitive bidding;

(f) Alternative contracting methods as described in OAR 137-049-0600 through 137-049-0690, or through methods specified by ordinance, when permitted by an individual or class exemption adopted by the city council.

(3) Emergency Contracts. Pursuant to ORS 279C.335(5) and this chapter, the city may declare that emergency circumstances exist that require prompt execution of a public contract for emergency construction or repair work.

(a) The council or person authorizing the emergency procurement shall document the nature of the emergency and describe the method used for

the selection of the particular contractor. The city shall encourage competition for emergency procurements to the extent reasonable under the circumstances.

(b) The procedures outlined in OAR 137-049-0150 are specifically adopted for the award and administration of any emergency contracts under this subsection.

(4) Selection of a Substitute Contractor. If a contractor provided a performance bond, the city may afford the contractor's surety the opportunity to provide a substitute contractor to complete performance of the contract. A substitute contractor shall perform all remaining contract work and comply with all terms and conditions of the contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the award of a new contract and shall not be subject to the competitive procurement provisions of ORS Chapter 279C or this section.

(5) Cooperative Purchasing. The city may participate in, sponsor, conduct, or administer joint cooperative procurements for the acquisition of public improvements.

(a) A solicitation and award process uses source selection methods substantially equivalent to those identified in ORS Chapter 279C and this section if the solicitation and award process:

(i) Calls for an award of a contract on the basis of the lowest responsible bidder or the lowest and best bidder determination in the case of competitive bids, or on the basis of a determination of the proposer whose proposal is most advantageous based upon evaluation factors set forth in the request for proposals in the case of competitive proposals when permitted by an exemption established by the city council;

(ii) Does not permit the application of any geographic preference that is more favorable to bidders or proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120(2);

(iii) Uses reasonably clear and precise specifications that promote suitability for the purposes intended and that reasonably encourage competition.

(b) The city shall determine, in writing, whether the solicitation and award process for an original contract arising out of a cooperative procurement for a public improvement is substantially equivalent to those identified in ORS Chapter 279C and this chapter.

(c) Protests. Protests regarding the use of all types of cooperative procurement shall be governed by OAR 137-049-0450.

(d) If the city is the administering contracting agency, then:

(i) It may charge a fair and reasonable fee to purchasing contract agencies that represents the excess cost of administering the contract in light of the purchasing contracting agency's use of that contract;

(ii) Determine whether the purchasing contract agency must enter into a written agreement with it.

(e) If the city is a purchasing contracting agency, it is authorized to pay a fee to the administering contracting agency that the city administrator or his or her designee determines is fair and reasonable in light of all the circumstances surrounding the procurement, including the savings that may be obtained if a cooperative procurement is used, the cost of the procurement in relationship to the fee, and other factors as may be considered.

(6) Competitive Bidding Requirement. The city shall solicit bids for public improvement contracts by invitation to bid ("ITB"), except:

(a) Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals, in which case the Attorney General's model rules shall apply.

(b) Contracts, or classes of contracts, exempted by the city council pursuant to state law, including substitute contractors selections set out in subsection (4) of this section.

(c) Contracts for goods or services if the value of the contract is less than \$5,000.

(d) Contracts not exceeding \$100,000.

(e) Contracts for any highway, bridge or other transportation projects not exceeding \$50,000 if made under the procedures for competitive quotations pursuant to subsection (7) of this section.

(f) Emergency contracts.

(g) Change orders or contract amendments reasonably related to the scope of work under the original contract up to 25 percent. Change orders or other amendments that increase the initial price of the contract by more than 25 percent must be separately approved by the city council.

(h) Contracts exempted by the city council from using an ITB process shall follow the rules set forth in NBCC 3.36.050(9) unless the exemption specifically authorizes a particular procurement process.

(7) Competitive Proposals. Public improvement contracts estimated not to exceed \$100,000, or not to exceed \$50,000 in the case of contracts for highways, bridges, and other transportation projects, may be awarded through the requirements of this rule.

(a) All requests for a price quotation for a public improvement shall be in writing and include the selection criteria to be utilized in selecting a contractor and, if the criteria are not of equal value, their relative value or ranking. The criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility, and similar factors.

(i) Written requests shall include the Bureau of Labor and Industries (BOLI) provisions regarding the prevailing wage if the estimated cost exceeds \$50,000;

(ii) If the estimated cost is less than \$50,000, but all price quotations equal or exceed \$50,000, then the solicitation shall be cancelled and a new request for a written price quotation containing BOLI provisions regarding prevailing wages shall be included.

(b) Requests for proposal for public improvements estimated to be \$25,000 or less can be made orally, provided the city seeks at least three competitive quotations and keeps a written record of the sources and amounts of the quotations received. If three quotations are not reasonably available, the city shall make a written record of the effort made to obtain those quotations.

(c) The city shall award the contract to the prospective contractor whose quote will best serve the interests of the city, taking into account the announced selection criteria. If the award is not made to the offeror offering the lowest price, the city shall make a written record for the basis of the award.

(d) Intermediate-level public improvement contracts obtained by competitive proposals may be increased above the original amount of award by change order or amendment within the following limitations, pursuant to NBCC 3.36.050(1)(e).

(8) Individual and Class Exemptions. The city council may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirements of ORS Chapter 279C, pursuant to ORS 279C.330 and 279C.335.

(9) Procurement Process. The city hereby adopts the procurement procedures for public

improvement contracts set out in ORS 279C.300 et seq. and the Oregon Administrative Rules from OAR 137-049-0200 through 137-049-0910.

(10) Negotiation. If all responsive offers on a public improvement contract exceed the budget for the project, the city may, prior to contract award, negotiate for a price within the budget under the following procedures:

(a) Negotiation shall start with the lowest responsive, responsible offeror. If negotiations are not successful, then the city may negotiate with the second lowest responsive, responsible offeror, and so on.

(b) Negotiations may include value engineering and other options to attempt to bring the project cost within the budgeted amount.

(c) A contract may not be awarded under this section if the scope of the project is significantly changed from the description in the original solicitation documents.

(d) The records of an offeror used in contract negotiations under this section are not open to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated.

(11) Disqualification. The city may disqualify any person as an offeror on a contract under the following circumstances:

(a) The person does not have sufficient financial ability to perform the contract. Evidence that the person can acquire in the amount and type required shall be sufficient to establish financial ability.

(b) The person does not have available equipment to perform the contract.

(c) The person does not have key personnel sufficiently experienced to perform the contract.

(d) The person has breached previous contractual obligations.

(e) The provisions of ORS Chapter 279C regarding disqualification of persons shall apply in addition to this section with respect to public improvement contracts.

(f) The person who has been disqualified as an offeror may appeal the disqualification to the city council in accordance with procedures in OAR 137-049-0260 and 137-049-0450. (Ord. 1969 § 4, 2009; Ord. 1933 § 8, 2005)

