

## **Council Roundup for February 7, 2022**

The Newberg City Council met on February 7, 2022 and took the following actions.

### **Approved Resolutions:**

2022-3795, receipt of Coronavirus State Fiscal Recovery Funding grant from Yamhill County for \$518,500.

2022-3780, establishment of new city district boundaries.

2022-3799, adoption of new purchasing policy.

2022-3790, Fund 14 loan to Escape Lodging for Fairfield Inn Hotel.

2022-3796, IGA with state for Building plan review and inspection services.

2022-3797, formal declaration of vacancy for District 4 seat on City Council.

Approved Ordinance 2022-2864, Amendment of Purchasing Code

### **In other business:**

Proclaimed February Black History Month

Heard report from the City Manager Pro Tem on January narrative. Heard report from Chehalem Valley Chamber of Commerce.

Urban Renewal Agency – approval of NURA Resolution 2022-04, Formal public review process of adoption of an Urban Renewal Plan.



**City Council Business Session**

**February 7, 2022 - 6:00 PM**

**Hybrid**

**newberg public safety building 401 e. third street**

**or**

**<https://us06web.zoom.us/j/87546575203>**

**or join by phone:**

**1 669 900 6833 or 1 253 215 8782 or 1 346 248 7799**

**webinar id: 875 4657 5203**

**1. CALL TO ORDER**

- 1.A Agenda en español  
[Spanish Council Biz Agenda 2022-0207.docx](#)

**2. ROLL CALL**

**3. PLEDGE OF ALLEGIANCE**

**4. PRESENTATIONS**

- 4.A Black History Month Proclamation  
[2022\\_February Black History Month Proclamation.docx](#)  
[CADD public comment 2022-0207.docx](#)
- 4.B Chehalem Valley Chamber of Commerce Quarter 2 Visitor Center Report  
[CVCC\\_Quarter\\_2\\_report.doc](#)  
[2021-22 Q2-Visitor Center Tourism Report.pdf](#)

**5. CITY MANAGER'S REPORT**

- 5.A CM report on January events  
[CM\\_narrative\\_report\\_for\\_January\\_events \(1\)rev.pptx](#)

**6. PUBLIC COMMENTS**

- 6.A Matthew Pruitt public comment on West Rock water rights purchase  
[Matthew Pruitt public comment for Feb. 7 .doc](#)

**7. CONSENT CALENDAR**



- 7.A Resolution 2022-3795, A Resolution to accept a grant award from Yamhill County for Coronavirus State Fiscal Recovery Funding and authorize the City Manager Pro tem to execute all grant documents  
[RCA Resolution YC ARPA Grant.pdf](#)

## **8. PUBLIC HEARINGS**

- 8.A Resolution 2022-3790, A Resolution establishing the new district boundaries applicable to the positions of Council members in the City of Newberg  
[RCA Res3780 legislative districts.doc](#)  
[RCA Res3780 Exhibit A.pdf](#)
- 8.B Ordinance 2022-2894 Amendment of Purchasing Code  
[RCA Ordinance 2894 re Updates to Municipal Code Purchasing Rules 4885-8379-1628 v.1.doc](#)  
[Ord 2894 Exhibit A.docx](#)  
[Redline - City of Newberg Code Section 3.25-4869-7052-7494-v1 to v7.pdf](#)
- 8.C Resolution 2022-3799, Adoption of purchasing policy  
[RCA Res 3799 re Purchasing Policy and Public Contracting Code 4867-7354-1642 v.2.doc](#)  
[Res 3799 Exhibit A.docx](#)

## **9. NEW BUSINESS**

- 9.A Resolution 2022-3790, A Resolution authorizing use of Fund 14 - Economic Development Revolving Loan Fund (EDRLF) towards System Development Charges (SDCs) for the Escape Lodging Company Fairfield Inn Hotel  
[RCA Reso 3790 Fairfield Inn EDRLF.doc](#)  
[Council Packet 2022-0207 Harris public comment.pdf](#)
- 9.B Resolution 2022-3796, A Resolution approving a Cooperative Agreement (Intergovernmental Agreement) between the Department of Consumer and Business Services, Building Codes Division and City of Newberg for Plan Review and Inspection services  
[RCA Reso 3796 IGA City-BCD.doc](#)  
[Attachment 1 - PO-44000-00004508 City of Newberg V4.pdf](#)
- 9.C District 4 Vacancy announcement - to publish Feb. 11
- 9.D Resolution 2022-3797, A Resolution acknowledging the acceptance of Councilor Bryce Coefield's resignation, expressing the City's appreciation for his service, declaring a vacancy, and announcing the advertisement for qualified persons for appointment to fill the vacancy (District No. 4 with a term ending December 31, 2022)  
[RCA Council District 4 Resolution 2022-3797 declaration of vacancy.doc](#)  
[Res 3797 Exhibit A.pdf](#)  
[RCA Res3797 Exhibit B.pdf](#)  
[District 4 Vacancy timelines question PPT 2022-0207.pptx](#)

## **10. COUNCIL BUSINESS**

## **11. ADJOURNMENT**

## **ADA STATEMENT**

*Contact the City Recorder's Office for physical or language accommodations at least 2 business days before the meeting. Call (503) 537-1283 or email [cityrecorder@newbergoregon.gov](mailto:cityrecorder@newbergoregon.gov). For TTY services please dial 711.*



Sesión de Determinación del Consejo Municipal  
febrero 7 de 2022 - 6:00 PM  
sesión híbrida  
Edificio de Seguridad Pública de Newberg 401 E Third Street  
o por Zoom:  
<https://us06web.zoom.us/j/87546575203>  
o por teléfono:  
1 669 900 6833 o 1 253 215 8782 o 1 346 248 7799  
webinar id: 875 4657 5203

1. LLAMAR AL ORDEN
2. PASAR LISTA DE ASISTENCIA
3. PROMESA DE LEALTAD A LOS ESTADOS UNIDOS DE AMERICA
4. PRESENTACIONES
  - 4.A Proclamación sobre el Mes Nacional de la Historia Afroamericana  
[2022\\_February Black History Month Proclamation.docx](#)
  - 4.B Informe del centro de visitantes del segundo trimestre de Chehalem Valley Chamber of Commerce  
[CVCC\\_Quarter\\_2\\_report.doc](#)  
[2021-22 Q2-Visitor Center Tourism Report.pdf](#)
5. INFORME DEL ADMINISTRADOR DE LA CIUDAD
6. COMENTARIOS PÚBLICOS
  - 6.A Comentario público de Matthew Pruitt sobre la compra de derechos de agua de West Rock  
[Matthew Pruitt public comment for Feb. 7 .doc](#)
7. CALENDARIO DE CONSENTIMIENTO
  - 7.A Resolución 2022-3795, Una resolución para aceptar una subvención del Condado de Yamhill para la Financiación Estatal de Recuperación Fiscal del Coronavirus y autorizar al Administrador Provisional de la Ciudad a ejecutar todos los documentos de la subvención  
[RCA Resolution YC ARPA Grant.pdf](#)

## 8. AUDIENCIAS PÚBLICAS

- 8.A Resolución 2022-3790, Una resolución que establece los nuevos límites del distrito aplicables a los puestos de los miembros del Concejo en la Ciudad de Newberg

[RCA Res3780 legislative districts.doc](#)

[RCA Res3780 Exhibit A.pdf](#)

- 8.B Ordenanza 2022-2894, Modificación del Código de Compras

[RCA Ordinance 2894 re Updates to Municipal Code Purchasing Rules 4885-8379-1628 v.1.doc](#)

[Ord 2894 Exhibit A.docx](#)

[Redline - City of Newberg Code Section 3.25-4869-7052-7494-v1 to v7.pdf](#)

- 8.C Resolución 2022-3799, Adopción de la política de compras

[RCA Res 3799 re Purchasing Policy and Public Contracting Code 4867-7354-1642 v.2.doc](#)

[Res 3799 Exhibit A.docx](#)

## 9. NUEVOS ASUNTOS

- 9.A Resolución 2022-3790, Una resolución que autoriza el uso del Fondo 14 - Fondo de Préstamos Rotatorios para el Desarrollo Económico (EDRLF) para Cargos de Desarrollo del Sistema (SDC) para Escape Lodging Company Fairfield Inn Hotel

[RCA Reso 3790 Fairfield Inn EDRLF.doc](#)

- 9.B Resolución 2022-3796, Una resolución que aprueba un Acuerdo de Cooperación (Acuerdo Intergubernamental) entre el Departamento de Servicios al Consumidor y Comerciales, la División de Códigos de Construcción y la Ciudad de Newberg para los servicios de Revisión e Inspección de Planos

[RCA Reso 3796 IGA City-BCD.doc](#)

[Attachment 1 - PO-44000-00004508 City of Newberg V4.pdf](#)

- 9.C Anuncio de vacante del Distrito 4 - se publicará el 11 de febrero

## 10. ASUNTOS DEL CONSEJO

## 11. TERMINAR LA SESIÓN

## DECLARACIÓN BAJO LA LEY ESTADOUNIDENSE DE DISCAPACIDADES

Contacta la oficina de la secretaría de la ciudad al menos 2 días hábiles antes de la sesión para obtener adaptaciones físicas o lingüísticas. Llame al (503) 537-1283 o envíe un correo electrónico a [cityrecorder@newbergoregon.gov](mailto:cityrecorder@newbergoregon.gov). Para servicios de TTY, marque 711.

# PROCLAMATION



**WHEREAS**, the City of Newberg takes pride in honoring and celebrating February as Black History Month; and

**WHEREAS**, since 1926, Charles G. Woodson's vision to establish an annual exploration of the Black experience has been accompanied by a theme that focuses public attention on important developments that merit emphasis; and

**WHEREAS**, the 2022 theme of "Black Health and Wellness" recognizes and celebrates the legacies of Black scholars, medical practitioners in western medicine, naturopathic physicians, and other grass root initiatives Black communities have embarked on to achieve wellness, such as mutual aid, community clinics, and an increased focus in mental health and preventative care; and

**WHEREAS**, we also seek to showcase often overlooked Black pioneers like Dr. Charles Richard Drew who discovered the method of long-term preservation of blood plasma which saved thousands of lives and innovated procedures used by the American Red Cross; and Dr. Mae C. Jemison who is not only a physician, researcher, and author, but also the first Black woman to travel in space as a NASA Astronaut; and

**WHEREAS**, this year's Black history month theme also serves to acknowledge the historical and modern-day disparities in quality and access of healthcare for Black Americans; and

**WHEREAS**, it is vital for non-Black individuals to seek an accurate education on the systemic inequities of our society that are not obvious in their lived experiences; and

**WHEREAS**, we encourage all residents to reflect on our State and Country's history to inform a commitment to prioritizing racial equity, inclusion, and respect for human dignity in all that we do; and

**NOW, THEREFORE**, in celebration of the legacies and continued influence of Black Oregonians and Americans, the Mayor and City Council, and on behalf of the people of the City of Newberg, Oregon, hereby **proclaim February 2022 as Black History Month.**

**IN WITNESS WHEREOF**, I Mayor Rick Rogers have hereunto set my hand and cause the Seal of the City of Newberg to be affixed on this 7<sup>th</sup> of February 2022.

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Rick Rogers, Mayor

# REQUEST FOR COUNCIL ACTION



**Date Action Requested: (February 7th, 2022)**

Order <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Information	
Subject: Public Comment on Black History Month proclamation	Staff: Department: File No.
Work Session <input type="checkbox"/> Business Session	Order On Agenda: Presentations - Proclamation

Submitted via webform on February 2<sup>nd</sup>, 2022 at 7:08 a.m.

By Jesse Cadd

Mr. Mayor and City Councilors,

My apologies for not being able to make these comments in person as I have another commitment on the first Monday night of the month these days.

I am not against Black History month in principle. It is a good thing to focus on specific aspects of our national history, both the good and the bad. However I am against some of the language in the Mayor's Black History month proclamation as they reveal a clear bias towards extreme leftist progressivism as embodied in Marxist-based Critical Race Theory language used in it. It is inappropriate for our city leadership to promote fringe and racist ideology when making public pronouncements. Examples of this language include:

"WHEREAS, this year's Black history month theme also serves to acknowledge the historical and modern-day disparities in quality and access of healthcare for Black Americans; and"

- What modern-day disparities are being assumed in this statement? Is there not disagreement about this supposed statement of fact? This is an assumption without any proof.

"WHEREAS, it is vital for non-Black individuals to seek an accurate education on the systemic inequities of our society that are not obvious in their lived experiences; and"

- A myriad of CRT based assumptions underly this statement, such as white guilt, systemic racism, and "equity" as equality of outcome, not opportunity. Systemic "inequities" are assumed on the basis of inequality of outcome without an examination of any other possible cause than racism.

"WHEREAS, we encourage all residents to reflect on our State and Country's history to inform a commitment to prioritizing racial equity, inclusion, and respect for human dignity in all that we do; and"

- Once again smuggling CRT terminology such as equity and inclusion. I and others reject the categories and terminology of CRT and urge the Mayor and council to stop using them in City correspondence and goals.

Critical Race Theory and its effects are destructive and divisive, leading only to more race-consciousness and doing damage to the progress that has actually been achieved in this great nation. Black History Month should be an acknowledgement of past mistakes, and a celebration of our collective progress, not a wallowing in the self-inflicted misery of "systemic racism" and the rest of the miserable elements of the cult of CRT.

Thank you for reading my comment.

-Jesse Cadd

Would you like this public comment read out loud at the City Council meeting? Yes, please read the public comment at the City Council meeting

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: February 7, 2022

Order \_\_\_\_ Ordinance \_\_\_\_ Resolution \_\_\_\_ Motion \_\_\_\_ Information XX  
No. No. No.

SUBJECT: Chehalem Valley Chamber of  
Commerce Quarter 2 Visitor Center Report

Staff: Doug Rux, Director; Scott Parker;  
Executive Director

Department: Community Development

Work Session \_\_\_\_ Business Session X

Order on Agenda: Presentations

## RECOMMENDATION:

Information only.

## EXECUTIVE SUMMARY:

The guiding principles in the Visitor Center Operating Plan include the following:

- Leverage the new location to work more closely with downtown businesses and visitor points of interest
- Retain the value of prior year investments, but keep operating costs low
- Implement improved visitor performance metrics
- Focus on the future by expanding the physical footprint to a few key downtown locations
- Do what's best for Newberg and the community
- Leverage new location as a shared collaboration space for Newberg businesses

The two main focus areas of the visitor center operating plan are (1) to better manage visitor engagement when they are visiting local businesses; and (2) to enhance existing visitor center operations through improved measurement and cost reduction.

### *Manage Visitor Engagement*

- Develop a new visitor-friendly map of both Newberg and the Downtown, to be updated annually
- Finalize a list of locations where high-value visitor materials will be located outside the visitor center (e.g. CVCC, lodging operators, coffee shops, etc.)
- Partner with the broader visitor economy community to develop plans, timed appropriately for subsequent years, including:
  - Working with Taste Newberg to improve the brand and brand perception of the downtown core
  - Develop Newberg 101 to train front-line staff on how to use Visitor Center materials and other maps to provide high quality recommendations to visitors and to keep visitor money within the Newberg community
  - Outreach to tour companies to steer additional traffic to downtown Newberg
  - As operating plans and support of the respective boards allows, co-locate Taste Newberg, the Newberg Downtown Coalition, and the Chamber in one space. At present, we have extended an invitation to co-locate, at no cost, within the Visitor Center space, but Taste Newberg and NDC have indicated that the rent subsidy provided by CPRD is meeting their



space needs.

*Enhance Existing Visitor Center Operations*

- Improve data capture for visitors (both in-person and telephonic)
- Partner with the Newberg Historical Society and the Newberg Wineries to improve the branding of the Visitor Center
- Reduce Costs  
In order to extend the coverage of scarcer TLT dollars, the Chehalem Valley Chamber of Commerce will cover the majority of the costs associated with operating the visitor center, only requesting an amount from TLT funds the equivalent of the amount of the lease in the new space (\$30k per year, a dramatic and appropriate reduction from prior years)

Scott Parker, Executive Director of the Chehalem Valley Chamber of Commerce, will present the Chamber's quarterly report included as Attachment 1.

**FISCAL IMPACT:**

The Chehalem Valley Chamber of Commerce had a contract with the City to operate a Visitor Center in FY 21/22. The contract amount for FY 21/22 is \$30,000. The funds were budgeted in Fund 19 – Transient Lodging Tax. The Q1 report covers activities in this fiscal year.

**STRATEGIC ASSESSMENT: (Relate to Council Goals if applicable)**

2020 Council Goals:

1. Change operational culture to one focused on Customer Service and act to Resolve Ongoing Legal Disputes

The Visitor Center is a forwarding facing customer service function for the City's tourism program.

2. Further develop an operational culture that adopts and cherishes Diversity, Equity, and Inclusion as core values.

The Visitor Center serves all individuals actively engaged in tourism activities within Newberg providing information on tourism options and information.

3. Promote development of housing affordability such as houselessness, transitional housing, workforce housing.

Not applicable.

4. Create and support an Urban Renewal Plan and Authority

Not applicable.

5. Collaborate with local partners and with entities like ICLEI in the development of a Sustainability program.

Not applicable.

Attachment: 1. Visitor Center Q2 Report

CHEHALEM VALLEY CHAMBER OF COMMERCE VISITOR CENTER REPORT							
		July/Aug/Sept	Oct/Nov/Dec	Jan/Feb/Mar	Apr/May/Jun		
Visitor Center		Q1	Q2	Q3	Q4		
	Walk-in Visitors	115		140			
	Email and Phone Requests for Info	65		86			
Visitor Center & Tourism		Q1	Q2	Q3	Q4	Annual Budget	YTD Actual
Revenue							
TLT Revenue:							
	City of Newberg	\$ 7,500.00	\$ 7,500.00			\$ 30,000.00	\$ 15,000.00
Other Revenue:							
						\$ -	\$ -
Total Revenues:		\$ 7,500.00	\$ 7,500			\$ 30,000.00	\$ 15,000.00
Expense							
	Personnel	\$ 15,469.70	\$ 8,984.94			\$ 39,000.00	\$ 24,454.64
	Overhead, Utilities, etc.	\$ 5,291.62	\$ 2,855.00			\$ 36,000.00	\$ 8,146.62
Total Expenses:		\$ 20,761.32	\$ 11,839.94			\$ 75,000.00	\$ 32,601.26
Net Income:		\$ (13,261.32)	\$ (4,339.94)			\$ -45,000.00	\$ (17,601.26)
Visitor Center Requests & Services Provided							
Q1:							
This quarter saw the transition from interim Director Joshua Duder to new Executive Director Scott Parker. Scott began on 9/1/21. There was a significant uptick in guests coming to the Visitor's Center, especially in September as people wanted to meet and welcome Scott to the area. The Visitor's Center was open in July and August Monday-Friday from 9am-5pm and 10am-3pm on weekends. In September the hours were from 9am-5pm Monday-Friday only. There were a lot of guests from all across the state as well as the country stopping in for maps and a variety of other materials to help with their trip. Local, state, and winery maps and The Chehalem Valley Business & Community Directory were the most popular items that were distributed. We are working on plans to drive even more foot traffic to the Visitor's Center and incentivize the gathering of email addresses and social media followers with a monthly give							
Q2:							
This quarter saw the hiring of a new Admin Assistant, Maryl Kunkel. She started 11/1/21. Her role is to fill the need for administrative work for the Chamber, as well as staffing the Visitor Center. The Visitor Center hours were 9-5 M-F, and we saw lots of visitors, and local residents stopping in for maps, and other tourist information. We recieved requests for maps as far as the Bronx, NY and Spain. In Dec, an open workspace, including computer with internet, was set up at the Visitor Center for community use, and we have seen a some residents in to use the space since it was announced. As this space becomes more utilized and well known, we expect an increase in foot traffic. On Dec.3rd, the Visitor Center participated in ArtWalk, highlighting a local artist and winery, and will remain a stop for each subsequent ArtWalk in 2022. We expect an increase in visitors and foot traffic as we become an established stop for Art Walk.							
Q3:							
Q4:							

# Newberg CM report

Monthly Events for January 2022



As well as the operational items I am about to cover in this report I would like to let you know that we got cracking on the budget early this year to avoid the last-minute crunch we have seen in the past.

So far the library, public works, public safety, city recorder and city managers budgets have been reviewed bar the labor costs. The labor costs will be better understood when the compensation study launched a few months ago is complete. This is anticipated in April.

Anyway there is a lot more to come on this but we are working hard and all departments are leaning in to the new process.

Oregon winter weather was severe in December and early January with heavy rainfall amounts, a rare white Christmas and a cold snap. The Maintenance Division staff put in over 135 manhours during the snow event of December 25-28<sup>th</sup> plowing and sanding city streets.

The Wastewater Treatment plant experienced peak flows of nearly 15 million gallons a day, up from the normal seasonal flows of about 5 million. The peak flow was down significantly from historic highs due to our work battling infiltration to the system.





The city-wide holiday decorations were removed and stored away till next year on January 9th by the combined efforts of community volunteers, spearheaded by the city's very own Mr. Christmas, Brian Love, members of TVF&R, and the Public Works Department. I want to thank all involved for helping maintain this tradition and taking care of the decorations.

With the end of the below freezing weather, the annual appearance of potholes has begun on local streets and highways. The maintenance division, working with ODOT, have begun to patch them, and will continue to monitor and stay on top of them during the next couple of months.

With the completion of the Operations Administration Building remodel at the WWTP, Operations division staff have moved back into the new laboratory, offices, and are working on getting the building set back up again.

The Engineering division has completed the replacement of the glass panels of the library atrium roof. Despite the Glass shortages that delayed the final work, the library stair well will now be dry for years to come.



Public Works  
crews ready  
for another  
day hard at it!



The advanced metering infrastructure project is mostly completed. The integration of the customer portal and information into our financial systems is almost complete.

The American Water Infrastructure Act is an effort mandated by the Federal Government to analyze and document water system risk and resilience.

Phase 1 is complete. The next phase of this work which is the Response Plan has also been completed.



Public Works Superintendent  
Preston shutting down  
non-permitted work activities  
causing a street closure.

In this case a naughty utility  
crew who improperly closed a  
street...

This last month the PWM shop has performed preventative maintenance on 11 vehicles, repairs on 30 vehicles, repaired 10 pieces of small equipment (mostly chainsaws), made 3 snowplow repairs during the snow event, and decommissioned and prepped one vehicle which sold on GovDeals.

We also identified 2 repairs as factory warranty and took them to the dealer for those repairs. Finally, we helped train 2 employees for their CDL final exams.



# New Sawdust Bays ready to go at WWTP



# Ensuring water safety – the remodeled WWTP Lab





Community Engagement has been busy this past month creating materials and working with several departments to share information about their various projects.

The first ever round of “Welcome to Newberg” postcards were sent out to new residents identified by new utility billing accounts. The postcards are on the next slide.





## Welcome to **NEWBERG**

We are so excited that you've chosen to live in our beautiful city. We believe that our residents are what make our city so special, and so we encourage you to get involved!



The City is here to serve you with water, sewage, the library, police, and more! Follow this link to learn more about how to get involved.  
[newbergoregon.org/welcome](http://newbergoregon.org/welcome)



414 E. First Street  
Newberg, OR 97132  
503-538-9421

**Welcome to Newberg!** We are thrilled you have chosen our city to call home. We hope you will find this community to be welcoming and caring. If there is anything we can do to improve city operations, please do not hesitate to let us know.

— Mayor Rick Rogers



Find City Council meeting agendas and other resources at [newbergoregon.gov](http://newbergoregon.gov).

### Stay connected!

Subscribe to our City newsletter, the *Newberg News Flash*, here: [eepurl.com/gKGQvr](http://eepurl.com/gKGQvr)

### Follow us on social media!

[/cityofnewberg](https://www.facebook.com/cityofnewberg) [/cityofnewberg](https://www.instagram.com/cityofnewberg) [@NewbergOR](https://twitter.com/NewbergOR)

Para información en Español, visita:  
[NewbergOregon.gov/Bienvenidos](http://NewbergOregon.gov/Bienvenidos)

The linked webpage introduces residents to City services, how to get connected, and where to find information.



In addition, the Community Engagement team is collecting emails to send out our first “Council Roundup Email” newsletter in February, which will give short summaries of Council items in easy-to-read language, include a link to the video recording, to help residents be more informed.

We’ve shared information about the new email newsletter on our social media accounts with the following graphic:



# ***COUNCIL UPDATES***

## **Stay Up to Date with City Council**

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including council decisions, video,  
and info on agenda items.



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<http://eepurl.com/hRVNof>



Various projects we've worked on this include a new demographic sheet and webpage for economic development, work on the solar farm project, a STRIVE webpage to share the accomplishments of our staff and our values, and pushing out information on the Police moving to a digitally encrypted radio system.

In terms of DEI work, our Bi-Lingual Community Engagement Specialist, Ezequiel has been busy. He's been actively meeting with local Spanish speaking business owners about ARPA and assisting them in applying for funds, has translated multiple webpages, applications for the City's Utilities Equal Pay Program and a new Spanish newsletter for residents called "¿Que Pasa Newberg?" .



Ezequiel is a very hard working bloke!

Lastly the Engagement team are working on an email newsletter for residents called “Newberg News Flash.”

Escucha el Audio 

Edición 1 | 1 de febrero del 2022

A graphic for the Newberg News Flash. It features the City of Newberg logo on the left, a photo of a hand filling a glass with water from a faucet in the center, and a blue box on the right with the text "¿QUÉ PASA NEWBERG?" and "Programa de Pagos Equilibrados del Agua".

## ¿QUÉ PASA NEWBERG?

### Programa de Pagos Equilibrados del Agua

#### Programa de Pagos Equilibrados del Agua

El Programa de Pagos Equilibrados es un programa especializado que distribuye sus pagos mensuales en cantidades iguales sobre un año.

Pagos equilibrados pueden ayudarte a preparar un presupuesto que no estará afectado por los cambios de uso temporales. Siempre será responsable por pagar solo el uso actual durante su tiempo con el servicio (si usa menos de lo que pagó durante el año, le daremos crédito para sus próximas facturas; si usa más, se cobrará en el próximo año). Nunca estará retrasado.

**REQUISITOS Y FORMULARIO**

In the planning world resubmittals for the Catalyst High School expansion and Newberg High School CET building design reviews were submitted.

The Design Reviews for the 5 applications for the City's Emergency Water PODS were issued.

The Design Review decision for C.S. Lewis Academy was issued.

GFU submitted a design review for a new chapel building on the campus.

My staff are working on a final partition plat at 310 S River Street and a final subdivision plat for Edgewater Subdivision.

Additionally new applications were received for the Fairfield Inn design review and lot line adjustment for GFU and Northwest Christian Church.

The kick-off meeting with ECONorthwest occurred for the Housing Production Strategy program.

The grant agreement with DLCD was finalized for the code audit of clear and objective standards for multi-family housing.

The Urban Renewal program advances. The Citizens Advisory Committee recommended forwarding the plan and report to the Urban Renewal Agency for their February 7, 2022 meeting.

This will start the 45-day consult / confer process with taxing districts. The annexation ordinance for the mill site and ODOT went into effect in January. The ordinance for Middle Housing also went into effect.



The Building Division has been busy. Activities in Lafayette with a new subdivision has created addition plan reviews.

In addition, multiple permits have been submitted for Crestview Crossing. Plan reviews are about complete for the commercial buildings at Crestview Crossing.



In library land Cozy Reading finished on January 8, 2022. Over 2,100 people participated including children, teens and adults, making this the library's most successful winter reading program ever.

This year two new programs were included: the Cozy Reading Penguin mascot, and the Family Library Scavenger Hunt. Both programs were incredibly popular with over 400 entries received for the Penguin mascot. Families kept up their reading habit over winter breaks, and became more familiar with the library through the mascot and scavenger hunt programs.

The library closed for one week in January due to half of the staff out on Covid quarantine. During that time the remaining staff were hard at work offering Curbside Pick-up of holds, book bundles, and reference services to our patrons.

As mentioned earlier Global Solarium finished replacing over 20 giant glass panels in the atrium. The library is excited for the next big rainstorm to test out the new glass!

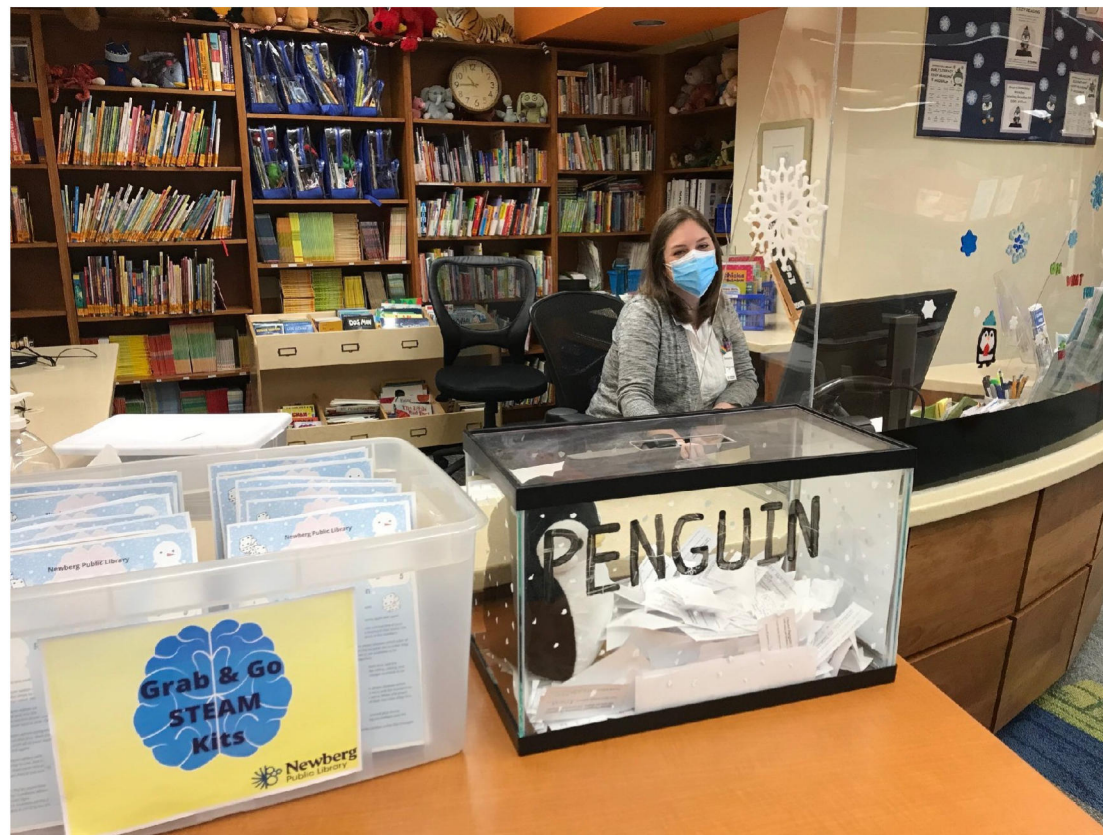
This is a  
winning child  
with a library  
penguin:

On the next  
slide is a  
penguin in a  
glass box!





See if you can spot  
the penguin, note  
its not the person in  
the back that's  
Samantha:



Finance was off to a busy start to the new year issuing W2s, 1099s and 1095s. Finance also worked quickly to issue the Essential Workers Stimulus checks to over a hundred employees who were identified as recipients.

This was also the City's very first ARPA expenditure. The total cost of the Essential Workers Stimulus was just under \$350,000 coming in under budget.

Finance has also been hard at work on the supplemental budget, which Council will see at the February 22nd meeting.

Lastly, Finance also had their first implementation meeting with Tyler Technologies for Incode 10, with an estimated live date of August for the general ledger, accounts payable and payroll, and electronic timekeeping to begin in September.



Here is the sort of low-tech hand stamping  
nonsense that will be replaced by Incode

10

( a typical day at Mr. Wills desk):



28

This month the IT Department continued work on the UPS that services the server room and expanded the battery capacity by 20% to better meet anticipated power requirements in the event of power failure.

Staff continued upgrading operating systems on thin clients in the city, moving through several more departments leaving only two departments to be scheduled for these upgrades.

The IT Department performed a version upgrade to the CAD System that runs the dispatch center, bringing them to the same version our primary partner agency runs.

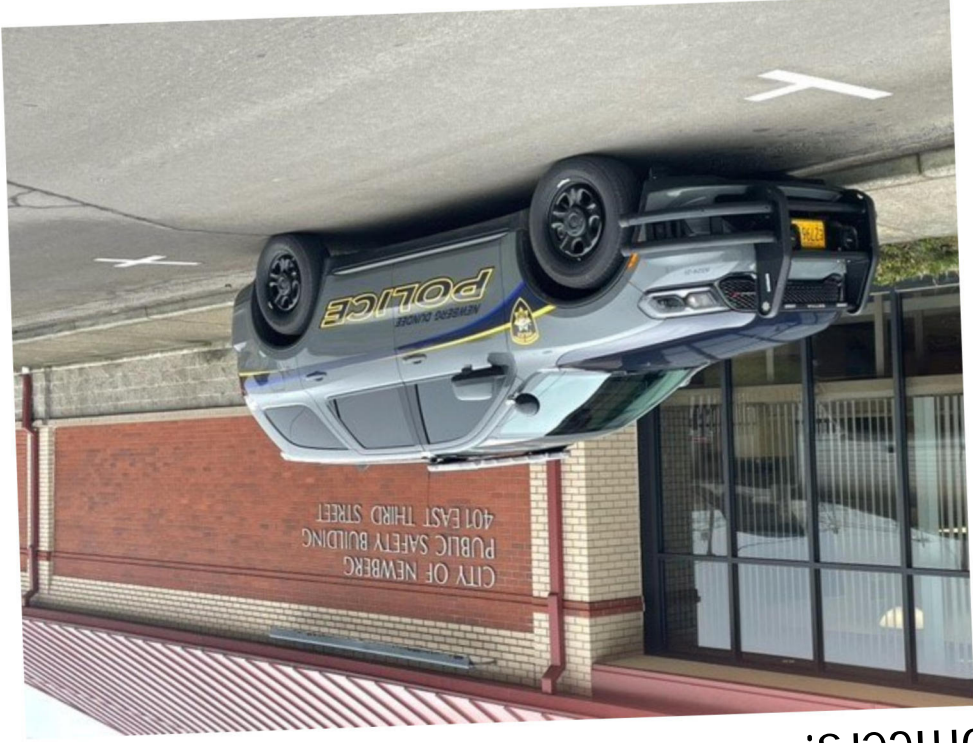
We also did security updating on over one hundred servers to address recent vulnerabilities.



On January 11, the radio communications for the Newberg Dundee Police Departments went digital. Sgt. Eric Ronning and NEWCOM dispatch supervisor Lauri Steinbeck have worked incredibly hard with WCCCA radio techs to make this a seamless transition.

The Newberg-Dundee Police Department completed an exhaustive audit of the entire evidence facility. We are very happy to say the audit went well.

Chief Kosmicki and Captain Ferguson have completed the new design of the patrol fleet. This design was an effort to be more inviting and to attract the next generation of police officers.







Officer Nathan James was promoted to patrol sergeant. He began his career as a reserve police officer in 1996 until getting hired full time in 2004.

Sgt. James brings a wealth of knowledge and experience as he has been on several training teams and special assignments during his tenure with the department.



In the world of Economic Health assistance was given on requests for information for Mill Site Development, there was continuing masses of work done on a wide range of small business ARPA requests, and our short term ARPA Federal Reporting Officer Paul started work to get that process up and running.

# So that's it for this month!

I am proud to have demonstrated how residents tax dollars have been hard at work as usual.

Questions?

# ***REQUEST FOR COUNCIL ACTION***

**DATE ACTION REQUESTED: February 7, 2022**

<b>Order ____ No.</b>	<b>Ordinance ____ No.</b>	<b>Resolution ____ No.</b>	<b>Motion ____</b>	<b>Information <u>XX</u></b>
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**SUBJECT: Public Comment**

**Staff: City Recorder  
Department:**

**Work Session \_\_\_\_ Business Session X**

**Order on Agenda: Public Comment**

## **Matthew Pruitt public comment requested to be read aloud at February 7, 2022 Council Meeting**

I hope before finalizing the deal for the cities use of the West Rock Mill water rights that the council takes a few things into consideration. Having a reliable source of water should be the goal with this purchase and this may not be it.

As climate change progresses Oregon will have less snow pack and lower rainfall totals and higher river temperatures limiting the cities ability to rely on the rivers decreasing water supply. Pumping from the river may harm threatened species like sturgeon, Steelhead and Chinook salmon. Also by using river water instead of well water we expose ourselves to bacterial outbreaks and blue green alga blooms like the city of Salem has had to deal with when they use water from Detroit lake.

Federal and state agencies may restrict the cities use of this water in the future if endangered fish become threatened by its use and it will open us up to lawsuits by conservation groups. The old Newberg landfill is also on the bank of the river just up stream of the white rock mill site. If we had a bad earthquake, as scientists say will happen in the near future, all of that waste could be dislodged into the river rendering it unfit for consumption. There are already high bacteria warnings all winter when storm runoff overwhelms our city's waste water systems and they spill untreated water into the Willamette river.

I want the city to have a safe water supply and a good investment for the future of Newberg so we can not afford to ignore the problems with this deal. It goes against the council goals of being environmentally responsible and avoiding needless litigation. Newberg needs the council to make informed decisions and not just look at the positives of city projects without looking deeply at the flaws.

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: February 7, 2022

Order \_\_\_\_ Ordinance \_\_\_\_ Resolution XX Motion \_\_\_\_ Information \_\_\_\_  
No. No. No. 2022-3795

**SUBJECT: A Resolution to accept a grant award from Yamhill County for Coronavirus State Fiscal Recovery Funding and authorize the City Manager Protem to execute all grant documents**

Staff: Kaaren Hofmann, PE City Engineer  
Department: Public Works  
File Number:

**Business Session**

**Order on Agenda: Consent**

## RECOMMENDATION:

Adopt Resolution No. 2022-3795

## EXECUTIVE SUMMARY:

The Programmable Logic Controller (PLC) is the system which provides the ability to run the treatment plant in an automatic mode. The Programmable Logic Controllers (PLCs) are part of the Siemens SIMATIC 505 family of process controllers. This is an unsupported platform that was discontinued in January 2016. Because they are no longer supported by the manufacturer, the City may have difficulty finding replacement parts. Currently, the City has been getting replacement parts from a third party, Control Technology, Inc. It is unclear if or when this will cease to be an option. Additionally, there is a single PLC controlling the entire plant. This presents a single point of failure for the plant. It has been recommended that a redundant pair of processors or dividing the functional responsibility for plant operation between multiple processors be added. The current programming platform is provided from a third party and is not supported by Siemens. As it sits now, the City is dependent on a single resource for their system support.

If this system failed, the operators of the treatment plant would no longer be able to control/manage the treatment processes, and lift stations remotely. This would require that the operators must start each piece of equipment in manual mode and then all controls have to be run manually. This relates to at least one operator staffing the facility 24/7 with another on standby, significantly increasing the cost of service to the residents of the City. Our staffing levels are not established to staff the plant on a 24/7 basis, and therefore when covering the additional shifts we do not have enough staff available to staff our normal daytime operational needs. It may also increase the likelihood of a permit violation.

This project will replace the existing PLC with a supported process controller and provide for additional security and redundancy in the system. This is a project that has been in the City's Capital Improvement Program for several years. An assessment of the system and a next steps plan has been completed.

In December of 2021, the City requested funds from Yamhill County for Coronavirus State Fiscal Recovery Funding to assist with the replacement and installation of the Programmable Logic Controllers for the Wastewater Treatment Plant. In January 2022, the County awarded Newberg \$518,500.00 to complete the proposed work.

If approved, the grant work is expected to start construction in 2022 and is required to be completed by 2024.

**FISCAL IMPACT:**

This grant will fund 50% of the design and construction of the project.

**STRATEGIC ASSESSMENT:**

2020 Council Goals:

All residents of the City will benefit from this project and meets the Customer Service and Sustainability Goals of the Council.



## **RESOLUTION No. 2022-3795**

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**A RESOLUTION TO ACCEPT A GRANT AWARD FROM YAMHILL COUNTY FOR CORONAVIRUS STATE FISCAL RECOVERY FUNDING AND AUTHORIZING THE CITY MANAGER PROTEM TO EXECUTE ALL GRANT DOCUMENTS**

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**RECITALS:**

1. The Programmable Logic Controller (PLC) is the system which provides the ability to run the treatment plant in an automatic mode. The Programmable Logic Controllers (PLCs) are part of the Siemens SIMATIC 505 family of process controllers. This is an unsupported platform that was discontinued in January 2016.
2. Additionally, there is a single PLC controlling the entire plant. This presents a single point of failure for the plant. It has been recommended that a redundant pair of processors or dividing the functional responsibility for plant operation between multiple processors be added.
3. If this system failed, the operators of the treatment plant would no longer be able to control/manage the treatment processes, and lift stations remotely. This would require that the operators must start each piece of equipment in manual mode and then all controls have to be run manually.
4. In December of 2021, the City requested funds from Yamhill County for Coronavirus State Fiscal Recovery Funding to assist with the replacement and installation of the Programmable Logic Controllers for the Wastewater Treatment Plant. In January 2022, the County awarded Newberg \$518,500.00 to complete the proposed work.
5. If approved, the grant work is expected to start construction in 2022 and is required to be completed by 2024.

**THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. The City accepts the grant from Yamhill County of Coronavirus State Fiscal Recovery Funding in the amount of \$518,500.00.
2. The City Manager is granted the authority to negotiate and execute all necessary documents related to this grant award, including agreements with Yamhill County and contracts with the selected consultant.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 8, 2022.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 7<sup>th</sup> day of February, 2022.

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Sue Ryan, City Recorder

ATTEST by the Mayor this 10<sup>th</sup> day of February, 2022.

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Rick Rogers, Mayor



# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: February 7, 2022

Order ____ No.	Ordinance ____ No.	Resolution ____ No. 2022-3780	Motion ____	Information ____
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**SUBJECT:** Establishing the new district boundaries applicable to the positions of Council Members in the City of Newberg

Staff: City Recorder Sue Ryan  
Department: Administration  
File Number:

**Business Session**

**Order on Agenda: Public Hearing**

☒ **ADMINISTRATIVE PUBLIC HEARING**

## RECOMMENDATION:

Adopt Resolution 2022-3780

## EXECUTIVE SUMMARY:

Chapter VII Section 28 of the City Charter sets 6 districts for the Council (The Mayor is an at-large position). These districts must be rebalanced every 10 years following the U.S. Census. For the City of Newberg it determines where Councilors reside but does not affect elections as councilors are elected by a citywide vote.

The City Council heard presentations on redistricting at meetings on August 16, 2021; December 20, 2021; and January 18, 2021. The City contracted with the Mid-Willamette Valley Council of Governments to prepare 3 map alternatives to rebalance the city's legislative districts. The COG and the City gathered public comment on the proposed alternatives. Tonight staff are recommending to the Council the adoption of the preferred district known as Alternative 1.

The current council boundaries Districts 1, 3 and 5 are below target population, and Districts 4 and 6 are above the target population. The target number is 4,190 for each district (Newberg's census population is 25,138). The goal is to balance each district to be within 5 % of total population meaning plus or minus 210 people.

### Alternative 1:

This alternative has minimal changes to the existing boundaries. Changes of note include:

- District 3 is expanded by moving the boundary north from 5<sup>th</sup> Street to 3<sup>rd</sup> Street.
- District 1 is expanded by moving the boundary east to Hulet Ave., and across Highway 99 W on the west edge of the City, and across Highway 99W south.
- District 5 is expanded by crossing Highway 99W south, and a few blocks west into District 2.



## ***RESOLUTION No. 2022-3780***

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**A RESOLUTION ESTABLISHING THE NEW DISTRICT BOUNDARIES  
APPLICABLE TO THE POSITIONS OF COUNCIL MEMBERS OF THE CITY  
OF NEWBERG.**

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### **RECITALS:**

1. The Newberg City Charter was amended on May 21, 1996, by a vote of the people to establish six geographical districts within the City of Newberg and provide that the Council move to six members.
2. Charter Chapter VII Section 28 a) The districts shall be reapportioned thereafter whenever the U.S. Census is taken, and within a reasonable amount of time after the data is available, or when the city so orders. Whenever the districts are reapportioned, the councilor in office shall not lose their qualification for office by reason of the boundary change for the remainder of their term, unless otherwise disqualified. In addition to the other qualifications, the councilor must have and maintain their residence in the district from which they were nominated during the term of their office, except as provided for in reapportionment.
3. Based upon data derived from the 2020 U.S. Census, the City Council through the services of the Council of Governments, has analyzed that data and established to the best of their ability, six districts which are equally populated throughout the City.

### **THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. The City Council of the City of Newberg hereby adopts the map and district boundaries referred to as Alternative # 1 in the report by the Mid-Willamette Council of Governments, which establishes new boundaries for the city's six districts as shown in Exhibit A.
2. This reapportionment is done based upon the data derived from the 2020 U.S. Census and in accordance with Oregon Secretary of State Directive 2021-01.
3. When territory is annexed into the City, that territory will be appended to the Council district which abuts the territory. If the territory annexed abuts more than one Council district, the Council shall determine to which district or districts the territory will be appended.
4. Resolutions 2011-2980 and 2002-2361 are hereby repealed.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 8, 2022.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 7<sup>th</sup> day of February, 2022.

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Sue Ryan, City Recorder

**ATTEST** by the Mayor this 10th day of February, 2022.

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Rick Rogers, Mayor

# City of Newberg Alternative 1

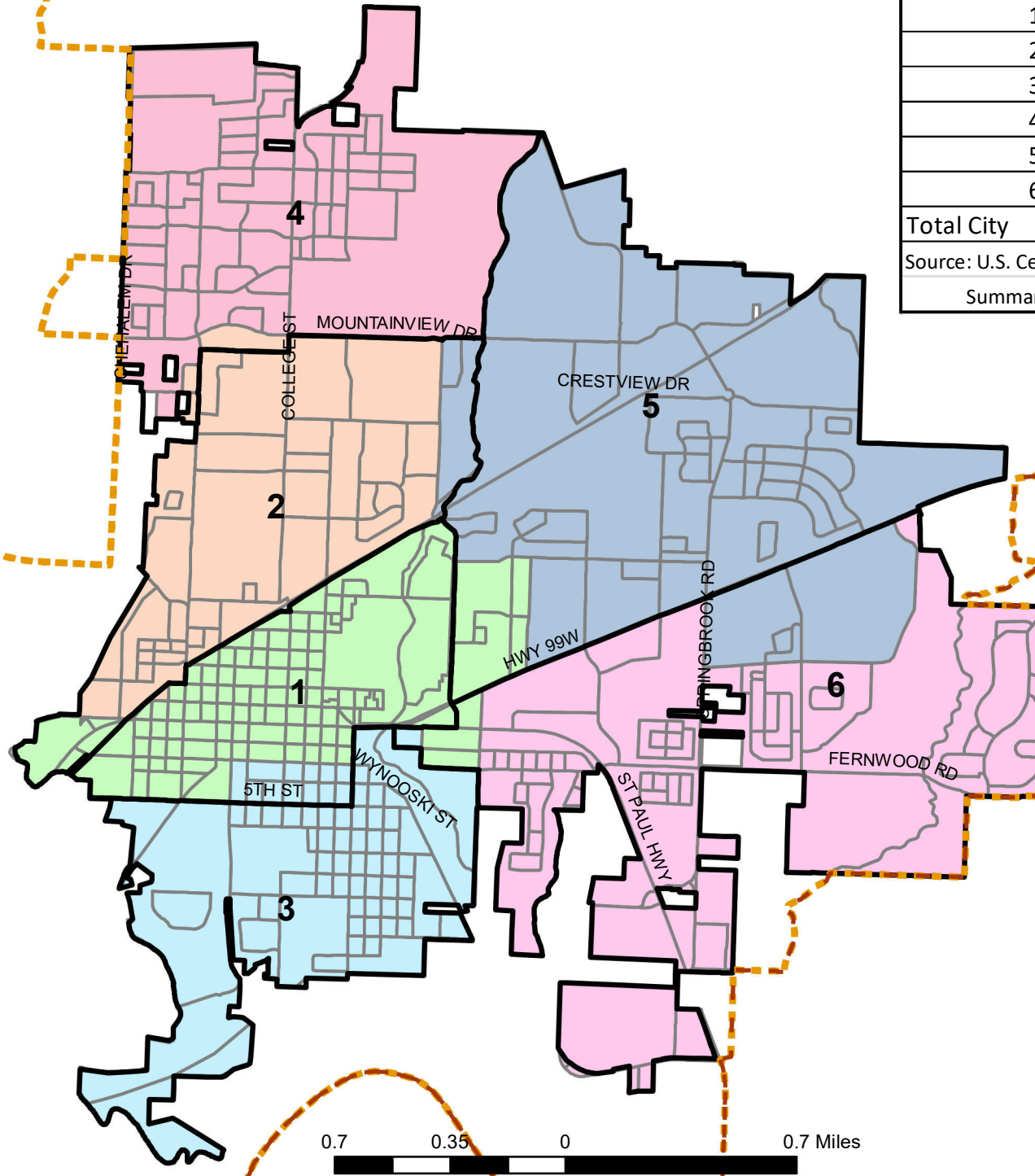
## Newberg Council Districts Alternative 1 And Deviation from Target Population (4,190)

District	Population	Deviation	% Deviation
1	4130	-60	-1.43
2	4171	-19	-0.45
3	4169	-21	-0.5
4	4327	137	3.27
5	4229	39	0.93
6	4112	-78	-1.86
Total City	25,138		

Source: U.S. Census Bureau, 2020 P.L. 94-171 Redistricting File

Summary of Total Population

- Senate Boundaries 2021
- House Boundaries 2021
- Current Council Districts



# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: February 7, 2022

Order \_\_\_\_ Ordinance XX Resolution \_\_\_\_ Motion \_\_\_\_ Information \_\_\_\_  
No. No. No. 2022-2894

**SUBJECT: PURCHASING POLICY AND  
AMENDMENTS TO NMC 3.25**

Staff: James Walker  
Department: City Attorney  
File Number:

**Business Session**

Order on Agenda

**\*\*\*LEGISLATIVE HEARING\*\*\***

**RECOMMENDATION:** Approve Ordinance 2022-2894

## **EXECUTIVE SUMMARY:**

The Council acts as the City's local contract review board and is authorized under Oregon law to adopt public contracting rules and procedures. The City of Newberg's contracting rules and procedures were last updated in 2005 under Ordinance No. 2005-2618. Since that time, Oregon's Public Contracting Code has been updated in 2007, 2011, 2013, 2017, and 2021. These updates have typically been accompanied by revisions to the Oregon Attorney General's Model Public Contracting Rules upon which Newberg's rules are based. The proposed amendments to NMC 3.25 align the municipal code with State law and the new Purchasing Policy.

## **FISCAL IMPACT:**

## **STRATEGIC ASSESSMENT:**

2020 Council Goals:

1. Change operational culture to one focused on Customer Service and act to Resolve Ongoing Legal Disputes
2. Further develop an operational culture that adopts and cherishes Diversity, Equity, and Inclusion as core values.
3. Promote development of housing affordability such as houselessness, transitional housing, workforce housing.
4. Create and support an Urban Renewal Plan and Authority
5. Collaborate with local partners and with entities like ICLEI in the development of a Sustainability program.



# ***ORDINANCE No. 2022-2894***

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## **AN ORDINANCE AMENDING AND RESTATING THE NEWBERG MUNICIPAL CODE, TITLE 3, CHAPTER 3.25, PURCHASING AND CONTRACTING**

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### **RECITALS:**

1. Whereas, under ORS 279A.060, the Council is the City's local contract review board.
2. Whereas, ORS 279A.065 gives a contracting agency the authority to adopt its own rules of procedure for public contracts.
3. Whereas, ORS 279A.070 gives a contracting agency authority to adopt rules necessary to carry out the provision of the Public Contracting Code and requires a contracting agency authorized to enter into personal services contracts to create procedures to screen and select persons to perform personal services.
4. Whereas, Newberg Municipal Code Section 3.25 contains the City's rules of procedure for public contracts.
5. Whereas, ORS 279A.065 requires a contracting agency that adopts its rules under the authority set forth in ORS 279A.065 to review those rules when the Oregon Attorney General makes a modification to the model public contracting rules.
6. Whereas, the Council, as the City's local contract review board, desires to revise the City's public contracting regulations in response to changes in applicable laws and rules.

### **THE CITY OF NEWBERG ORDAINS AS FOLLOWS:**

1. The City of Newberg's public contracting regulations are amended as shown in Exhibit A.
2. Exhibit A is adopted and by this reference is incorporated.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after February 7, 2022.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 7th day of February, 2022.

\_\_\_\_\_  
Sue Ryan, City Recorder

**ATTEST** by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Rick Rogers, Mayor

Chapter 3.25  
PURCHASING AND CONTRACTING

Sections:

- 3.25.010 City policy.
- 3.25.020 [Reserved].
- 3.25.030 Regulation by city council.
- 3.25.040 Model Rules.
- 3.25.050 Authority of purchasing manager.
- 3.25.060 Definitions.
- 3.25.070 [Reserved].
  
- 3.25.071 Personal Services Contracts.
- 3.25.080 Solicitation methods for certain classes of contracts.
- 3.25.090 Informal solicitation procedures.
- 3.25.100 [Reserved].
- 3.25.110 [Reserved].
- 3.25.120 [Reserved].
- 3.25.130 Appeal of debarment or prequalification decision.
  
- 3.25.010 City policy.

A. Title. The provisions of this chapter and all rules adopted under this chapter may be cited as the City of Newberg's public contracting regulations.

B. Purpose of Public Contracting Regulations. It is the policy of the City of Newberg, hereinafter referred to as "the city," 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 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) of this section, it is the city's intent that the city's public contracting regulations be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B and 279C. [Ord. 2618, 3-7-05. Code 2001 § 34.01.]

3.25.020 [Reserved.]

3.25.030 Regulation by city council.

Except as expressly delegated in accordance with policy or these regulations, the 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. [Ord. 2618, 3-7-05. Code 2001 § 34.03.]

3.25.040 Model Rules.

The model rules adopted by the Attorney General under ORS 279A.065 (Model Rules) are adopted as the public contracting rules for the city, to the extent that the Model Rules do not conflict with the provisions of this chapter. [Ord. 2618, 3-7-05. Code 2001 § 34.04.]

3.25.050 Authority of purchasing manager.

A. General Authority. The city manager shall be the purchasing manager for the city and is authorized to issue all solicitations and to award all city contracts for which the contract price does not exceed \$100,000 and the proposed expenditure is included in the current fiscal year budget. Subject to the provisions of this chapter, 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's contracting needs. The purchasing manager shall hear all solicitation and award protests.

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;

2. Give preference to goods that are certified to be made from recycled products when such goods are available, can be substituted for nonrecycled 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 nonrecycled products; and

3. Give any other preferences as set forth in the City of Newberg Purchasing Policy, applicable law, or both.

C. Delegation of Purchasing Manager's Authority. Any of the responsibilities or authorities of the purchasing manager under this chapter may be delegated and subdelegated by written directive, including the City of Newberg Purchasing Policy.

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 council any modifications required to ensure compliance with statutory changes.

E. Emergencies.

1. In General. When the city manager or the city manager's duly appointed designee determines that immediate execution of a contract is necessary to prevent substantial damage or injury to persons or property, the city manager or designee may execute the contract without competitive selection and award or city council approval, but, where time permits, the city manager shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.

2. Reporting. Any official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances:

a. 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 and the public; and

b. Notify the city council of the facts and circumstances surrounding the emergency execution of the contract.

3. Emergency Public Improvement Contracts. A public improvement contract may only be awarded under emergency circumstances if the 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 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 city council may waive the requirement for all or a portion of required performance and payment bonds.

#### 3.25.060 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

“Award” means either identifying or the city’s identification of the person with whom the city intends to enter into a contract following the resolution of any protest of the city’s selection of that person and the completion of all contract negotiations.

“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, and under which the concessionaire makes payments to the city 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 maximum monetary obligation that the city either will or may incur under a contract, including bonuses, incentives, and contingency amounts, if the contractor fully performs under the contract.

“Contract review board” or “local contract review board” means the city council. The city council of the City of Newberg is designated as the local contract review board under the Oregon Public Contracting Code. The local contract review board may delegate its powers and



responsibilities consistent with the Oregon Public Contracting Code, the Model Rules, and the Newberg Municipal Code.

“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 279C.440 that prohibits a potential contractor from competing for the city’s public contracts for a prescribed period of time.

“Disposal” means any arrangement for the transfer of property by the city under which the city relinquishes ownership.

“Emergency” means circumstances that could not have been reasonably foreseen, 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.

“Findings” means 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; and 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’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.

“Oregon Public Contracting Code” means ORS Chapters 279A, 279B and 279C.

“Person” means a natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with legal capacity to contract, or a public body.

“Personal services contract” or “PSC” means 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 services depends on attributes that are unique to the service provider.

“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.

“Public contract” means a sale or other disposal, or a purchase, lease, rental, or other acquisition, by the city 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. “Public improvement” does not include:

1. Projects for which no funds of the city 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 contractors who are prequalified 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” or “RFP” means a publicly advertised request for sealed competitive proposals.

“Request for qualifications” or “RFQ” means a written document issued by the city to which contractors respond in writing by describing their experience with and qualifications for the services, personal services or architectural, engineering or land surveying services, or related services, described in the document.

“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 with respect to a proposed project, procurement, or other contracting opportunity. The word “solicitation” also refers to the process by which the city requests, receives, and evaluates potential contractors and awards public contracts.

“Solicitation agent” means, with respect to a particular solicitation, the city manager or designee appointed by the city manager to conduct the solicitation and make an award.

“Solicitation documents” means all informational materials issued by the city 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.

“Surplus property” means personal property owned by the city which is no longer needed for use by the department to which such property has been assigned. [Ord. 2618, 3-7-05. Code 2001 § 34.06.]

3.25.070 [Reserved].

3.25.071 Personal services contracts.

A. Personal Services Contracts Definition.

1. PSCs within the definition set forth in NMC 3.25.060 include, but are not limited to, the following:

a. Contracts for services performed in a professional capacity, including services of an accountant, attorney, medical professional (e.g., doctor, dentist, nurse, counselor), information technology consultant or broadcaster, except for Architectural, Engineering, Photogrammetric Mapping or Land Surveying Services and other construction-related professional services subject to Chapter 137, Division 48 of the Oregon Administrative Rules (OAR);

b. Contracts for services as an artist in the performing or fine arts, including any person identified as a photographer, filmmaker, actor, director, painter, weaver, or sculptor;

c. Contracts for services that are specialized, creative, or research-oriented;

d. Contracts for educational services;

e. Contracts for human custodial care, child care, mental health care, health services, social and emergency services, and other human services; and

f. Contracts for other professional or technical consulting services not listed above.

2. The purchasing manager is given the discretion to decide whether a particular type of contract or service falls within the definition of "Personal Services Contract" as set forth in these regulations.

3. The city will not use PSCs to obtain and pay for the services of an employee. A PSC may be used only to obtain and pay for the services of an independent contractor.

B. PSC Formal Selection Procedure. The City will use a formal selection procedure if the estimated contract amount of the personal services contract is greater than \$150,000. All formal RFP and RFQ solicitations must comply with the requirements for competitive sealed proposals contained in ORS 279B.060 and may be solicited, processed, and reviewed through

any of the sealed proposal procurement methods set forth in OAR 137-047-0260 through 137-047-0263.

C. PSC Informal Selection Procedures. The city may use an informal selection process to obtain personal services when a formal selection process is not required.

1. The informal selection process must solicit responses/proposals from at least three qualified contractors or vendors offering the required services. If three proposals are not reasonably available, fewer will suffice, but the city shall make a written record of the effort made to obtain at least three proposals.

2. The informal selection process is intended to be competitive. The selection and ranking may be based on criteria including, but not limited to, each offeror's:

- a. Particular capability to perform the services required;
- b. Experienced staff available to perform the services required, including each offeror's recent, current, and projected workloads;
- c. Performance history;
- d. Approach and philosophy used in providing services;
- e. Fees or costs;
- f. Geographic proximity to the project or the area where the services are to be performed; and
- g. Work volume previously awarded by the city, with the object of effecting an equitable distribution of contracts among qualified contractors. But distribution must not violate the policy of selecting the most highly qualified contractor to perform the services at a fair and reasonable price.

Written confirmation of solicitation attempts and responses with contractor names and addresses shall be maintained in the city's procurement file.

D. Other Approved Solicitation Methods.

1. Request for Qualifications. An RFQ may be used to determine that competition does not exist for a particular service, or to establish a list of qualified contractors for RFPs or for informal solicitations under these regulations.

a. The RFQ must at least describe the particular specialty desired, the qualifications the contractor must have in order to be considered, and the evaluation factors and their relative importance. The RFQ may require information including, but not limited to, the contractor's particular capability to perform the required services; the number of experienced staff available to perform the required services, including specific qualifications and experience of personnel; a list of similar services the contractor has completed with references concerning past performance; and any other information necessary to evaluate contractor qualifications.

b. A qualifications pre-submission meeting (voluntary or mandatory) may be held for all interested contractors to discuss the proposed services. The RFQ must include the date, time, and place of the meeting.

c. Unless the RFQ establishes that competition does not exist, each contractor qualified under an RFQ will receive a notice (or other materials as appropriate) of any required services and have an opportunity to submit a proposal or quote in response to the city's subsequent RFP.

2. Price Agreements. The City may enter into Price Agreements for personal services. Such Price Agreements shall be solicited as otherwise required by these regulations based on the maximum contract price.

3. Cooperative Procurement. The city may contract for personal services pursuant to a cooperative procurement in compliance with OAR 137-046-0400 to 137-046-0480.

E. PSC Selection by Negotiation.

The purchasing manager may procure personal services with contractors through direct negotiation in any of the following circumstances:

1. The contract price is not more than \$75,000, provided that the chosen contractor is prequalified.



2. The nature of the work is not project-driven but requires an ongoing, long-term relationship of knowledge and trust. Examples of such work include insurance brokerage/agent of record services, medical services, and audit services.

3. The Contractor possesses unique knowledge and/or expertise in a specialized service area, making competition impractical. Such services can include, but are not limited to, education services, staff coaching, and community relations.

4. A contract for which a non-city funding source, e.g., a grant or a federal, state, or city contract, identifies the contractor in the funding award or makes a funding award conditioned upon the service being performed by a specific contractor. The following must be documented to the procurement file:

a. The name of the external funding source;

b. The background on how the funding source selected the contractor(s); and

c. A copy of the funder's document naming the contractor.

5. The contract is entered into pursuant to an emergency declared by the city manager.

6. The contract is for interim staff or temporary staffing services.

7. The contract is for legal services. For the purposes of this section, "legal services" means attorney and paralegal services for transactional work, litigation, investigations, advice, reports, and other services requiring legal advice or work by an attorney, and includes all related costs or fees.

F. PSC Contract Requirements. City PSCs must contain the mandatory contract provisions set forth in ORS 279B.020(5), 279B.220, 279B.230, 279B.235(3), and, if the contract involves lawn or landscape maintenance, ORS 279B.225.

G. PSC Contract Amendments.

1. The city may amend any Personal Services Contract if the city, in its sole discretion, determines that the amendment is within the scope of the solicitation and that the amendment would not materially impact the field of competition for the personal services described in the final form of the original solicitation documents. In making this determination, the city shall

consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the solicitation document if the city reasonably believes that the number of offerors would not significantly increase if the solicitation document were re-issued to include the additional services.

2. The city may amend any contract if the additional services are required by reason of existing or new laws, rules, regulations, or ordinances of federal, state, or local agencies which affect performance of the original contract.

3. All amendments to contracts must be in writing, must be signed by an authorized representative of the consultant and the city, and must receive all required approvals before the amendments will be binding on city.

4. A single contract amendment or cumulative amendments may not increase the total contract price to greater than 110 percent of the original contract price, except in any of the following circumstances:

a. The purchasing manager determines that the need for the amendment is caused by unforeseen conditions or circumstances and conducting a new procurement would result in unreasonable additional cost or delay. For the purposes of this section:

i. An “unforeseen condition or circumstance” is one that is discovered after the original contract was solicited and awarded that could not have been reasonably anticipated as part of the original solicitation or contract.

ii. “Unreasonable additional cost or delay” means that the cost of conducting a new procurement and/or awarding a new contract is likely to exceed the cost of a contract amendment and/or that the delay caused by conducting a new procurement would cause a break in service, require repetition of earlier work, or cause a delay in completion of the contract that would be detrimental to the city program or service benefiting from the contract.

b. The purchasing manager determines that the amendment, additional scope, or alternative work was contemplated in the original procurement and provided for in the original contract. (Examples include a solicitation and contract that provides for renewal or extension for subsequent terms or that specifically allows for alternates or additional work.)

c. The amendment is presented to the city council as part of the council's agenda and the council approves the amendment based upon the circumstances of the particular contract. The purchasing manager shall set forth the justification for the amendment in a supplementary staff report enclosed with the council's consent agenda.

5. Amendments Requiring Additional Authority. An amendment to a contract that increases the original contract price by more than 10 percent requires city manager approval. An amendment to a contract approved by the city manager that would cause the total contract price to exceed the city manager's delegated authority to approve contracts under these regulations or the City of Newberg Purchasing Policy must be approved by the city council except as provided in these regulations or the City of Newberg Purchasing Policy.

### 3.25.080 Solicitation methods for certain 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 established by the city council:

A. Purchases from Nonprofit Agencies for Disabled Individuals. The city shall give a preference to goods, services, and public improvements available from qualified nonprofit agencies for individuals with disabilities in accordance with the provisions of ORS 279.835 through 279.850.

B. Public Improvement Contracts.

1. City-Funded Privately Constructed Public Improvements. The city 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's contribution to the project may not exceed 25 percent of the total cost of the project;

b. The city must comply with all applicable laws 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 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 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 for all claims for payment, injury, or property damage arising from or related to the construction of the project.

2. Public Improvement Contracts for Construction, Maintenance, and Repair of Public Rights-of-Way Where the Work Is Adjacent to a Private Developer's Construction Work. The city is authorized to sole source city public improvement contracts for construction, maintenance, and repair of public rights-of-way (or utilities located in city rights-of-way) where the work to be done under the public improvement contract is adjacent, connecting or in close proximity (i.e., six blocks) to where a private developer is having construction work done on infrastructure in their development.

C. 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'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. 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.

5.      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.

6.      Government-Regulated Items. Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.

7.      Insurance. Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.

8.      Non-Owned Property. Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the city.

9.      Specialty Goods for Resale. Contracts for the purchase of specialty goods by the city for resale to consumers.

10.     Sponsor Agreements. Sponsorship agreements under which the city receives a gift or donation in exchange for recognition of the donor.

11.     Structures. Contracts for the disposal of structures located on city-owned property.

12.     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.

13.     Temporary Extensions or Renewals. With the exception of Price Agreements, contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and nonrenewable, or recently expired, contract, other than a contract for public improvements.

14.     Temporary Use of City-Owned Property. The city may negotiate and enter into a license, permit, or other contract for the temporary use of city-owned property without using a competitive selection process if:

- a. The contract results from an unsolicited proposal to the city based on the unique attributes of the property or the unique needs of the offeror;
- b. The proposed use of the property is consistent with the city's use of the property and the public interest; and
- c. The city reserves the right to terminate the contract without penalty, in the event that the city determines that the contract is no longer consistent with the city's present or planned use of the property or the public interest.

15. **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's needs and can be purchased for a lower cost than substantially similar 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. The purchasing manager shall record the findings that support the purchase.

16. **Utilities.** Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.

D. Contracts Required by Emergency Circumstances.

1. **In General.** When an official with authority to enter into a contract on behalf of the city determines that immediate execution of a contract within the official's authority is necessary to prevent substantial damage or injury to persons or property, the official may execute the contract without competitive selection and award or city council approval, but, where time permits, the official shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.

2. **Reporting.** An official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances:

- a. 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 and the public; and



b. Notify the city council of the facts and circumstances surrounding the emergency execution of the contract.

3. Emergency Public Improvement Contracts. A public improvement contract may only be awarded under emergency circumstances if the 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 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 city council may waive the requirement for all or a portion of required performance and payment bonds.

E. 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 chapter.

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.

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.

4. If a single purchase of goods or services exceeds \$150,000, 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. This subsection does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.

F. Cooperative Procurement Contracts. Cooperative procurements may be made without competitive solicitation as provided in the Oregon Public Contracting Code.

G. 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. Factors that may be considered by the solicitation agent include costs of sale, administrative costs, and public benefits to the city. 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 department or public agency.

b. Auction. By publicly advertised auction to the highest bidder.

c. Bids. By publicly 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 which is recognized by the Internal Revenue Service as an 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 \$500.00, 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 \$100.00 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, a police officer may purchase the handgun that the police officer 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 at least 30 days prior to the officer's expected retirement date and request an appraisal of the handgun. Upon receipt of the appraisal fee from the officer, the city 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. However, the purchasing manager is delegated the authority to present the handgun that the police officer used at the time of retirement to the police officer as a gift from the city.

5. Restriction on Sale to City Employees. City 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 shall make, execute, and deliver a bill of sale signed on behalf of the city, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.

#### H. 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 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 \$10,000. Contracts under which the solicitation agent estimates that receipts by the city will not exceed \$10,000 in any fiscal year and \$100,000 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 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. [Ord. 2856 § 2, 2-18-20; Ord. 2705 § 4, 10-6-08; Ord. 2618, 3-7-05. Code 2001 § 34.08.]

3.25.090 Informal solicitation procedures.

The city 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 contractors, 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 a 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 bidder 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, based on the criteria for award.
3. Records. A written record of all persons solicited and offers received shall be maintained for at least six years after award. 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 or proposals.

B. Qualified Pools.

1. General. To create a qualified pool, the purchasing manager may invite prospective contractors to submit their qualifications to the city 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 republished at least once per year and shall be posted at the city'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.

4. Contract. The operation of each qualified pool may be governed by the provisions of a pool contract to which the city and all pool participants are parties. The contract shall contain all terms required by the city, 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 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 contract.

5. Use of Qualified Pools. Subject to the provisions of these regulations concerning methods of solicitation for classes of contracts, the solicitation agent 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 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 city council in the manner described in NMC 3.25.130. [Ord. 2618, 3-7-05. Code 2001 § 34.09.]



3.25.100 [Reserved].

3.25.110 [Reserved].

3.25.120 [Reserved].

3.25.130 Appeal of debarment or prequalification decision.

A. Right to Hearing. Any person who has been debarred from competing for city contracts or for whom prequalification has been denied, revoked, or revised may appeal the city's decision to the governing body as provided in this section.

B. Filing of Appeal. The person must file a written notice of appeal with the city'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 City Council. Immediately upon receipt of such notice of appeal, the purchasing manager shall notify the 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 shall notify the appellant of the time and place of the hearing;

2. The 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 city council shall consider de novo the notice of debarment, or the notice of denial, revocation, or revision of prequalification, the criteria upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.

E. Decision. The city council shall set forth in writing the reasons for the decision.

F. Costs. The city council may allocate the city council's costs for the hearing between the appellant and the city. The allocation shall be based upon facts found by the city council and stated in the city council's decision that, in the city council's opinion, warrant such allocation of

costs. If the city council does not allocate costs, the costs shall be paid by the appellant, if the decision is upheld, or by the city, if the decision is overturned.

G. Judicial Review. The decision of the city council may be reviewed only upon a petition in the circuit court of Yamhill County filed within 15 days after the date of the city council's decision. [Ord. 2618, 3-7-05. Code 2001 § 34.13.]

**Chapter 3.25**  
**PURCHASING AND CONTRACTING**

**Sections:**

- 3.25.010 City policy.
- 3.25.020 ~~Application of public contracting regulations~~[\[Reserved\]](#).
- 3.25.030 Regulation by city council.
- 3.25.040 Model Rules.
- 3.25.050 Authority of purchasing manager.
- 3.25.060 Definitions.
- 3.25.070 ~~Process for approval of special solicitation methods and exemptions~~[\[Reserved\]](#).
- [3.25.071 Personal Services Contracts.](#)
- 3.25.080 Solicitation methods for [certain](#) classes of contracts.
- 3.25.090 Informal solicitation procedures.
- 3.25.100 ~~Use of brand name specifications for public improvements~~[\[Reserved\]](#).
- 3.25.110 ~~Bid, performance and payment bonds~~[\[Reserved\]](#).
- 3.25.120 ~~Electronic advertisement of public improvement contracts~~[\[Reserved\]](#).
- 3.25.130 Appeal of debarment or prequalification decision.

**3.25.010 City policy.**

A. Title. The provisions of this chapter and all rules adopted under this chapter may be cited as [the City of](#) Newberg’s public contracting regulations.

B. Purpose of Public Contracting Regulations. It is the policy of the City of Newberg, hereinafter referred to as “the city,” 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 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) of this section, it is the city's intent that the ~~Newberg~~city's public contracting regulations be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B and 279C. [Ord. 2618, 3-7-05. Code 2001 § 34.01.]

### **3.25.020 ~~Application of public contracting regulations~~[Reserved.]**

~~In accordance with ORS 279A.025, the city'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 and a public body or agency of the State of Oregon or its political subdivisions, or between the city and an agency of the federal government.~~

~~B. Grants. A grant contract is an agreement under which the city is either a grantee or a grantor of monies, 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 the city 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 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, 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 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 as authorized by law; or~~

~~4. — Banking, money management or other predominantly financial transactions of the city 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 through 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. [Ord. 2618, 3-7-05; Code 2001 § 34.02.]~~

### 3.25.030 Regulation by city council.

Except as expressly delegated ~~under~~in accordance with policy or these regulations, the 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 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. [Ord. 2618, 3-7-05. Code 2001 § 34.03.]~~

### 3.25.040 Model Rules.

The ~~Model Rules~~model rules adopted by the Attorney General under ORS 279A.065 (Model Rules) are adopted as the public contracting rules for the city, to the extent that the Model Rules do not conflict with the provisions of this chapter ~~including any amendments to this chapter; and further provided, that despite the provisions of the Model Rules concerning the~~

~~selection of architects, engineers, land surveyors and related consultants, the city's evaluation of architects, engineers, land surveyors and related consultants may include price as a dominant criterion for selection.~~ [Ord. 2618, 3-7-05. Code 2001 § 34.04.]

### **3.25.050 Authority of purchasing manager.**

A. General Authority. The city manager shall be the purchasing manager for the city and is authorized to issue all solicitations and to award all city contracts for which the contract price does not exceed \$100,000 and the proposed expenditure is included in the current fiscal year budget. Subject to the provisions of this chapter, 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's contracting needs. The purchasing manager shall hear all solicitation and award protests.

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 nonrecycled 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 nonrecycled products; and

3. Give any other preferences as set forth in the City of Newberg Purchasing Policy, applicable law, or both.

C. Delegation of Purchasing Manager's Authority. Any of the responsibilities or authorities of the purchasing manager under this chapter may be delegated and subdelegated by written directive, including the City of Newberg Purchasing Policy.

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 council any modifications required to ensure compliance with statutory changes.



E. Emergencies. ~~In case of accident, disaster or other circumstance creating a public emergency, the city manager may award contracts and make purchases for the purpose of meeting said emergency; but shall promptly file with the city council a certificate showing such emergency and the necessity for such action, together with an itemized account of all expenditures. [Ord. 2856 § 1, 2-18-20; Ord. 2733 Att. A, 2-7-11; Ord. 2618, 3-7-05; Ord. 1730, 5-6-74. Code 2001 §§ 31.21, 34.05.]~~

1. *In General.* When the city manager or the city manager's duly appointed designee determines that immediate execution of a contract is necessary to prevent substantial damage or injury to persons or property, the city manager or designee may execute the contract without competitive selection and award or city council approval, but, where time permits, the city manager shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.

2. *Reporting.* Any official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances:

a. 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 and the public; and

b. Notify the city council of the facts and circumstances surrounding the emergency execution of the contract.

3. *Emergency Public Improvement Contracts.* A public improvement contract may only be awarded under emergency circumstances if the 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 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 city council may waive the requirement for all or a portion of required performance and payment bonds.

### 3.25.060 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

“Award” means ~~the selection of a person to provide goods, services or public improvements under either identifying or the city’s identification of the person with whom the city intends to enter into a public contract. The award of a contract is not binding on the city until the following the resolution of any protest of the city’s selection of that person and the completion of all~~ contract ~~is executed and delivered by the city~~ negotiations.

“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, and under which the concessionaire makes payments to the city 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~~ maximum monetary obligation that the city either will or to be paid may incur under a contract, including ~~any approved alternates, and any fully executed change orders or amendments~~ bonuses, incentives, and contingency amounts, if the contractor fully performs under the contract.

“Contract review board” or “local contract review board” means the city council. The city council of the City of Newberg is designated as the local contract review board under the ~~State of~~ Oregon Public Contracting Code. The local contract review board may delegate its powers and responsibilities consistent with the Oregon Public Contracting Code, the Model Rules, and the Newberg Municipal Code.

“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 279C.440 that prohibits a potential contractor from competing for the city’s public contracts for a prescribed period of time.

“Disposal” means any arrangement for the transfer of property by the city under which the city relinquishes ownership.

“Emergency” means circumstances that could not have been reasonably foreseen, 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” means 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; and 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’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.

“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 capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with legal capacity to ~~enter into a binding~~ contract, or a public body.

“Personal services contract” or “PSC” means a contract ~~with an independent contractor~~ predominantly primarily for the provision of services that require ~~special training or certification, skill,~~ 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~~ services depends on attributes that are unique to the service provider. ~~Such services include, but are not limited to, the services of architects, engineers, land surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. The city council shall have discretion to determine whether additional types of services not specifically mentioned in this definition fit within the definition of “personal services.”~~

“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.

“Public contract” means a sale or other disposal, or a purchase, lease, rental, or other acquisition, by the city 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. “Public improvement” does not include:

- ~~1.~~1. Projects for which no funds of the city are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
- ~~2.~~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 ~~venders~~contractors who are prequalified 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” or “RFP” means a publicly advertised request for sealed competitive proposals.

“Request for qualifications” or “RFQ” means a written document issued by the city to which contractors respond in writing by describing their experience with and qualifications for the services, personal services or architectural, engineering or land surveying services, or related services, described in the document.

“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 with respect to a proposed project, procurement, or other contracting opportunity. The word “solicitation” also refers to the process by which the city 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 designee appointed by the city manager to conduct the solicitation and make an award.

“Solicitation documents” means all informational materials issued by the city 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 definition;~~
- ~~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 definition;~~
- ~~4. Qualified legally to contract with the city;~~
- ~~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 nonresponsible; and~~
- ~~6. Not been debarred by the city, Bureau of Labor and Industries (BOLI), the state, 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 which is no longer needed for use by the department to which such property has been assigned. [Ord. 2618, 3-7-05. Code 2001 § 34.06.]

**3.25.070 ~~Process for approval of special solicitation methods and exemptions~~ [\[Reserved\]](#).**

~~A. Authority of City Council. In its capacity as contract review board for the city, the city council, 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.~~

~~B. Basis for Approval. The approval of a special solicitation method or exemption from competition must be based upon a record before the city council 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 sign the contract(s).~~

~~In making a determination regarding a special selection method, the 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 shall approve the special solicitation or exemption after a public hearing before the city council following notice by publication in at least one newspaper of general circulation in the city area.~~

~~2. At the public hearing, the city shall offer an opportunity for any interested party to appear and present comment.~~

~~3. The city council will consider the findings and may approve the exemption as proposed or as modified by the city council after providing an opportunity for public comment.~~

**3.25.071 Personal services contracts.**

**A. Personal Services Contracts Definition.**

1. PSCs within the definition set forth in NMC 3.25.060 include, but are not limited to, the following:

a. Contracts for services performed in a professional capacity, including services of an accountant, attorney, medical professional (e.g., doctor, dentist, nurse, counselor), information technology consultant or broadcaster, except for Architectural, Engineering, Photogrammetric Mapping or Land Surveying Services and other construction-related professional services subject to Chapter 137, Division 48 of the Oregon Administrative Rules (OAR);

b. Contracts for services as an artist in the performing or fine arts, including any person identified as a photographer, filmmaker, actor, director, painter, weaver, or sculptor;

c. Contracts for services that are specialized, creative, or research-oriented;

d. Contracts for educational services;

e. Contracts for human custodial care, child care, mental health care, health services, social and emergency services, and other human services; and

f. Contracts for other professional or technical consulting services not listed above.

2. The purchasing manager is given the discretion to decide whether a particular type of contract or service falls within the definition of “Personal Services Contract” as set forth in these regulations.

3. The city will not use PSCs to obtain and pay for the services of an employee. A PSC may be used only to obtain and pay for the services of **an independent contractor**.

B. PSC Formal Selection Procedure. The City will use a formal selection procedure if the estimated contract amount of the personal services contract is greater than \$150,000. All formal RFP and RFQ solicitations must comply with the requirements for competitive sealed proposals contained in ORS 279B.060 and may be solicited, processed, and reviewed through any of the sealed proposal procurement methods set forth in OAR 137-047-0260 through 137-047-0263.

C. PSC Informal Selection Procedures. The city may use an informal selection process to obtain personal services when a formal selection process is not required.

1. The informal selection process must solicit responses/proposals from at least three qualified contractors or vendors offering the required services. If three proposals are not reasonably available, fewer will suffice, but the city shall make a written record of the effort made to obtain at least three proposals.

2. The informal selection process is intended to be competitive. The selection and ranking may be based on criteria including, but not limited to, each offeror’s:

a. Particular capability to perform the services required;

b. Experienced staff available to perform the services required, including each offeror’s recent, current, and projected workloads;

c. Performance history;

d. Approach and philosophy used in providing services;

e. Fees or costs;

f. Geographic proximity to the project or the area where the services are to be performed; and

g. Work volume previously awarded by the city, with the object of effecting an equitable distribution of contracts among qualified contractors. But distribution must not violate the policy of selecting the most highly qualified contractor to perform the services at a fair and reasonable price.

Written confirmation of solicitation attempts and responses with contractor names and addresses shall be maintained in the city's procurement file.

D. ~~Special Requirements for Public Improvement Contracts.~~ Other Approved Solicitation Methods.

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.~~ Request for Qualifications. An RFQ may be used to determine that competition does not exist for a particular service, or to establish a list of qualified contractors for RFPs or for informal solicitations under these regulations.

a. The RFQ must at least describe the particular specialty desired, the qualifications the contractor must have in order to be considered, and the evaluation factors and their relative importance. The RFQ may require information including, but not limited to, the contractor's particular capability to perform the required services; the number of experienced staff available to perform the required services, including specific qualifications and experience of personnel; a list of similar services the contractor has completed with references concerning past performance; and any other information necessary to evaluate contractor qualifications.

b. A qualifications pre-submission meeting (voluntary or mandatory) may be held for all interested contractors to discuss the proposed services. The RFQ must include the date, time, and place of the meeting.

c. Unless the RFQ establishes that competition does not exist, each contractor qualified under an RFQ will receive a notice (or other materials as appropriate) of any required services and have an opportunity to submit a proposal or quote in response to the city's subsequent RFP.

2. ~~The notice shall state that the public hearing is for the purpose of taking comments on the city's draft findings for an exemption from the standard solicitation method. At the time of the notice, copies of the draft findings shall be made available to the public.~~ Price Agreements. The City may enter into Price Agreements for personal services. Such Price Agreements shall be solicited as otherwise required by these regulations based on the maximum contract price.

3. Cooperative Procurement. The city may contract for personal services pursuant to a cooperative procurement in compliance with OAR 137-046-0400 to 137-046-0480.

E. ~~Commencement of Solicitation Prior to Approval.~~ A solicitation may be issued prior to the approval of a special exemption under this section; provided, that the closing of the solicitation may not be earlier than five days after the date of the hearing at which the city council approves the exemption. If the 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. ~~[Ord. 2618, 3-7-05. Code 2001 § 34.07.]~~ PSC Selection by Negotiation.

The purchasing manager may procure personal services with contractors through direct negotiation in any of the following circumstances:

1. The contract price is not more than \$75,000, provided that the chosen contractor is prequalified.

2. The nature of the work is not project-driven but requires an ongoing, long-term relationship of knowledge and trust. Examples of such work include insurance brokerage/agent of record services, medical services, and audit services.

3. The Contractor possesses unique knowledge and/or expertise in a specialized service area, making competition impractical. Such services can include, but are not limited to, education services, staff coaching, and community relations.

4. A contract for which a non-city funding source, e.g., a grant or a federal, state, or city contract, identifies the contractor in the funding award or makes a funding award conditioned upon the service being performed by a specific contractor. The following must be documented to the procurement file:

a. The name of the external funding source;

- b. The background on how the funding source selected the contractor(s); and
- c. A copy of the funder's document naming the contractor.
- 5. The contract is entered into pursuant to an emergency declared by the city manager.
- 6. The contract is for interim staff or temporary staffing services.
- 7. The contract is for legal services. For the purposes of this section, "legal services" means attorney and paralegal services for transactional work, litigation, investigations, advice, reports, and other services requiring legal advice or work by an attorney, and includes all related costs or fees.
- F. PSC Contract Requirements. City PSCs must contain the mandatory contract provisions set forth in ORS 279B.020(5), 279B.220, 279B.230, 279B.235(3), and, if the contract involves lawn or landscape maintenance, ORS 279B.225.
- G. PSC Contract Amendments.
  - 1. The city may amend any Personal Services Contract if the city, in its sole discretion, determines that the amendment is within the scope of the solicitation and that the amendment would not materially impact the field of competition for the personal services described in the final form of the original solicitation documents. In making this determination, the city shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the solicitation document if the city reasonably believes that the number of offerors would not significantly increase if the solicitation document were re-issued to include the additional services.
  - 2. The city may amend any contract if the additional services are required by reason of existing or new laws, rules, regulations, or ordinances of federal, state, or local agencies which affect performance of the original contract.
  - 3. All amendments to contracts must be in writing, must be signed by an authorized representative of the consultant and the city, and must receive all required approvals before the amendments will be binding on city.

4. A single contract amendment or cumulative amendments may not increase the total contract price to greater than 110 percent of the original contract price, except in any of the following circumstances:

a. The purchasing manager determines that the need for the amendment is caused by unforeseen conditions or circumstances and conducting a new procurement would result in unreasonable additional cost or delay. For the purposes of this section:

i. An “unforeseen condition or circumstance” is one that is discovered after the original contract was solicited and awarded that could not have been reasonably anticipated as part of the original solicitation or contract.

ii. “Unreasonable additional cost or delay” means that the cost of conducting a new procurement and/or awarding a new contract is likely to exceed the cost of a contract amendment and/or that the delay caused by conducting a new procurement would cause a break in service, require repetition of earlier work, or cause a delay in completion of the contract that would be detrimental to the city program or service benefiting from the contract.

b. The purchasing manager determines that the amendment, additional scope, or alternative work was contemplated in the original procurement and provided for in the original contract. (Examples include a solicitation and contract that provides for renewal or extension for subsequent terms or that specifically allows for alternates or additional work.)

c. The amendment is presented to the city council as part of the council’s agenda and the council approves the amendment based upon the circumstances of the particular contract. The purchasing manager shall set forth the justification for the amendment in a supplementary staff report enclosed with the council’s consent agenda.

5. *Amendments Requiring Additional Authority.* An amendment to a contract that increases the original contract price by more than 10 percent requires city manager approval. An amendment to a contract approved by the city manager that would cause the total contract price to exceed the city manager’s delegated authority to approve contracts under these regulations or the City of Newberg Purchasing Policy must be approved by the city council except as provided in these regulations or the City of Newberg Purchasing Policy.

### 3.25.080 Solicitation methods for certain 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 established by the city council:

A. Purchases from Nonprofit Agencies for Disabled Individuals. The city shall give a preference to goods, services, and public improvements available from qualified nonprofit agencies for ~~disabled~~ individuals with disabilities 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. Nontransportation Public Improvements up to \$150,000. Public improvement contracts other than contracts for a highway, bridge or other transportation project for which the estimated contract price does not exceed \$150,000 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.~~

1. ~~4.~~ City-Funded Privately Constructed Public Improvements. The city 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's contribution to the project may not exceed 25 percent of the total cost of the project;
- b. The city must comply with all applicable laws 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 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 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 for all claims for payment, injury, or property damage arising from or related to the construction of the project.

2. ~~5.~~ *Public Improvement Contracts for Construction, Maintenance, and Repair of Public Rights-of-Way Where the Work Is Adjacent to a Private Developer's Construction Work.* The ~~City of Newberg~~city is authorized to sole source city public improvement contracts for construction, maintenance, and repair of public rights-of-way (or utilities located in city rights-of-way) where the work to be done under the public improvement contract is adjacent, connecting or in close proximity (i.e., six blocks) to where a private developer is having construction work done on infrastructure in their development.

~~C. — Personal Services Contracts — Award as Goods and Services. 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 through 279B.085.~~

~~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 \$150,000. Contracts for personal services for which the estimated contract price does not exceed \$150,000 may be awarded using an informal solicitation for proposals.~~

~~3. — *Seventy-Five Thousand Dollar 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 \$150,000 over the full term, including optional renewals, may be awarded under any method deemed in the government's best interest by the solicitation agent, including by direct appointment.~~

~~5. — *Personal Service Contracts for Continuation of Work.* Contracts of not more than \$150,000 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.~~

~~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 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.~~

~~2. — *Energy Savings Performance Contracts.* Unless the contract qualifies for award under another classification in this section, contractors for energy savings performance contracts shall be selected under a request for proposals in accordance with the city'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 \$150,000. The procurement of goods or services, or goods and services, for which the estimated contract price does not exceed \$150,000 may be made under an informal solicitation for either quotes or proposals.~~

C. ~~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'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 \$10,000. Contracts of any type for which the contract price does not exceed \$10,000 without a record of the method of award.~~

4. ~~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.

5. ~~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.

6. ~~7. Government-Regulated Items.~~ Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.

7. ~~8. Insurance.~~ Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.

8.     ~~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.

~~10. — *Sole Source Contracts.* Contracts for goods or services which are available from a single source may be awarded without competition.~~

9.     ~~11.~~ *Specialty Goods for Resale.* Contracts for the purchase of specialty goods by the city for resale to consumers.

10.    ~~12.~~ *Sponsor Agreements.* Sponsorship agreements under which the city receives a gift or donation in exchange for recognition of the donor.

11.    ~~13.~~ *Structures.* Contracts for the disposal of structures located on city-owned property.

12.    ~~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.

13.    ~~15.~~ *Temporary Extensions or Renewals.* ~~Contracts~~ With the exception of Price Agreements, contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and nonrenewable, or recently expired, contract, other than a contract for public improvements.

14.    ~~16.~~ *Temporary Use of City-Owned Property.* The city may negotiate and enter into a license, permit, or other contract for the temporary use of city-owned property without using a competitive selection process if:

- a.     The contract results from an unsolicited proposal to the city based on the unique attributes of the property or the unique needs of the ~~proposer~~ offeror;
- b.     The proposed use of the property is consistent with the city's use of the property and the public interest; and
- c.     The city reserves the right to terminate the contract without penalty, in the event that the city determines that the contract is no longer consistent with the city's present or planned use of the property or the public interest.

15.     ~~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's needs and can be purchased for a lower cost than substantially similar 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. The purchasing manager shall record the findings that support the purchase.

16.     ~~18.~~ *Utilities.* Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.

D.     ~~G.~~ Contracts Required by Emergency Circumstances.

1.        *In General.* When an official with authority to enter into a contract on behalf of the city determines that immediate execution of a contract within the official's authority is necessary to prevent substantial damage or injury to persons or property, the official may execute the contract without competitive selection and award or city council approval, but, where time permits, the official shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.

2.        *Reporting.* An official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances:

a.        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 and the public; and

b.        Notify the city council of the facts and circumstances surrounding the emergency execution of the contract.

3.        *Emergency Public Improvement Contracts.* A public improvement contract may only be awarded under emergency circumstances if the 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 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 city council may waive the requirement for all or a portion of required performance and payment bonds.

E.     ~~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 chapter.

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.

2.       The price of the goods or services must be established under ~~price agreements~~ 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.

4.       If a single purchase of goods or services exceeds \$150,000, 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. This subsection does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.

F.     ~~I.~~ Cooperative Procurement Contracts. Cooperative procurements may be made without competitive solicitation as provided in the Oregon Public Contracting Code.

G.     ~~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. Factors that may be considered by the solicitation agent include costs of sale, administrative costs, and public benefits to the city. 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 department or public agency.
  - b. *Auction*. By publicly advertised auction to the highest bidder.
  - c. *Bids*. By publicly 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 which is recognized by the Internal Revenue Service as an 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 \$500.00, 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 \$100.00 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, a police officer may purchase the handgun that the police officer 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 at least 30 days prior to the officer's expected retirement date and request an appraisal of the handgun. Upon receipt of the appraisal fee from the officer, the city 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. However, the purchasing manager is delegated the authority to present the handgun that the police officer used at the time of retirement to the police officer as a gift from the city.

5. *Restriction on Sale to City Employees.* City 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 shall make, execute, and deliver a bill of sale signed on behalf of the city, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.

#### H. ~~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 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~~10,000.* Contracts under which the solicitation agent estimates that receipts by the city will not exceed \$~~5,000~~10,000 in any fiscal year and \$~~50,000~~100,000 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 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. [Ord. 2856 § 2, 2-18-20; Ord. 2705 § 4, 10-6-08; Ord. 2618, 3-7-05. Code 2001 § 34.08.]

### **3.25.090 Informal solicitation procedures.**

The city 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 ~~venders~~contractors, 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 a 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~~bidder 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, based on the criteria for award.

3. *Records.* A written record of all persons solicited and offers received shall be maintained for at least six years after award. 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 or proposals.

B. Qualified Pools.

1. *General.* To create a qualified pool, the purchasing manager may invite prospective contractors to submit their qualifications to the city 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 republished at least once per year and shall be posted at the city'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.

4. *Contract.* The operation of each qualified pool may be governed by the provisions of a pool contract to which the city and all pool participants are parties. The contract shall contain all terms required by the city, 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 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 contract.

5. *Use of Qualified Pools.* Subject to the provisions of these regulations concerning methods of solicitation for classes of contracts, the solicitation agent 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 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 city council in the manner described in NMC 3.25.130. [Ord. 2618, 3-7-05. Code 2001 § 34.09.]

### **3.25.100 ~~Use of brand name specifications for public improvements~~[\[Reserved\]](#).**

~~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; 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 of Purchasing Manager. The purchasing manager 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) of this section.~~

~~C. ——— Brand Name or Equivalent. Nothing in this section prohibits the city from using 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, or from establishing a qualified product list. [Ord. 2618, 3-7-05. Code 2001 § 34.10.]~~

**3.25.110 Bid, performance and payment bonds [\[Reserved\]](#).**

~~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 \$75,000 shall require bid security. Bid security for a request for proposal may be based on the city’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 and any public agency that is providing funding for the project for which the contract was awarded.~~

~~3. — Cash in Lieu. The purchasing manager may permit the successful offeror to submit a cashier's check or certified 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 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 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 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 NMC 3.25.080(G), unless the city council requires otherwise. [Ord. 2618, 3-7-05. Code 2001 § 34.11.]~~

### **3.25.120 Electronic advertisement of public improvement contracts**[\[Reserved\]](#).

~~In lieu of publication in a newspaper of general circulation in the city 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'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 metropolitan area and will provide cost savings for the city, or that the use of electronic publication will be more effective than publication in a newspaper of general circulation in the city metropolitan area in encouraging meaningful competition. [Ord. 2618, 3-7-05. Code 2001 § 34.12.]~~

### **3.25.130 Appeal of debarment or prequalification decision.**

A. Right to Hearing. Any person who has been debarred from competing for city contracts or for whom prequalification has been denied, revoked, or revised may appeal the city's decision to the governing body as provided in this section.

B. Filing of Appeal. The person must file a written notice of appeal with the city'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 City Council. Immediately upon receipt of such notice of appeal, the purchasing manager shall notify the 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 shall notify the appellant of the time and place of the hearing;

2. The 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 city council shall consider de novo the notice of debarment, or the notice of denial, revocation, or revision of prequalification, the ~~standards of responsibility~~ criteria upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.

E. Decision. The city council shall set forth in writing the reasons for the decision.

F. Costs. The city council may allocate the city council's costs for the hearing between the appellant and the city. The allocation shall be based upon facts found by the city council and stated in the city council's decision that, in the city council's opinion, warrant such allocation of costs. If the city council does not allocate costs, the costs shall be paid by the appellant, if the decision is upheld, or by the city, if the decision is overturned.

G. Judicial Review. The decision of the city council may be reviewed only upon a petition in the circuit court of Yamhill County filed within 15 days after the date of the city council's decision. [Ord. 2618, 3-7-05. Code 2001 § 34.13.]

Document comparison by Workshare Compare on Monday, January 31, 2022  
10:02:12 AM

Input:	
Document 1 ID	netdocuments://4869-7052-7494/1
Description	City of Newberg Code Section 3.25
Document 2 ID	netdocuments://4869-7052-7494/7
Description	City of Newberg Code Section 3.25
Rendering set	Standard

Legend:	
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Split/Merged cell	
Padding cell	

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Deletions	237
Moved from	1
Moved to	1
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Format changes	0
Total changes	465



# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: February 7, 2022

Order \_\_\_\_ Ordinance \_\_\_\_ Resolution XX Motion \_\_\_\_ Information \_\_\_\_  
No. No. No. 2022-3799

SUBJECT: NEWBERG PURCHASING POLICY

Staff: James Walker  
Department: City Attorney  
File Number:

Business Session

Order on Agenda

\*\*\*ADMINISTRATIVE HEARING\*\*\*

**RECOMMENDATION:** Approve Resolution 2022-3799

## EXECUTIVE SUMMARY:

The Council acts as the City's local contract review board and is authorized under Oregon law to adopt public contracting rules and procedures. A Purchasing Policy has been prepared for the City to follow in conjunction with NMC 3.25 to procure various goods and services.

## FISCAL IMPACT:

## STRATEGIC ASSESSMENT:

2020 Council Goals:

1. Change operational culture to one focused on Customer Service and act to Resolve Ongoing Legal Disputes
2. Further develop an operational culture that adopts and cherishes Diversity, Equity, and Inclusion as core values.
3. Promote development of housing affordability such as houselessness, transitional housing, workforce housing.
4. Create and support an Urban Renewal Plan and Authority
5. Collaborate with local partners and with entities like ICLEI in the development of a Sustainability program.

# ***RESOLUTION No. 2022-3799***

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## **A RESOLUTION APPROVING A NEW CITY OF NEWBERG PURCHASING POLICY**

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### **RECITALS:**

1. Whereas, under ORS 279A.060, the Council is the City's local contract review board.
2. Whereas, ORS 279A.065 gives a contracting agency the authority to adopt its own rules of procedure for public contracts.
3. Whereas, ORS 279A.070 gives a contracting agency authority to adopt rules necessary to carry out the provisions of the Public Contracting Code and requires a contracting agency authorized to enter into personal services contracts to create procedures to screen and select persons to perform personal services.

### **THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. The Council, acting as the City's local contract review board, adopts the Purchasing Policy and Procedures attached hereto as Exhibit A.
2. Exhibit A is adopted and by this reference is incorporated.

➤ **EFFECTIVE DATE** of this resolution is the day after February 7, 2022.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 7th day of February, 2022.

\_\_\_\_\_  
Sue Ryan, City Recorder

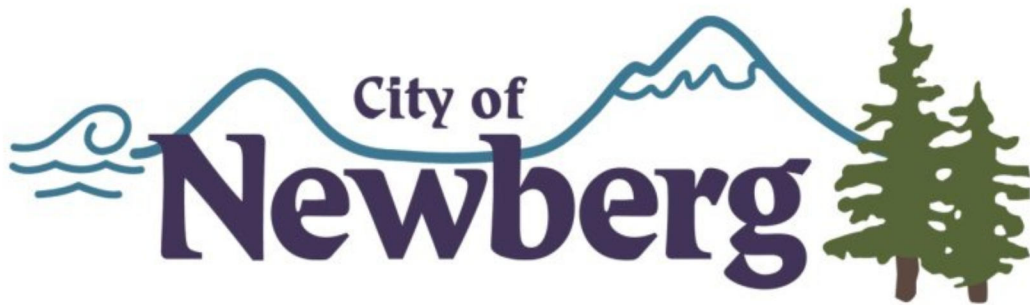
**ATTEST** by the Mayor this 10<sup>th</sup> day of February, 2022.

\_\_\_\_\_  
Rick Rogers, Mayor

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# PURCHASING POLICY AND PROCEDURES

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## **1. Introduction**

### **1.1 Purpose**

This policy governs contracts entered into and purchases made by the City of Newberg (“City”). It is the policy of the City to utilize public contracting and purchasing practices that maximize the efficient use of City resources and the purchasing power of City 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 purchasing needs of the City as they emerge in various industries.

### **1.2 Interpretation of Purchasing Policy**

Procurement responsibilities for the City are established in this document in accordance with the requirements of the City’s Municipal Code, Ordinance No 2005-2618 and Oregon State Revised Statutes Chapters 279A, 279B, and 279C (the “Public Contracting Code”) and the Attorney General’s Model Public Contracting Policies (“Model Policies”).

1. It is the City’s intent that this policy be interpreted to authorize the full use of all contracting and purchasing powers described in ORS Chapters 279A, 279B and 279C.
2. The Model Policies adopted under ORS 279A.065 shall apply to the contracts and purchases of the City to the extent they do not conflict with the policies and regulations adopted by the City.
3. In the event of a conflict between any provisions of this policy and the Model Policies, the provisions of this policy shall prevail.

### **1.3 Specific Provisions’ Precedence over General Provisions.**

In the event of a conflict between the provisions of this policy, the more specific provision shall take precedence over the more general provision.

### **1.4 Conflict with Federal Statutes and Regulations.**

Except as otherwise expressly provided in ORS Chapters 279A, 279B and/or 279C, applicable federal statutes and regulations govern when federal funds are involved.

## **2. Scope**

These purchasing policies apply to all City departments. All City purchases are subject to the authority of City of Newberg Public Contracting Policies, the policies and ordinances of City of Newberg and the laws of the State of Oregon.

### **3. Authority**

The City Council comprises the Local Contract Review Board for the City. It has determined the policies for the City's public contracts and personal service agreements. Public contracts include any purchase, lease or sale of real or personal property, public improvements or services other than agreements exclusively for personal service. The City follows its public contracting rules codified in NMC Chapter 3.25 as well as the Public Contracting Code and the Attorney General's Model Public Contract Policies which include:

ORS 279A	General Provisions
ORS 279B	Public Procurements
ORS 279C	Public Improvements
Division 46	Provisions Related to Public Contracting
Division 47	Procurements for Goods or Services
Division 48	Consultant Selection: Architectural, Engineering and Land Surveying Services and Related Services Contracts
Division 49	Provisions Related to Public Contracts for Construction Services

Copies of these policies are available at <https://www.codepublishing.com/OR/Newberg/>.

### **4. Local Preference**

When possible, the purchasing manager shall use solicitation documents and evaluation criteria that: 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 give preference to goods that are certified to be made from recycled or refurbished products when such goods are available and meet specifications.

For purposes of awarding a public contract, the purchasing manager shall give preference to goods or services that have been manufactured or produced in Yamhill County if (a) price, fitness, availability, and quality are otherwise equal and (b) application of the preferences stated in the paragraph above, and any other preferences required by the Oregon Public Contracting Code are not applicable.

### **5. MWESB**

In accordance with ORS 279A.100 and OAR 125-246-0200, the purchasing manager may limit competition for a public contract estimated to cost \$50,000 or less to contracting entities owned or controlled by a Certification Office for Business Inclusion and Diversity ("COBID")-certified or minority-owned, woman-owned, service-disabled veteran owned, or emerging small business ("MWESB") business. When making a direct award of contract or seeking responses to a solicitation for an intermediate procurement, staff is encouraged to review the COBID Certification Directory for firms in the category of work being solicited.

## **6. Responsibility Overview**

### **6.1 Requesting Department's Responsibilities:**

- Verify funds are available for the expenditure and within budget authority with authorization to expend by the Department Supervisor or Department Head.
- Purchases made with procurement card (P-card) must be made within cardholders authorized limit and in accordance with the City's Purchasing Card policy.
- Prepare and provide required documentation for authorization to purchase the goods or services.
- Inspect materials when received or verify that services were provided. Assure goods are what was ordered, are in visually working order and undamaged. Provide proof of receipt.

### **6.2 Vendor's Responsibilities:**

Before issuing payment under any contract, the City must make sure all vendors (including contractors and consultants):

- Attach to the contract a public liability insurance policy listing the City as an additional insured to the policy.
- Attach to the contract proof of Workers Compensation insurance for all subject workers and contractors.
- Possess a business license issued by the City of Newberg, if the vendor is located within or performs services inside Newberg's city limits. Vendors and contractors who sell goods or services to the City that do not exceed \$500 need not possess a business license from the City of Newberg.

### **6.3 Finance Department's Responsibilities:**

- Support City departments in the procurement process including providing training, as necessary.
- Maintain a functional procurement process including a system for authorization of purchases, timely payment of vendors, and accurate accounting for costs of goods and services.
- Administer the City's Procurement Card (P-Card) process including maintaining a current policy and procedures.
- Maintain and verify records for all vendors, including up to date W-9 forms, business licenses, and insurance coverages.

### **6.4 City Legal Counsel's Responsibilities:**

- Support City departments in the procurement process.
- Provide timely contract review and interpretations of purchasing requirements, terms, and conditions.



## 6.5 City Manager's Responsibilities:

- The City Manager shall be the purchasing manager for the City and is hereby authorized to issue all solicitations and to award all City contracts for which the contract price does not exceed one-hundred thousand dollars (\$100,000) and the proposed expenditure is included in the current fiscal year budget. The purchasing manager shall hear all solicitation and award protests.
- City Manager may delegate and sub-delegate any or all purchasing duties by written directive.
- Whenever the Oregon State Legislative Assembly enacts laws that cause the Attorney General to modify its Model Policies, the City Manager shall review and recommend to the City Council any modifications required to ensure compliance with statutory changes.

## 6.6 City Council Responsibilities:

The City Council is designated as the local contract review board for the City and has all the rights, powers, and authorities necessary to carry out the provisions of these Policies, the Public Contracting Code, and/or the AG Model Policies.

## 7. Purchasing Thresholds

As the City's Purchasing Manager, the City Manager delegates purchasing authorities for the City as follows:

Type of Purchase <sup>1</sup>	Total Purchase Amount	Process	PO Required?	Signing Authority	Documentation Required
<a href="#">Goods and Services</a>	\$0 up to \$999	<a href="#">Direct Purchase</a>	No	N/A	None
	\$1,000 to \$9,999	<a href="#">Small Procurements</a>	Yes	Department Head or Department Head's designee <sup>2</sup>	Basis of selection and/or documentation of verbal quotes
	\$10,000 - \$149,999	<a href="#">Intermediate Procurements</a>	Yes	Department Head (up to \$50,000) City Manager (up to \$100,000) City Council (above \$100,000)	Written quotes
	\$150,000 and above	<a href="#">Large Procurements</a>	Yes	City Council	Formal solicitation documents
<a href="#">Personal Services (Actuaries, Financial Advisors, Legal Counsel, Interpreters, etc.)</a>	See Personal Services Rules	<a href="#">Direct Selection</a>	Yes	Department Head	Basis of selection and/or documentation of quotes
	\$0- \$149,999	<a href="#">Informal Solicitation</a>	Yes	City Manager	Written quotes
	\$150,000 and above	<a href="#">Formal Solicitation</a>	Yes	City Council	Formal solicitation documents

<sup>1</sup> These processes represented within this table are considered standard procurement types. Other procurement processes exist where there is an allowable exception to competitive bidding rules. These processes are described in detail [here](#).

<sup>2</sup> Designee appointments must be reviewed and updated (or renewed) annually.

Type of Purchase <sup>1</sup>	Total Purchase Amount	Process	PO Required?	Signing Authority	Documentation Required
<a href="#">Professional Services</a> (A/E, Land Surveying, and Related Services)	\$0-\$99,999	<a href="#">Direct Selection</a>	Yes	Department Head (up to \$50,000) City Manager (up to \$100,000)	Basis of selection and/or documentation of quotes
	\$100,000 - \$249,999	<a href="#">Informal Solicitation</a>	Yes	City Council	Written quotes
	\$250,000 and above	<a href="#">Formal Solicitation</a>	Yes	City Council	Formal solicitation documents
<a href="#">Public Improvements</a>	\$0-\$4,999	<a href="#">Direct Selection</a>	Yes	Department Head	Basis of selection and/or documentation of quotes
	\$5,000 - \$99,999	<a href="#">Informal Solicitation</a>	Yes	City Manager	Written quotes
	\$100,000 and above	<a href="#">Formal Solicitation</a>	Yes	City Council	Formal solicitation documents

Oregon’s Public Contracting Code states that a contracting agency cannot artificially divide or fragment a procurement so as to qualify for a particular type of procurement (see e.g., ORS 279B.065(2)). This prohibits breaking a purchase into “component units” (e.g., separate hoses from a power washer to get the price below the purchasing limit).

## **8. Purchasing Goods and/or Services**

Goods and/or services includes the purchase of supplies, equipment, materials, and any personal property, including any tangible, intangible, and intellectual property and rights and licenses in relation thereto, and services, other than personal services and professional services as defined within this policy.

### **8.1 Direct Purchases (Less than or Equal to \$1,000):**

Contracts or purchases of goods or services with a contract price less than \$1,000 can be purchased directly by authorized personnel and are not subject to competitive bidding or public notice requirements.

Documentation required: None

### **8.2 Small Procurements (More than \$1,000 and less than or equal to \$10,000):**

Contracts or purchases of goods or services with a contract price greater than \$1,000 and less than or equal to \$10,000 are small procurements. Small procurements are not subject to competitive purchasing requirements and no public notice is required.

1. For small procurements of goods or services, the purchaser may use any procurement method the purchaser deems practical or convenient, including informal verbal quotes, direct negotiation or direct award. Purchasers conducting small procurements should select vendors that provide the most advantageous terms for the City, taking into account price, experience, expertise, functionality, suitability, and other relevant factors.

2. Vendors selected should meet all vendor requirements.
3. A small procurement contract awarded may be amended to exceed \$10,000 only in accordance with OAR 137-047-0800, provided that the cumulative amendments do not increase the total contract price by more than ten percent (10%) of the original contract price. An amendment that increases the original contract by more than ten percent (10%) requires City Manager approval.
4. Documentation required:
  - a. Purchase Order
  - b. Description of selection method and/or documentation of verbal quotes

### **8.3 Intermediate Procurements (More than \$10,000 and less than or equal to \$150,000):**

Contracts for goods or services with a contract price greater than \$10,000 and less than or equal to \$150,000 are intermediate procurements.

1. Intermediate procurements shall be by informal written solicitation (minimum of three (3) written quotes). If the purchaser determines three (3) qualified providers are not reasonably available, fewer shall suffice if the reasons and efforts made to obtain proposals are documented in the procurement file.
2. The purchaser may negotiate with an offeror to clarify an informal written solicitation, or to make modifications that will make the quote, proposal or solicitation acceptable or more advantageous to the City.
3. If a contract is awarded, the award shall be made to the offeror whose informal written solicitation will best serve the interests of the City, taking into account price or any other relevant considerations, including but not limited to, experience, expertise, product functionality, suitability for a particular purpose, delivery and contractor responsibility.
4. Intermediate procurement contracts may be amended if the cumulative amendments do not increase the total contract price by more than ten percent (10%) of the original contract price and only in accordance with OAR 137-047-0800. An amendment that increases the original contract by more than ten percent (10%) requires City Manager/City Council approval (City Council if over \$100,000).
5. Documentation required:
  - a. Purchase order
  - b. Authority for the purchasing transaction and basis for using the intermediate procurement process
  - c. Written quote sheet

- d. Copies of all quotes received (at least three are required; but if three were not reasonably available – then the procurement file must include a description of how purchaser tried to obtain the quotes and reason(s) that minimum three were not obtained)
- e. Evaluation of quotes (e.g., scoring sheets, evaluation criteria, selection considerations)
- f. Copy of contract document (signed by all parties)
- g. Any amendments or addenda to the contract (signed by all parties)
- h. Copy of minutes indicating Council approval, if applicable

#### **8.4 Large Procurements (More than \$150,000):**

Contracts for goods or services with a contract price greater than \$150,000 are large procurements.

- 1. The purchaser shall use competitive sealed bidding as set forth in ORS 279B.055, or competitive sealed proposals as set forth in ORS 279B.060.
- 2. Documentation required:
  - a. Purchase order
  - b. Authority for the purchasing transaction and basis for using the large procurement process
  - c. Copy of request for bids/proposals
  - d. Copies of bids/proposals received
  - e. Evaluation of bids (must include scoring criteria and scoring sheets)
  - f. Copy of public notice of the solicitation
  - g. Copy of notice of intent to award
  - h. Copy of contract document (signed by all parties)
  - i. Any amendments or addenda to the contract (signed by all parties)
  - j. Copy of minutes indicating Council approval
  - k. Protests received (if any) and City response

## **9. Purchasing Personal Services**

Personal services are services other than professional services that require specialized skill, knowledge, and resources in the application of technical or scientific expertise or in the exercise of professional, artistic, or

management discretion or judgment, and for which the quality of services depends on attributes that are unique to the services provider.

### **9.1 Requests for Qualifications (Optional)**

At the purchaser's discretion, a request for qualifications may be used to determine whether competition exists to perform the needed personal services or to establish a non-binding list of qualified contractors for individual negotiation, informal written solicitations, or requests for proposals.

1. A request for qualifications shall describe the particular type of personal services that will be sought, the qualifications the contractor must have to be considered, and the evaluation factors and their relative importance.
2. A request for qualifications may require information including, but not limited to:
  - a. The contractor's capability to perform the required personal services;
  - b. The number of experienced personnel available to perform the required personal services;
  - c. The specific qualifications and experience of personnel;
  - d. A list of similar personal services the contractor has completed;
  - e. References concerning past performance;
  - f. Contractor responsibility; and
  - g. Any other information necessary to evaluate the contractor's qualifications.
3. A voluntary or mandatory qualifications pre-submission meeting may be held for all interested contractors to discuss the proposed personal services. The request for qualifications shall include the date, time and location of the meeting.
4. Unless the responses to a request for qualifications establish that competition does not exist, the request for qualifications is canceled, or all responses to the request for qualifications are rejected, and all respondents who meet the qualifications set forth in the request for qualifications shall receive notice of any required personal services and have an opportunity to submit a proposal in response to request for proposals.

### **9.2 Direct Selection**

Personal services may be procured through direct selection in the following circumstances, provided that the services to be provided are within a budgetary appropriation or approved by City Council:

1. The contract price is not more than \$75,000, provided that the chosen contractor is prequalified.

2. The nature of the work is not project-driven but requires an ongoing, long-term relationship of knowledge and trust. Examples of such work include insurance brokerage/agent of record services, medical services, and audit services.
3. The contractor possesses unique knowledge, expertise, or both, in a specialized service area, making competition impractical. Such services can include, but are not limited to, education services, staff coaching, and community relations.
4. A contract for which a non-City funding source, e.g., a grant or federal, state, or city contract, identifies the contractor in the funding award or makes a funding award conditioned upon services being performed by a specific contractor. The following must be documented to the procurement file: the name of the external funding source; the background on how the funding source selected the contractor; and a copy of the funder's document naming the contractor.
5. The contract is entered into pursuant to an emergency (see Emergency Procurements).
6. The contract is for interim staff or temporary staffing services.
7. The contract is for legal services. For the purposes of this section, "legal services" means attorney and paralegal services for transactional work, litigation, investigations, advice, reports, and other services requiring legal advice or work by an attorney, and includes all related costs or fees.
8. Personal services contracts procured by direct negotiation pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than ten percent (10%) of the original contract price. An amendment that increases the original contract by more than 10 percent (10%) requires City Manager/City Council approval (City Council if over \$100,000).
9. Documentation required:
  - a. Purchase order (if over \$1,000), authority for the purchasing transaction and basis for using the direct selection process.
  - b. Documentation of the method used for the procurement. For example: a copy of the solicitation document (if any); list of prospective suppliers/contractors who were notified of the procurement opportunity; record of all negotiations and communications regarding the procurement; and a general basis for making the final selection.
  - c. Contract (signed by all parties).
  - d. Any amendments or addenda to the contract (signed by all parties).

### **9.3 Informal Written Solicitations (Less than \$150,000)**

An informal written solicitation process may be used for personal services when the contract price is less than \$150,000.

1. An informal written solicitation shall solicit proposals from at least three (3) qualified providers. If the purchaser determines three (3) qualified providers are not reasonably available, fewer shall suffice if the reasons and efforts made to obtain proposals are documented in the procurement file. Regardless of the number of proposals received, written confirmation of solicitation attempts and responses with contractor names and addresses must be maintained in the procurement file.
2. The solicitation document shall include:
  - a. The date, time and place that proposals are due;
  - b. A description of personal services sought, or the project to be undertaken;
  - c. Any statement of the time period for which quotes must remain firm, irrevocable, valid and binding on the offeror. If no time is stated in the solicitation document, the period shall be thirty (30) days;
  - d. Any required contract terms or conditions; and
  - e. Any required quote form or format.
3. The informal selection process is intended to be competitive. Selection and ranking of quotes may be based criteria including but not limited to the following:
  - a. Capability to perform the personal services required;
  - b. Experienced staff available to perform the personal services required, including the proposer's recent, current and projected workloads;
  - c. Performance history;
  - d. Approach and philosophy used in providing personal services;
  - e. Fees or costs;
  - f. Geographic proximity to the project or the area where the services are to be performed; and
  - g. Work volume previously awarded by the City, with the object of effecting an equitable distribution of contracts among qualified contractors. But distribution must not violate the policy of selecting the most highly qualified contractor to perform the services at a fair and reasonable price.
4. Personal services contracts procured by informal written solicitations pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than ten percent (10%) of the original contract price. An amendment that increases the original contract

by more than 10 percent (10%) requires City Manager/City Council approval (City Council if over \$100,000).

5. Documentation required:

- a. Purchase order.
- b. Authority for the purchasing transaction and basis for using the intermediate procurement process.
- c. Copy of quote document (e.g., request for quotes/proposals/qualifications, invitations to bid).
- d. Copies of all quotes received.
- e. Evaluation of quotes (e.g., scoring sheets, evaluation criteria, selection considerations).
- f. Copy of contract document (signed by all parties).
- g. Any amendments or addenda to the contract (signed by all parties).
- h. Copy of minutes indicating Council approval, if applicable

**9.4 Formal Solicitation - Requests for Proposals (More than \$150,000).**

A formal request for proposals or bids shall be used to procure personal services when the contract price is \$150,000 or more.

1. The purchaser shall use competitive sealed bidding as set forth in ORS 279B.055, or competitive sealed proposals as set forth in ORS 279B.060.
2. Documentation required:
  - a. Purchase order
  - b. Authority for the purchasing transaction and basis for using the large procurement process
  - c. Copy of request for bids/proposals
  - d. Copies of bids/proposals received
  - e. Evaluation of bids (must include scoring criteria and scoring sheets)
  - f. Copy of public notice of the solicitation
  - g. Copy of notice of intent to award
  - h. Copy of contract document (signed by all parties)



- i. Any amendments or addenda to the contract (signed by all parties)
- j. Copy of minutes indicating Council approval
- k. Protests received (if any) and City response

## **10. Purchasing Professional Services**

Professional Services includes architectural, engineering, land surveying, photogrammetric, transportation planning, or services related to the planning, design, engineering, or oversight of public improvement projects such as:

- Landscape architectural services;
- Facilities planning services;
- Energy planning services;
- Space planning services;
- Environmental impact studies;
- Hazardous substances or hazardous waste or toxic substances testing services;
- Wetland delineation studies;
- Wetland mitigation services;
- Native American studies;
- Historical research services;
- Endangered species studies;
- Rare plant studies;
- Biological services;
- Archaeological services;
- Cost estimating services;
- Appraising services;
- Material testing services;
- Mechanical system balancing services;
- Commissioning services;
- Project management services;
- Construction management services and owner's representative service; and/or
- Land use planning services.

### **10.1 Direct Appointment (Less than \$100,000)**

The City may enter into a contract directly with a consultant providing professional services without following the selection procedures set forth elsewhere in these Policies if:

1. The City finds that an emergency exists (see [Emergency Procurements](#)); or
2. The total estimated fee to be paid under the Contract does not exceed \$100,000; or

3. Where a Project is being continued, as more particularly described below, and where the estimated fee will not exceed \$250,000, and the professional services to be performed under the contract meet the following requirements:
  - a. The services consist of or are related to professional services that have been substantially described, planned or otherwise previously studied under an earlier contract with the same consultant and are rendered for the same project as the professional services rendered under the earlier contract;
  - b. The estimated fee to be made under the contract does not exceed \$250,000; and
  - c. The City used a formal selection procedure applicable to the selection of the consultant at the time of original selection to select the consultant for the earlier contract; or
4. Where a Project is being continued, as more particularly described below, and where the total estimated fee is expected to exceed \$250,000, the professional services to be performed under the contract meet the following requirements:
  - a. The services consist of or are related to professional services that have been substantially described, planned or otherwise previously studied under an earlier contract with the same consultant and are rendered for the same project as the professional services rendered under the earlier contract;
  - b. The City used a formal selection procedure applicable to selection of the consultant at the time of original selection to select the consultant for the earlier contract; and
  - c. The City makes written findings that entering into a contract with the consultant, whether in the form of an amendment to an existing contract or a separate contract for the additional scope of services, will:
    - i. Promote efficient use of public funds and resources and result in substantial cost savings to the City; and,
    - ii. Protect the integrity of the public contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the contract.
5. The City may select a consultant for a contract under this section from the following sources:
  - a. A list of consultants the City creates under OAR 137-048-0120 (List of Interested Consultants; Performance Record);
  - b. Another contracting agency's list of consultants that the contracting agency has created under OAR 137-048-0120 (List of Interested Consultants; Performance Record), with written consent of that contracting agency; or
  - c. All consultants offering the required professional services that the City reasonably

can identify under the circumstances.

6. The City shall direct negotiations with a consultant selected under this section toward obtaining written agreement on:
  - a. The specific scope of the professional services to be provided by the consultant.
  - b. The consultant's performance obligations and performance schedule;
  - c. Payment methodology and a maximum amount payable to the consultant for the professional services required under the contract that is fair and reasonable to the City as determined solely by the City, taking into account the value, scope, complexity and nature of the professional services; and
  - d. Any other provisions the City believes to be in the City's best interest to negotiate.

### **10.2 Informal Solicitations (\$100,000 or more and less than \$250,000)**

An informal written solicitation process may be used for professional services when the contract price is less than \$250,000.

1. An informal written solicitation shall solicit quotes from at least five (5) prospective Consultants. If the purchaser determines five (5) prospective Consultants are not reasonably available, fewer shall suffice if the reasons and efforts to locate available qualified providers are documented in the procurement file. Prospective Consultants must be drawn from the sources listed under Section 9.1.4 above.
2. The solicitation document shall include:
  - a. The date, time and place that proposals are due and other directions for submitting proposals;
  - b. The anticipated contract performance schedule;
  - c. A description of the project for which professional will be required under the resulting contract;
  - d. Conditions or limitations, if any, that may constrain the selected Consultant's ability to provide additional services related to the project, including construction services;
  - e. Criteria upon which the most qualified Consultant will be selected;
  - f. A statement that proposers responding to the RFP do so solely at their expense, and the City is not responsible for any proposer expenses associated with the RFP;
  - g. A statement directing proposers to the protest procedures set forth in OAR 137-048;
  - h. A sample form of contract; and

- i. Any required quote form or format.
3. Selection and ranking of quotes may be based on the following criteria:
  - a. Capability to perform the personal services required;
  - b. Experienced staff available to perform the personal services required, including the proposer's recent, current and projected workloads;
  - c. Performance history;
  - d. Approach and philosophy used in providing personal services;
  - e. Geographic proximity to the project or the area where the services are to be performed; and
  - f. Such other factors deemed appropriate, including a desire to ensure an equitable distribution of work among highly qualified contractors.
4. Professional services contracts procured by informal written solicitations pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than ten percent (10%) over the original contract price. An amendment that increases the original contract by more than 10 percent (10%) requires City Manager/City Council approval (City Council if over \$100,000).
5. Documentation required:
  - a. Purchase order.
  - b. Authority for the purchasing transaction and basis for using the informal solicitation process.
  - c. Copy of quote document (e.g., request for quotes/proposals/qualifications, invitations to bid).
  - d. Copies of all quotes received.
  - e. Evaluation of quotes (e.g., scoring sheets, evaluation criteria, selection considerations).
  - f. Copy of contract document (signed by all parties).
  - g. Any amendments or addenda to the contract (signed by all parties).
  - h. Copy of minutes indicating Council approval, if applicable

### **10.3 Formal Solicitation (Greater than \$250,000).**

A request for proposals shall be used to procure personal services when the contract price is \$250,000 or more.

1. Request for Proposal. The request for proposal shall include:
  - a. Notice of any pre-offer conference, including:
    - i. The time, date and location;
    - ii. Whether attendance at the pre-offer conference is mandatory or voluntary; and
    - iii. A provision that statements made by representatives of the City at the pre-offer conference are not binding unless confirmed by written addendum.
  - b. The form and instructions for submission of proposals, including the location where proposals must be submitted, the date and time by which proposals must be received and any other special information, e.g., whether proposals may be submitted by electronic means;
  - c. The name and title of the person designated for the receipt of proposals and the person designated as the contact person for the procurement, if different;
  - d. A date, time and place that pre-qualification applications, if any, must be filed and the classes of work, if any, for which proposers must be pre-qualified;
  - e. A statement that the City may cancel the procurement or reject any or all proposals;
  - f. The date, time and place of opening;
  - g. The office where the request for proposals may be reviewed;
  - h. A description of the professional services to be procured, the project for which the City is seeking the professional services, the estimated project cost, the estimated time period during which the project is to be completed, the estimated time period in which professional services sought will be performed, and other general background information;
  - i. The RFP evaluation process and the criteria which will be used to select the most qualified proposer, including the weights, points or other classifications applicable to each criterion. If the City does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value.;
  - j. Conditions or limitations, if any, that may constrain or prohibit the selected consultant's ability to provide additional services related to the project, including but not limited to construction services;

- k. Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;
  - l. Reservation of the right to seek clarifications of each proposal;
  - m. Reservation of the right to reject any or all proposals and reservation of the right to cancel the solicitation at any time if doing either would be in the public interest as determined by the City;
  - n. A statement that proposers responding to the solicitation do so solely at their expense, and City is not responsible for any proposer expenses associated with the solicitation;
  - o. If more than one tier of competitive evaluation will be used, a description of the process under which the proposals will be evaluated in the subsequent tiers;
  - p. If contracts will be awarded to more than one professional services contractor, an identification of how the City will determine the number of contracts to be awarded, or that the manner will be left to the City's discretion at time of award;
  - q. If contracts will be awarded to more than one professional services contractor, the criteria to be used to choose from the multiple contracts when acquiring professional services shall be identified;
  - r. The anticipated schedule, deadlines, evaluation process and protest process, including a statement directing proposers to the protest procedures set forth in OAR 137-048;
  - s. A form of sample contract;
  - t. A request for any information the City deems reasonably necessary to permit the City to evaluate, rank and select the most qualified proposer to perform the professional services described in the solicitation;
  - u. The form and amount of any proposal security deemed reasonable and prudent to protect the City's interests;
  - v. All required contract terms and conditions, including the statutorily required provisions in ORS 279B.220, 279B.230 and 279B.235; and
  - w. Any terms and conditions authorized for negotiation and reservation of the right to negotiate a final contract that is in the best interest of the City.
2. The purchaser shall provide public notice of a request for proposals for professional services that includes a brief description of the project, the professional services the City seeks, how and where proposers may obtain a copy of the solicitation, and the deadline for submitting a proposal or response to the solicitation.

- a. Public notice shall be given not less than twenty-one (21) days prior to closing for the request for proposals/bids, unless the purchaser determines that a shorter interval is in the public's interest, or a shorter interval will not substantially affect competition.
  - b. The purchaser shall document the specific reasons for the shorter public notice period in the procurement file.
3. Professional services contracts procured by requests for proposals pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than ten percent (10%) over the original contract price. An amendment that increases the original contract by more than 10 percent (10%) requires City Manager/City Council approval (City Council if over \$100,000).
4. Documentation required:
  - a. Purchase order
  - b. Authority for the purchasing transaction and basis for using the formal solicitation procurement process.
  - c. Copy of request for proposals.
  - d. Copies of proposals received
  - e. Evaluation of proposals (must include scoring criteria and scoring sheets).
  - f. Copy of newspaper notice of the solicitation.
  - g. Copy of notice of intent to award.
  - h. Copy of contract document (signed by all parties).
  - i. Any amendments or addenda to the contract (signed by all parties).
  - j. Copy of minutes indicating Council approval.
  - k. Protests received (if any) and City response.

## **11. Public Improvements**

A Public Improvement is a project for construction, reconstruction, or major renovation on real property, by or for the City. A public improvement does not include projects for which no funds of the City are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or emergency work, minor alteration, or ordinary repair or maintenance necessary to preserve a public improvement.

### **11.1 Informal Solicitation (Less than \$100,000)**

An informal written solicitation process may be used for public improvement contracts when the contract price is less than \$100,000.

1. An informal written solicitation shall solicit quotes from at least three (3) qualified contractors. If the City determines three (3) qualified providers are not reasonably available, fewer shall suffice if the reasons and efforts made to obtain quotes are documented in the procurement file.
2. The solicitation document shall include:
  - a. The date, time and place that quotes are due;
  - b. A description of public improvement sought, or the project to be undertaken;
  - c. Any statement of the time period for which quotes must remain firm, irrevocable, valid and binding on the offeror. If no time is stated in the solicitation document, the period shall be thirty (30) days;
  - d. Selection criteria to be utilized in selecting a contractor and, if criteria are not of equal value, their relative value or ranking;
  - e. Any required contract terms or conditions; and
  - f. Any required quote form or format.
3. Selection and ranking of quotes may be based on the following criteria:
  - a. Capability to perform the public improvement required;
  - b. Experienced staff available to perform the public improvement required, including the proposer's recent, current and projected workloads;
  - c. Performance history;
  - d. Fees or costs;
  - e. Geographic proximity to the project or the area where the public improvements are to be performed; and
  - f. Such other factors deemed appropriate, including a desire to ensure an equitable distribution of work among highly qualified contractors.
4. Public improvement contracts procured by informal written solicitations pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than ten percent (10%) over the original contract price. An amendment that increases the original contract by more than 10 percent (10%) requires City Manager/City Council approval (City Council if over \$100,000).



5. Documentation required:

- a. Purchase order.
- b. Authority for the purchasing transaction and basis for using the informal solicitation process.
- c. Copy of quote document (e.g., request for quotes/proposals/qualifications, invitations to bid).
- d. Copies of all quotes received.
- e. Evaluation of quotes (e.g., scoring sheets, evaluation criteria, selection considerations).
- f. Copy of contract document (signed by all parties).
- g. Any amendments or addenda to the contract (signed by all parties).
- h. Copy of minutes indicating Council approval, if applicable

**11.2 Formal Solicitations (More than \$100,000)**

Public improvements over \$100,000 shall be procured through a formal solicitation process.

1. Invitations to bid must include the following information:

- a. Identification of the public improvement project, including the character of the work, and applicable plans, specifications and other contract documents;
- b. Notice of any pre-bid conference, including the time, date, and location of any pre-bid conference; whether attendance will be voluntary or mandatory; and that statements made by the City's representatives at the conference are not binding upon the City unless confirmed by written addendum;
- c. The deadline for submitting mandatory prequalification applications and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;
- d. Instructions and information concerning the form and submission of bids, including the address of the office to which bids must be delivered, any bid or proposal security requirements, and any other required information or special information (e.g., whether bids may be submitted by electronic means);
- e. Time and date by which the bids must be received.
- f. The time, date, and place of bid opening;
- g. The time and date of closing after which the City will not accept bids;

- h. The office where the specifications for the work may be reviewed;
- i. A statement that each bidder to an ITB must identify whether the bidder is a “resident bidder” as defined in ORS 279A.120;
- j. Name and title of the person designated to receive bids and the contact person for the procurement, if different.
- k. If the contract resulting from a solicitation will be a contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148), a statement that no bid will be received or considered by the City unless the bid contains a statement by the bidder as a part of its bid that "Contractor agrees to be bound by and will comply with the provisions of 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148."
- l. A statement that the City will not receive or consider a bid for a Public Improvement Contract unless the bidder is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as specified in OAR 137-049-0230;
- m. Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;
- n. Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-049-0440(3));
- o. How the City will notify bidders of addenda and how the City will make addenda available (See OAR 137-049-0250); and
- p. When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in OAR 137-049-0360;
- q. A statement that the City may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, including the requirement to demonstrate the bidder's responsibility under ORS 279C.375(3)(b), and may reject for good cause all bids after finding that doing so is in the public interest;
- r. The anticipated solicitation schedule, deadlines, protest process and evaluation process, if any;
- s. Evaluation criteria, including the relative value applicable to each criterion, that the City will use to determine the responsible bidder with the lowest responsive bid (where Award is based solely on price) or the responsible proposer or proposers with the best responsive proposal or proposals (where use of competitive proposals is authorized under ORS 279C.335 and OAR 137-049-0620), along with the process the City will use to determine acceptability of the work;

- t. If the solicitation document is an Invitation to Bid, any special price evaluation factors in the solicitation document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, and ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the City has available concerning future use;
  - u. If the solicitation document is a request for proposals, the Contracting Agency shall refer to the additional requirements of OAR 137-049-0650; and
  - v. All contract terms and conditions.
- 2. A public notice may be provided in any manner deemed reasonably prudent considering the nature of the procurement. Public notice may be published on the City's website, through an electronic procurement system, in a newspaper of general circulation in the area where the contract is to be performed. For construction contracts over \$125,000, the City shall publish at least once in a newspaper of general circulation in the area where the contract is to be performed.
  - 3. The City shall evaluate all bids received before the time and date indicated for bid opening. The City may not consider for award any bids received after the time and date indicated for bid opening. All applicable preferences shall be applied in evaluating the bids. Bids shall be evaluated on the requirements and criteria set forth in the invitation to bid. No criteria may be used in the evaluation that were not set forth in the invitation to bid.
  - 4. At least 7 calendar days before the award, the City shall provide written notice of its intent to award a contract to all bidders. A shorter notice period may be established, provided that the specific reasons for the shorter notice period are documented in the procurement file.
  - 5. The City's award shall not be final until the later of either the expiration of the protest period following the notice of intent to award pursuant to OAR 137-049-0395, or after the City provides written responses to all timely-filed protests denying the protests and affirming the award.
  - 6. Public improvement contracts procured by informal solicitation pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than ten percent (10%) over the original contract price. An amendment that increases the original contract by more than 10 percent (10%) requires City Manager/City Council approval (City Council if over \$100,000).

### **11.3 Bonding**

Bonds for public improvement projects must be obtained in accordance with the following requirements:

1. **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 \$100,000 shall require bid security. For bridges and other transportation projects, bid security is required if the estimated contract price exceeds \$50,000. Bid security for a request for proposal may be based on the city's estimated contract price. The security may not exceed 10 percent of the amount bid for the contract.
2. **Performance Bonds.** Before executing a contract for more than \$100,000 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. For bridges and other transportation projects, the performance bond described in this Section is required if the estimated contract price exceeds \$50,000. The performance bond must be solely for the protection of the city and any public agency that is providing funding for the project for which the contract was awarded. The Department Head or their designee may permit the successful offeror to submit a cashier's check or certified check in lieu of all or a portion of the required performance bond.
3. **Payment Bonds.** Before executing a contract for more than \$100,000 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. For bridges and other transportation projects, the payment bond described in this Section is required if the estimated contract price exceeds \$50,000.
4. **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.
5. **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 subsections 1 and 2 of this section upon execution of an amendment establishing the guaranteed maximum price. The city 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.
6. **Emergencies.** In cases of emergency, or when the interest or property of the city 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 issued by City Council.

## **12. Exceptions to Competitive Procurement Requirements**

In certain circumstances, exceptions to competitive procurement requirements may be granted through the City Council acting as the City's Contract Review Board. Departments will be required to show justification for any exemption request, receive approval from the Council as documented in the minutes, and provide proper documentation for the City's procurement files.

### **12.1 Sole Source Procurements (Other than Public Improvements)**

A contract may be awarded as a sole-source procurement without competition pursuant to this section.

1. Before a sole-source contract may be awarded, the purchaser shall make written findings that the goods or services are available from only one source, based on one or more of the following criteria:
  - a. The efficient use of existing goods or services, personal services or professional services requires the acquisition of **compatible** goods or services that are **available from only one source**;
  - b. The goods or services **available from only one source** and required for the **exchange of software or data** with other public or private agencies;
  - c. The goods or services are **available from only one source**, and are needed for use in a **pilot or an experimental project**; or
  - d. **Other facts or circumstances** exist that support the conclusion that the goods or services are available from only one source.
2. To the extent reasonably practical, contract terms advantageous to the City shall be negotiated with the sole source provider.
3. The City shall publish notice of any determination that the sole source selection method will be used in a manner similar to public notice of competitive sealed bids for goods and services not less than ten (10) days prior to the date a sole source contract will be awarded. The notice shall describe the goods or services to be procured, identify the prospective contractor and include the date and time when, and place where, protests of the use of a sole source selection method must be filed.

### **12.2 Special Procurements.**

In its capacity as contract review board for the City, the City Council, upon its own initiative or upon request, may create special selection, evaluation and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts for goods and services as provided in this section.

1. The approval of a special solicitation method or exemption from competition must be based upon a record before the City Council that contains the following:

- a. The nature of the contract or class of contracts for which the special solicitation or exemption is requested;
  - b. The estimated contract price or cost of the project, if relevant;
  - c. 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;
  - d. 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, or findings to support that the approval 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;
  - e. A description of the proposed alternative contracting methods to be employed; and
  - f. The estimated date by which it would be necessary to let the contract(s).
2. In determining a special selection method, the 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.
  3. The City shall publish notice of any approval of a special procurement in a manner similar to public notice of competitive sealed bids for goods and services not less than seven (7) days prior to the date a sole source contract will be awarded. The notice shall describe the goods or services to be procured, identify the prospective contractor and include the date and time when, and place where, protests of the use of a sole source selection method must be filed.

### **12.3 Contracts**

The following classes of contracts may be awarded in any manner that the City Manager deems appropriate to the City's needs, including by direct appointment or purchase. Except where otherwise provided, the City Manager shall make a record of the method of award.

1. Contract amendments shall not be considered to be separate contracts if made in accordance with these policies.
2. 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.
3. 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.

4. Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
5. Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the City.
6. Contracts for the purchase of specialty goods by the City for resale to consumers.
7. Sponsorship agreements, under which the City receives a gift or donation in exchange for recognition of the donor.
8. Contracts for the disposal of structures located on City-owned property.
9. 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.
10. Contracts for a single period of one (1) 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 or professional services unless otherwise permitted under OAR 137-048-0310.
11. License agreements and other contracts the City may negotiate and enter into for the temporary use of City-owned property, subject to the following requirements:
  - a. The contract must result from an unsolicited proposal to the City based on the unique attributes of the property or the unique needs of the proposer;
  - b. The proposed use of the property must be consistent with the City's use of the property and the public interest; and
  - c. The City reserves the right to terminate the contract without penalty, if the City determines that the contract is no longer consistent with the City's present or planned use of the property or the public interest.
12. The City Manager may contract for the purchase of used property by negotiation if such property is suitable for the City's needs and can be purchased for a lower cost than substantially similar new property.
  - a. 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.
  - b. The City Manager shall record the findings that support the purchase.
13. Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.

#### **12.4 Emergency Procurements.**

When the purchaser determines that immediate execution of a contract within the purchaser's authority is necessary to prevent **substantial damage or injury to persons or property**, and with the approval of

the City Manager or the City Manager's duly appointed designee, the purchaser may execute the contract without competitive selection and award or City Council approval, but, where time permits, competitive quotes should be sought from at least three (3) providers.

1. When the purchaser enters into an emergency contract, the purchaser shall, as soon as possible in light of the emergency circumstances, 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 and the public.
2. The purchaser shall also notify the City Council of the facts and circumstances surrounding the emergency execution of the contract.

### **12.5 Cooperative Procurement Contracts.**

Cooperative procurements may be made without competitive solicitation as provided in the Public Contracting Code.

1. Suggested website to obtain quotes: "Oregon Buys" The State of Oregon Contracts website offers solicitation research and advertisement to help get the best cost quote for your goods, services and public improvements. Website: <https://oregonbuys.gov/bsc/> In order to use this site, you will be assigned a login and password along with helpful guidelines to obtain the quotes for your request. Vendors offer their services through this site.
2. The City currently has a subscription to [Gov Spend \(formerly Smart Procure\)](https://govspend.com/). This site allows you to request quotes on products and services and see what product and pricing other cities, counties or companies have purchased and from which vendor. To view the video go to: <https://help.govspend.com/support/home>
3. The City also has cooperative procurement arrangements with the following entities: Sourcewell; Houston Galveston Area Council ("HGAC"), and the Oregon Cooperative Procurement Program

### **12.6 Public Improvements Exempt from Competitive Bidding Requirements:**

Specific exemptions to competitive bidding requirements are available for public improvement projects that meet the following criteria, and complete the required processes for exemption, within the Model Rules:

1. Projects that are unlikely to promote favoritism, and result in substantial cost savings (ORS 279C.335, OAR 137-049-0630, OAR 137-049-0620)
2. Energy Saving Performance Contracts (ORS 279C.335, OAR 137-049-0620, OAR 137-049-0630, OAR 137-049-0680)
3. Design/Build Contracting (ORS 279C.335, OAR 137-049-0630, OAR 137-049-0670)
4. Construction Manager/General Contractor Projects (ORS 279C.335, ORS 279C.337, OAR 137-049-0630, OAR 137-049-0690)



DRAFT

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: February 7, 2022

Order ____ No.	Ordinance ____ No.	Resolution <u>XX</u> No. 2022-3790	Motion ____	Information ____
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**SUBJECT: A Resolution authorizing use of Fund 14 - Economic Development Revolving Loan Fund (EDRLF) towards System Development Charges (SDCs) for the Escape Lodging Company Fairfield Inn Hotel**

Staff: Doug Rux, Director  
Department: Community Development  
File Number: GEN22-0002

**Business Session**

**Order on Agenda; New Business**

☐ **ADMINISTRATIVE PUBLIC HEARING**

## RECOMMENDATION:

Adopt Resolution No. 2022-3790.

## EXECUTIVE SUMMARY:

### A. BACKGROUND

In 1988 the City adopted Resolution No. 88-1356 establishing an Economic Development Revolving Loan Fund. Resolution No. 92-1732 amended Resolution 88-1356. Resolution No. 94-1841 repealed Resolution No. 88-1356 and established the Economic Development Revolving Loan Allocation Procedures. Section 14 of Resolution No. 94-1841 states in part “The City Council may budget monies from this fund for other activities that promote economic development.” Resolution No. 98-2086 established Economic Development Revolving Loan Program Guidelines. Within the NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEWBERG: 3. states “The guidelines for the program may be changed or altered by the City Council as necessary in order to accommodate business activities in Newberg.”

Staff has been discussing with Escape Lodging Company the development of a 79 room Fairfield Inn since October 2019 to be located off S Brutscher Street on a 1.953-acre site.

A Pre-application meeting was held on the project on October 23, 2019.

Patrick Nofield, President of Escape Lodging Company, presented to the City Council on July 6, 2021, outlining his development concept. At the presentation it was noted that the estimated fees to the City for the project would be \$1,041,415.

#### *Escape Lodging Proposed Solution (July 26, 2021)*

“We propose that Escape Lodging will pay a maximum of \$500,000 out of pocket towards the city of Newberg System Development fees. We will enter into an agreement with a note payable for the remaining balance that will be paid for by the newly realized transient lodging tax dollars

(9%) that we collect from our guests until the debt is paid in full (approximately 18 months after the property is operational).”

Staff has continued the discussions with Mr. Nofield on possible funding solutions to address the costs of System Development Charges. The topics have included:

1. Fund 14 Economic Development Fund
2. Reduction in System Development Charges
3. ARPA Funding
4. Financing SDCs

**Estimated System Development Changes (79 room hotel)**

SDC Category	SDC Estimate	Units
Wastewater	\$ 407,282.01	Fixture units
Water	\$ 32,038.24	2” meter
Stormwater	\$ 5,920.16	\$ 411.14 per EDU
Transportation	\$ 318,500.78	79 room/hotel per ITE
<i>Total</i>	<i>\$ 763,741.19</i>	

*Source: City of Newberg/Escape Lodging, August 24, 2021. Fee increase will occur on April 1, 2022*

**Escape Lodging Comparison System Development Charges from Prior Projects**

Community	Project	Year	Total SDC
The Dalles, OR	80 Room Marriott Fairfield	2014	\$225,000
Richland, WA	82 Room Boutique Hotel	2017	\$100,000
Beaverton, OR	112 Room Marriott TPS	2018	\$300,000
Cannon Beach, OR (As an 80-room hotel it would have cost approx \$200,000)	20 Room addition	2018	\$50,000

*Source: Escape Lodging, July 6, 2021*

**Estimated Transient Lodging Tax Revenue - Fairfield Inn**

Year	Revenue	TLT Generated
Year 1	\$ 3,002,944	\$ 270,265
Year 2	\$ 3,326,751	\$ 299,408
Year 3	\$ 3,535,435	\$ 318,189
Year 4	\$ 3,760,435	\$ 338,439
Year 5	\$ 3,985,435	\$ 358,689
Year 6	\$ 4,210,435	\$ 378,939
Year 7	\$ 4,435,435	\$ 399,189

Year 8	\$ 4,660,435	\$ 419,439
Year 9	\$ 4,885,435	\$ 439,689
Year 10	\$ 5,110,435	\$ 459,939
Total Revenue	\$40,913,174	
Total TLT Revenue		\$ 3,682,185
10 Year Annual Average		\$ 368,219

*Source: Escape Lodging, July 6, 2021*

#### **Estimated TLT Split General Fund/Tourism**

	<b>TLT Generated</b>	<b>General Fund</b>	<b>Tourism</b>
Year 1	\$ 270,265	\$ 175,491.98	\$ 94,773.02
Year 2	\$ 299,408	\$ 194,415.49	\$ 104,992.51
Year 3	\$ 318,189	\$ 206,610.62	\$ 111,578.38
Year 4	\$ 338,439	\$ 219,759.61	\$ 118,679.39
Year 5	\$ 358,689	\$ 232,908.60	\$ 125,780.40
Year 6	\$ 378,939	\$ 246,057.60	\$ 132,881.40
Year 7	\$ 399,189	\$ 259,206.59	\$ 139,982.41
Year 8	\$ 419,439	\$ 272,355.58	\$ 147,083.42
Year 9	\$ 439,689	\$ 285,504.58	\$ 154,184.92
Year 10	\$ 459,939	\$ 298,653.57	\$ 161,285.43

#### *Ancillary Visitor Spending*

##### **Visitor Spending Yamhill County 2019**

“According to independent research done for Travel Oregon by Runyan Associates in 2019, the average travel party spends \$386 per trip in Yamhill County. These dollars are not only spent on lodging, but with restaurants, retail shops, gas stations, food stores, wineries and arts, cultural and recreation amenities.” Todd Davidson, CEO Travel Oregon, June 30, 2021

Projected annual direct visitor spending Newberg Fairfield Inn Hotel:

22,000 room nights x 2.2 nights average stay equals 10,000 trips

10,000 trips x \$386 = \$3,860,000 annual spending

## **B. ANALYSIS**

Staff has evaluated the four different alternatives to address System Development Charge (SDC) costs for this project. The evaluation does not include other costs associated with the development such a land use fees, building fees, construction excise taxes, or miscellaneous fees. The focus has been to determine if it feasible to get the SDCs in alignment with SDCs that were charged for the Beaverton Escape Lodging Company project. Staff was also looking at the long-term economic impact of the Fairfield Inn on Newberg’s economy. For example, property tax revenues will be generated estimated in the first year to be \$12,000 plus. Additionally, the tourism related activities portion of the TLT revenue would assist in tourism marketing and promotion activities and visitor center operations. Finally, there is the broader economic impact of tourism on the Newberg business community. General estimates for that impact are noted above.

The City has a capital improvement project to re-pave S Brutscher Street in the summer of 2022 and if possible, would like the public infrastructure installed that will service the hotel project before the City starts its capital project. There is a moratorium provision in the Design and Construction Standards under Section 5.21 of 5-years for newly paved streets that would require more than a trench cut for the infrastructure which would add costs to the hotel development project.

Legal Counsel has evaluated the use of TLT funds towards the hotel development. To be clear this is related to the TLT Tourism portion of the revenue that must follow ORS 320.300 - 320.365. It is not related to the General Fund portion which can be used for any purpose.

The definition of “tourism-related facility” requires that the facility:

1. Be other improved real property, meaning real estate or land enhanced in value by a building or other structure;
2. Have a useful life of 10 or more years; and
3. Have the substantial purpose of supporting tourism or accommodating tourist activities.

There are ambiguities and uncertainties if the restricted portion of TLT tax can be used on a hotel and if a hotel is defined as a tourist related facility. Staff’s preference to avoid this ambiguous area and focus on the General Fund portion of the TLT revenue that is unrestricted in use.

1. Fund 14 Economic Development Fund – Economic Development Revolving Loan Fund (EDRLF)

Fortunately, there is at the city’s disposal a tool which has been used to launch key projects that directly benefit the economic health of the community. This is the EDRLF as defined by City Council Resolutions 94-1841 and 98-2086.

EDRLF funds have been used to create loans for targeted investment areas: manufacturing, commercial business, particularly the downtown area, and affordable housing. Resolution No. 94-1841 states in part “The City Council may budget monies from this fund for other activities that promote economic development.” Resolution 98-2086 states the following: “The guidelines for the program may be changed or altered by the City Council as necessary in order to accommodate business activities in Newberg.”

The City Council has used this program several times to help launch future business activities. For example, in 2018 and 2021 it was used to prepare an urban renewal program. In 2017 it assisted with the Hoover – Minthorn House for foundation work. In 2017 it was used for the Butler Property Appraisal. In 2015 it was used for improvements to the Second Street Public Parking Lot. Additionally, the fund was used in 2008 to assist with Phase 1 of the Chehalem Cultural Center for Sheridan Street and plaza improvements.

For FY 2021/2022 there is \$350,000 budgeted in Special Payments for EDRLF Loans (14-9130-601000). In addition, there is \$175,126 available in Contingency-Econ Dev (14-9180-800000). This provides a potential source of funding of \$525,126.

There are sufficient funds available in the EDRLF program to partner with Escape Lodging to address the SDC issues they have raised for the Fairfield Inn hotel. Depending

on timing a Supplemental Budget may be necessary to move funds from Contingency into Special Payments.

The Escape Lodging proposal directly relates to economic development activity in Newberg. The concept is to utilize the EDRLF through an agreement or contact with Escape Lodging to write down the initial SDC costs and have the General Fund portion of the TLT revenue generated by the hotel pay back Fund 14. It is estimated the payback period would be 2.5 – 3 years once the hotel is operational. The amount of EDRLF dollars to be accessed would be an estimated \$393,741.19. The city would need to decide if there is some form of interest that would be charged for utilizing the EDRLF program.



## 2. Reduction in System Development Charges

The City Council has heard from the community that SDCs are an issue for development. The City Council received a presentation on August 2, 2021, but follow-up conversations have waned in establishing a Council Subcommittee with possible citizen/business participation, to evaluate and address the SDC issue. Due to delays and the complexity of SDC methodology staff would sidestep this topic and looked at the three other funding options.

## 3. ARPA Funding

Staff proposed utilization of \$70,000 of ARPA funds to reduce System Development Charges (SDCs) for transportation, water, wastewater, and stormwater for a new 79 room hotel. ARPA expenditure categories (EC): 2.11 Aid to Tourism, Travel, or Hospitality. On December 15, 201 the Newberg Budget Committee awarded \$70,000 to the Fairfield Inn project to apply to SDCs.

## 4. Financing SDCs

Financing of SDCs is currently possible per NMC 13.05.110 . Early discussions on this option were not positively received due to the interest rate the city charges to finance SDCs. Financing is still a possibility. Under this construct the EDRLF could be used to make the installment payments and be repaid by the TLT General Fund revenues generated.



## C. SUMMARY

The goal is to get the upfront out of pocket cost of the SDCs down to approximately \$300,000 for Escape Lodging that would align with their Beaverton OR project. Staff would suggest a two-pronged approach to address the SDCs for the Fairfield Inn. The estimated SDCs are \$763,741.19 (based on current year rates which will increase on April 1, 2022).

The first prong is to allocate \$70,000 of ARPA funds towards SDCs. This would bring the balance down to \$693,741.19. The ARPA allocation occurred on December 15, 2021, by the Newberg Budget Committee.

The second prong is to utilize Fund 14 Economic Development Fund in the amount of \$393,741.19.

- The City Council would need to adopt a resolution to utilize Fund 14 for an economic development purpose.
- An agreement/contract would be entered into between the City and Escape Lodging Company on the terms of the payback using the General Fund portion of TLT revenue.
- Repayment would come from TLT revenue to the General Fund back to Fund 14.
- It is estimated the payback period to be 2.5 – 3 years once the hotel is operational. The specific time period would need to be established and terms included that if the TLT General Fund Revenue is insufficient based on the estimates that a lump sum would be paid at the end of the term of the agreement/contract.
- During this payback time period the General Fund would be forgoing the estimated \$393,741.19 in revenue but would see the long-term benefits of future TLT revenue to the General Fund as noted in the **Estimated TLT Split General Fund/Tourism** table above.
- The City would be receiving property taxes from the new hotel development in addition to paying its monthly charges for transportation utility fee and public safety fees.
- Payment of the city's Construction Excise Tax program is not part of the SDC funding methodology.
- This approach does not touch the restricted Tourism portion of the TLT revenue and avoids legal issues related to the definition of "a tourism-related facility". There would be revenue gains once the facility is operational to fund tourism marketing, promotion, and visitor center functions.

Patrick Nofield's original proposal was that for all development costs he would upfront \$500,000 of those costs. Staff's proposal is different and only focusses on the SDC issue. You could translate staff's approach to say that Escape Lodging would expend an estimated \$577,674 upfront and \$463,741.19 would be covered by an agreement utilizing ARPA and General Fund TLT revenues.

Fund 14  
\$393K  
Council Resolution  
Grant

Developer  
\$300K (est)

ARPA  
\$70K

TLT GF  
\$393K  
2.5 – 3 year back

SDC  
\$763K

Property Tax  
\$12,000+ year

## **FISCAL IMPACT:**

For FY 2021/2022 there is \$350,000 budgeted in Special Payments for EDRLF Loans (14-9130-601000). In addition, there is \$175,126 available in Contingency-Econ Dev (14-9180-800000). This provides a potential source of funding of \$525,126.

\$70,000 of ARPA funds towards SDCs. The ARPA allocation occurred on December 15, 2021, by the Newberg Budget Committee.

## **STRATEGIC ASSESSMENT:**

2020 Council Goals:

1. Change operational culture to one focused on Customer Service and act to Resolve Ongoing Legal Disputes

Not applicable.

2. Further develop an operational culture that adopts and cherishes Diversity, Equity, and Inclusion as core values.

Not applicable.

3. Promote development of housing affordability such as houselessness, transitional housing, workforce housing.

Not applicable.

4. Create and support an Urban Renewal Plan and Authority

Not applicable.

5. Collaborate with local partners and with entities like ICLEI in the development of a Sustainability program.

Not applicable.





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**A RESOLUTION AUTHORIZING USE OF FUND 14 - ECONOMIC DEVELOPMENT REVOLVING LOAN FUND (EDRLF) TOWARDS SYSTEM DEVELOPMENT CHARGES (SDCs) FOR THE ESCAPE LODGING COMPANY FAIRFIELD INN HOTEL**

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**RECITALS:**

1. Staff has been discussing with Escape Lodging Company the development of a 79 room Fairfield Inn since October 2019 to be located off S Brutscher Street on a 1.953-acre site.
2. Patrick Nofield, President of Escape Lodging Company, presented to the City Council on July 6, 2021, outlining his development concept. At the presentation it was noted that the estimated fees to the City for the project would be \$1,041,415.
3. Staff has continued the discussions with Mr. Nofield on possible funding solutions to address the costs of System Development Charges. The topics have included Fund 14 Economic Development Fund, Reduction in System Development Charges, ARPA Funding, and Financing SDCs.
4. The amount of EDRLF dollars to be accessed would be an estimated \$393,741.19.
5. For FY 2021/2022 there is \$350,000 budgeted in Special Payments for EDRLF Loans (14-9130-601000). In addition, there is \$175,126 available in Contingency-Econ Dev (14-9180-800000). This provides a potential source of funding of \$525,126.
6. The Escape Lodging Company proposal directly relates to economic development activity in Newberg. The concept is to utilize the EDRLF through an agreement or contract with Escape Lodging Company to write down the initial SDC costs and have the General Fund portion of the TLT revenue generated by the hotel pay back Fund 14. It is estimated the payback period would be 2.5 – 3 years once the hotel is operational.
7. The Newberg Budget Committee awarded \$70,000 of ARPA funds to the Fairfield Inn project to apply to SDCs.

**THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. The City Council authorizes the City Manager to expend not more than \$394,000 from the Economic Development Revolving Loan Fund (EDRLF). The purpose of the expenditure is to apply the funds towards System Development Charges (SDCs) for the Escape Lodging Company Fairfield Inn hotel.
2. Escape Lodging Company and the City of Newberg will repay the EDRLF allocation for SDCs from the General Fund portion of Transient Lodging Tax revenues generated from the Fairfield Inn estimated to be over a 2.5 – 3-year period after the hotel operations commence.

3. Escape Lodging Company and the City of Newberg will enter into an agreement or contract in a form approved by the City Attorney on the expenditure of the EDRLF funds for SDCs related to the Fairfield Inn hotel and the terms to repay the EDRLF based on the Request For Council Action presented to the City Council on February 7, 2022.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 8, 2022.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 7<sup>th</sup> day of February, 2022.

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Sue Ryan, City Recorder

**ATTEST** by the Mayor this 10<sup>th</sup> day of February, 2022.

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Rick Rogers, Mayor

## Sue Ryan

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**From:** charris1@frontier.com  
**Sent:** Friday, February 4, 2022 11:36 AM  
**To:** Sue Ryan; Rick Rogers; Elise Yarnell Hollamon; Julia Martinez Plancarte; Denise Bacon; Mike McBride; Stephanie Findley  
**Subject:** Council Meeting 2/7/22 Resolution 2022-3790 EDRLF

This email originated from outside the City of Newberg's organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Council Members:

Regarding the proposal to “loan” Escape Lodging Co. \$394,000 for its boutique hotel, don’t be fooled. This is simply a shell game, in which the city will essentially be giving Escape Lodging Co \$394,000, under the guise of an economic development loan. Read the staff report closely—the city will be providing Escape Lodging Co with a potentially interest-free \$394,000 loan, which money was derived from the city’s general fund, and the loan will be repaid with \$394,000 that would otherwise go to the city’s general fund (ie, the general fund share from the transient lodging tax). In essence, in the end, the city is reducing Escape Lodging Co’s SDCs by close to \$400,000, at the expense of the city’s general fund. (Oh, and by the way, this does not include another \$70,000 that the city will be giving Escape Lodging Co from the city’s ARPA funds.)

And why is **Escape Lodging Co** requesting this boondoggle? One reason is simply to get out of paying the systems development charges that it thinks are too high, because Beaverton’s SDCs are lower. Well, tell this to Newberg’s local builders, who have been saying for years that the city’s SDCs are higher than other cities’ SDCs. For these builders, the city’s response is to allow them to pay the SDCs in installments, with interest charged per NMC 13.05.110.

**The fair response to Escape Lodging Co’s request is to treat Escape Lodging Co no differently than local builders—let them pay the SDCs in installments, per the NMC.**

But Escape Lodging Co whines that the interest rate (currently 6.25%) is too high. Well, boo hoo. The current interest rate for construction financing of a hotel is higher yet—about 7.5%. But complaining to the city is easier than complaining to their construction lender. Escape Lodging Co should instead be jumping at the city’s offer to allow it to pay the SDCs in installments, at the lower rate charged by the city compared to the rate charged by the construction lender. If the city entered into a 5-year repayment plan, at the city’s current interest rate of 6.25%, and given Escape Lodging Co.’s projected 22,000 room nights per year, times 5 years, the interest charged works out to less than \$1 per night per room. Escaped Lodging Co.’s Beaverton hotel charges \$200/night plus.

I’ll also point out that the Strategic Assessment found at the end of the staff report is wrong when it says that the goal to “Promote development of housing affordability such as houselessness, transitional housing, workforce housing” is not applicable. The \$400,000 that, one way or another is coming from the city’s general fund, could go a long way toward promoting the development of affordable housing.

**The city is already facing an affordable housing crisis. This crisis would only be worsened by the needs of the service workers the hotel would bring in. If the City Council really believes**

**that affordable housing is a priority, then it should literally put its money where its mouth is, into affordable housing rather than into the hands of Escape Lodging Co investors.**

Charlie Harris  
(503) 538-7350 (not text-enabled)  
[charris1@frontier.com](mailto:charris1@frontier.com)

# REQUEST FOR COUNCIL ACTION

**DATE ACTION REQUESTED: February 7, 2022**

<b>Order ____</b> <b>No.</b>	<b>Ordinance ____</b> <b>No.</b>	<b>Resolution ____</b> <b>No. 2021-3796</b>	<b>Motion ____</b>	<b>Information ____</b>
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**SUBJECT: A Resolution approving a Cooperative Agreement (Intergovernmental Agreement) between the Department of Consumer and Business Services, Building Codes Division and City of Newberg for Plan Review and Inspection services**

**Staff: Doug Rux, Director**  
**Department: Community Development**  
**File Number: MISC322-0001**

**Business Session**

**Order on Agenda**

☐ **ADMINISTRATIVE PUBLIC HEARING**

## **RECOMMENDATION:**

Adopt Resolution No. 2022-3796.

## **EXECUTIVE SUMMARY:**

During the COVID-19 pandemic the Newberg Building Division has experienced situations where staff has been out of the office for extended periods creating difficulties in providing services. The Building Division has a third-party agreement with an outside vendor, but during the pandemic those services have not always been accessible due to staff shortages. To address this issue the Building Division has been working to build depth in our third-party services. Recently a contract was entered into with Northwest Code Professionals to provide third-party services in addition to our current third-party service provider of Claire Company.

To round out the third-party services the City has been discussing with the Department of Consumer and Business Services, Building Codes Division for a Cooperative Agreement (Intergovernmental Agreement) for services under the authority of ORS 190.010.

Attachment 1 is the Cooperative Agreement. The Agreement would run for 5-years. The Agreement covers Plan Review and Inspection services. The agreement has been through legal review by the City Attorney's office.

## **FISCAL IMPACT:**

Funds are budgeted in 08-4210-580000 Professional Services to cover third-party services. The amount budgeted for FY 21-22 is \$55,000.

## **STRATEGIC ASSESSMENT:**

2020 Council Goals:

1. Change operational culture to one focused on Customer Service and act to Resolve Ongoing Legal Disputes

Approval of the Cooperative Agreement with the Department of Consumer and Business Services, Building Codes Division will ensure adequate staffing if circumstances arise when the Newberg Building Division is

short staffed to provide plan review and building inspection services to the Newberg development community.

2. Further develop an operational culture that adopts and cherishes Diversity, Equity, and Inclusion as core values.

Not applicable.

3. Promote development of housing affordability such as houselessness, transitional housing, workforce housing.

Not applicable.

4. Create and support an Urban Renewal Plan and Authority

Not applicable.

5. Collaborate with local partners and with entities like ICLEI in the development of a Sustainability program.

Not applicable.



## ***RESOLUTION No. 2021-3796***

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**A RESOLUTION APPROVING A COOPERATIVE AGREEMENT  
(INTERGOVERNMENTAL AGREEMENT) BETWEEN THE DEPARTMENT  
OF CONSUMER AND BUSINESS SERVICES, BUILDING CODES DIVISION  
AND CITY OF NEWBERG FOR PLAN REVIEW AND INSPECTION  
SERVICES**

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**RECITALS:**

1. During the COVID-19 pandemic the Newberg Building Division has experienced situations where staff has been out of the office for extended periods creating difficulties in providing services.
2. Oregon Revised Statutes (ORS) 190.010 provides the authority of local governments to make intergovernmental agreements.
3. The City of Newberg and Department of Consumer and Business Services, Building Codes Division have discussed and prepared Cooperative Agreement (Intergovernmental Agreement) to provide Plan Review and Inspection services when the city is in need of these services.

**THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. The City Manager Pro Tem is authorized to sign the Cooperative Agreement included as Exhibit "A".
2. Exhibit "A" is hereby incorporated by reference.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 8, 2022.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 7<sup>th</sup> day of February, 2022.

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Sue Ryan, City Recorder

**ATTEST** by the Mayor this 10<sup>th</sup> day of February, 2022.

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Rick Rogers, Mayor



**COOPERATIVE AGREEMENT (5 YEAR)**

PO-44000-00004508

CA # 717909-00

This agreement is between the City of Newberg (Municipality) and the State of Oregon acting by and through its Department of Consumer and Business Services, Building Codes Division (DCBS), in accordance with ORS 190.110 and 455.185. The Contract Administrators of this agreement are:

DCBS	City of Newberg
Contract Administrator: Warren Jackson	Contract Administrator: Will Worthey
Title: Field Services Section Manager	Title: City Manager Pro Tem
State of Oregon, Department of Consumer and Business Services, DCBS Building Codes Division 1535 Edgewater St. NW P.O. Box 14470 Salem, OR 97309-0404 Phone: (503) 373-7755 Fax: (503) 378-2322	Address: City of Newberg 414 E First St PO Box 970 Newberg OR 97132  Phone: (503) 537-1207  FEIN: 93-6002221
Email: <a href="mailto:Warren.D.Jackson@Oregon.gov">Warren.D.Jackson@Oregon.gov</a>	Email: <a href="mailto:Will.Worthey@newbergoregon.gov">Will.Worthey@newbergoregon.gov</a>

**I. PURPOSE:** By this Agreement, the State of Oregon, acting by and through its Department of Consumer and Business Services, Building Codes Division (DCBS), and the Municipality agree to provide Plan Review and Inspection services to each other when requested. When requesting services, a party is the Requesting Party. When providing Services, a party is the Service Provider.

**II. TERM OF AGREEMENT:**

This Agreement shall become effective when signed by all parties. This Agreement shall expire five years after its effective date, unless terminated early in accordance with Section IX.

**III. STATEMENT OF WORK**

A. A Requesting Party shall:

1. Contact the Building Official of the Service Provider, when services are needed.
2. Email inspection requests to the Building Official of the Service Provider, after confirmation from Service Provider inspection assistance is available.

# COOPERATIVE AGREEMENT (5 YEAR)

PO-44000-00004508

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3. Send all construction plans for which plan review is requested to:

When DCBS is the Service Provider:

ATTN: Warren Jackson  
BCD Salem Office,  
1535 Edgewater St. NW  
Salem OR 97304

When Municipality is Service Provider:

ATTN: Will Worthey  
414 E First St  
PO Box 970  
Newberg OR 97132

4. Remit payment to the Service Provider within 60 days of the close of the quarter in accordance with Section IV(C).

B. Service Provider shall:

1. Perform plan review and inspection services, by plan or inspection as requested, consistent with construction codes and standards adopted by the State of Oregon.
2. Perform services using Service Provider staff possessing appropriate certification or designation recognized by the State of Oregon.
3. Complete residential plan reviews within 10 calendar days. Complete commercial Plan reviews within 15 calendar days of receipt.
4. Submit inspection reports to the Requesting Party within forty-eight (48) hours of the inspection.

The only services that will be provided under this Agreement are those requested by the Requesting Party and as Service Provider has available staff to complete the requested work

## IV. CONSIDERATION

A. Requesting Party agrees to pay Service Provider at the rate of:

- a) Ninety percent (90%) of the plan review fee collected by the Requesting Party for plan reviews completed under this agreement.

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# COOPERATIVE AGREEMENT (5 YEAR)

PO-44000-00004508

CA # 717909-00

b) Eighty-five dollars (\$85.00) per hour for inspections performed on behalf of the Requesting Party.

B. Both parties certify that, at the time this agreement is written, sufficient funds are available and authorized for expenditure to finance costs of this agreement.

C. Requesting Party shall remit payment to Service Provider on a quarterly basis. Service Provider will invoice Requesting Party on a quarterly basis for inspections performed on behalf of the Requesting Party. Requesting Party will submit payment for and a report of plan reviews completed and review fees collected for plan reviews completed by Service Provider. Quarters will be: January thru March, April thru June, July thru September, and October thru December. Payment is due within 60 days of the close of each quarter. Payment to be sent to the following address:

When DCBS is Service Provider:

Building Codes Division  
BCD FACS  
PO Box 14470  
Salem OR 97309-0404

When Municipality is Service Provider:

City of Newberg  
PO Box 970  
Newberg, OR 97132

D. With every payment, for the work done under this Agreement during the quarter for which payment is being remitted, Requesting Party shall provide Service Provider with:

(1) Documentation of each plan review performed by Service Provider and the associated fees collected by Requesting Party;

(2) documentation of all work performed by Service Provider at the hourly rate under paragraph (A)(b) of this section, as well as the date and number of hours such work was performed; and

E. Requesting Party agrees that it shall provide or make available, if and as requested by Service Provider, any and all records and information related to this agreement of which Requesting Party is custodian, within 30 days of such request by Service Provider. Requesting Party further agrees that it shall retain and not destroy any and all documents

# **COOPERATIVE AGREEMENT (5 YEAR)**

PO-44000-00004508

CA # 717909-00

and records related to this Agreement for a minimum of one year after such document or record is created.

## **V. TRAVEL AND OTHER EXPENSES**

Requesting Party shall not be responsible to Service Provider for travel or other expenses.

## **VI. BREACH**

Neither party shall be in breach of this Agreement until written notice of the unperformed obligation has been given and that obligation remains unperformed after notice for 7 days in the case of Municipality's obligations; or 14 days in the case of DCBS's obligations. In the case of a default, the nonbreaching party may terminate this agreement with (10) days prior written notice to the breaching party and shall be entitled to seek damages or any other remedy provided by applicable law. If DCBS is the nonbreaching party, it may elect to perform any of the breaching party's obligations and recover from the breaching party the costs of such performance plus interest at the rate of 10% of such costs. If DCBS is the nonbreaching party, it may also elect to commence an investigation of Municipality under ORS 455.770(1) and (2)(b).

## **VII. CONTRIBUTION**

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the Municipality (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Municipality in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Municipality on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the Municipality on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it

# **COOPERATIVE AGREEMENT (5 YEAR)**

PO-44000-00004508

CA # 717909-00

would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the Municipality is jointly liable with the State (or would be if joined in the Third Party Claim), the Municipality shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the Municipality on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Municipality on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Municipality's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

## **VIII. AMENDMENTS**

The terms of this agreement shall not be waived, altered, modified, supplemented or amended except by written instrument signed by both parties. This agreement may be extended upon written amendment.

## **IX. TERMINATION**

This agreement may be terminated by mutual consent by both parties or by either party upon thirty (30) days' notice, in writing.

## **X. FORCE MAJEURE**

Neither party shall be held responsible for delay or failure to perform when such delay or failure is due to fire, flood, epidemic, strikes, acts of God or the public enemy, unusually severe weather, legal acts of public authorities, or delays or defaults caused by public carriers, which cannot be reasonably foreseen or provided against. In such event, the period for the performance shall be extended for the period of such delay. Upon the cessation of the cause of delay or nonperformance, the affected Party shall resume performance of its obligations under this Agreement. Either party may terminate the agreement, effective with the giving of written notice, after determining such delays or failure will reasonably prevent successful performance in accordance with the terms of this agreement.

## **XI. ALTERNATIVE DISPUTE RESOLUTION**

# **COOPERATIVE AGREEMENT (5 YEAR)**

PO-44000-00004508

CA # 717909-00

The parties shall attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

## **XII. NONDISCRIMINATION**

The parties agree to comply with all applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations in the performance of this agreement.

## **XIII. COMPLIANCE WITH APPLICABLE LAWS**

The parties agree that both shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this agreement. The parties agree that this agreement shall be administered and construed under the laws of the State of Oregon.

## **XIV. PARTNERSHIP**

Neither party is, by virtue of this agreement, a partner nor a joint venturer in connection with activities carried out under this agreement, and shall have no obligation with respect to the other party's debts or any other liability or obligation of the other party of whatever kind or nature.

## **XV. AUDIT**

DCBS reserves the right to audit, at Municipality's expense, all records pertinent to this agreement.

## **XVI. NO WAIVER OF CLAIMS**

The failure by either party to enforce any provision of this agreement shall not constitute a waiver by that party of that provision or of any other provision or provisions of this agreement.

## **XVII. ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the parties concerning the subject matter of this agreement and supersedes any and all prior or contemporaneous negotiations or agreements between the parties, whether written or oral, concerning the subject matter of this agreement which is not fully expressed herein. This agreement may not be modified or amended except in writing and signed by all parties.

Signatures on next page.

# COOPERATIVE AGREEMENT (5 YEAR)

PO-44000-00004508

CA # 717909-00

## XVIII. SIGNATURES

Department of Consumer and Business  
Services, Building Codes Division

City of Newberg

\_\_\_\_\_  
Dawn Bass Date  
Deputy Administrator

\_\_\_\_\_  
Name Date  
Title

\_\_\_\_\_  
Nancy A. Cody Date  
Designated Procurement Officer

\_\_\_\_\_  
Name Date  
Title

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: February 7, 2022

Order \_\_\_\_ Ordinance \_\_\_\_ Resolution XX Motion \_\_\_\_ Information \_\_\_\_  
No. No. No. 2022-3797

**SUBJECT:** A Resolution acknowledging the acceptance of Councilor Bryce Coefield's resignation, expressing the City's appreciation for his service, declaring a vacancy, and announcing the advertisement for qualified persons for appointment to fill the vacancy (District No. 4 with a term ending December 31, 2022)

**Contact Person (Preparer) for this Resolution:** Sue Ryan, City Recorder

**Dept.:** Administration

## RECOMMENDATION:

Adopt **Resolution No. 2022-3797** acknowledging the acceptance of Councilor Bryce Coefield's resignation on January 3<sup>rd</sup>, 2022 by the City Council, declaring District No. 4 City Council position vacant, and announcing the advertisement for qualified persons for appointments to fill the vacancy (District No. 4 with a term ending December 31, 2022).

## EXECUTIVE SUMMARY:

Councilor Bryce Coefield was appointed to the Newberg City Council on September 8, 2020 to fill out the remainder of the term for District 4 when Councilor Patrick Johnson left office.

He submitted his resignation on January 3, 2022. This resignation creates a vacancy on the City Council for the District No. 4 position. The term for this position expires December 31, 2022.

The City Charter states that vacancies on the Council are to be filled by appointment of the City Council. The vacancy will be filled through solicitation of applications from residents who meet the Charter criteria for appointment. The individual must live within District No. 4, be a registered voter, and have resided in the City for at least a year prior to appointment.

**Staff need direction from the City Council on the timeline for recruitment, interviews and appointment.**

### Potential timelines:

2 week recruitment: Feb. 9-23 – interviews March 7 Council meeting or at a special council meeting, with appointment the same evening or at the next regular meeting.

3 week recruitment: Feb. 9-March 2 – interviews March 7 Council meeting or at a special council meeting with appointment the same evening or at the next regular meeting

4 week recruitment: Feb. 9 – March 9 – interviews March 21 Council meeting or special council meeting with appointment the same evening or at the next regular meeting

Applications will be available on-line and to the City Recorder, Sue Ryan.



## **STRATEGIC ASSESSMENT:**

The Council Member is one of the most important positions in the City. The Council sets policy and direction for the City. It is critical for the City Council to have a full complement of its membership in order to carry on the business of the City.

# ***RESOLUTION No. 2022-3797***

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**A RESOLUTION ACKNOWLEDGING THE ACCEPTANCE OF THE  
RESIGNATION OF COUNCILOR BRYCE COEFIELD, EXPRESSING THE  
CITY’S APPRECIATION FOR HIS SERVICE, DECLARING A VACANCY,  
AND ANNOUNCING THE ADVERTISEMENT FOR QUALIFIED PERSONS  
FOR APPOINTMENT TO FILL THE VACANCY (DISTRICT NO. 4 WITH  
A TERM ENDING DECEMBER 31, 2022)**

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## **RECITALS:**

1. Councilor Bryce Coefield was appointed to the Newberg City Council on September 8, 2020 to fill a vacancy.
2. On January 3, 2022, Councilor Bryce Coefield announced his resignation for personal reasons.
3. This resignation creates a vacancy on the City Council for the District No. 4 position. The term for this position expires December 31, 2022.
4. The City Charter states that vacancies on the Council are to be filled by appointment of the City Council.

## **THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. The Council hereby expresses its regrets that Councilor Bryce Coefield is leaving the Council and accepts his resignation effective January 3<sup>rd</sup>, 2022. Attached is a letter from Councilor Coefield, which is hereby attached to this resolution as Exhibit “A” and by this reference incorporated.
2. The Mayor and Council express their deep appreciation on behalf of the citizens of the City of Newberg for Councilor Coefield’s service to the City by the giving of his personal time and effort in attending meetings, and working on behalf of the citizens of Newberg on the Newberg City Council.
3. The City Council hereby declares the Council District No. 4 position occupied by Councilor Coefield is hereby vacant.
4. The Council announces to the citizens of the City of Newberg the vacancy has occurred and applications for this position is being received from qualified persons to fill this position.
5. Attached is a map of the Newberg City Council districts showing the location of District No. 4, which is hereby attached as Exhibit “B” and by this reference incorporated.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 8<sup>th</sup>, 2022.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 7<sup>th</sup> day of February, 2022.

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Sue Ryan, City Recorder

**ATTEST** by the Mayor this 10<sup>th</sup> day of February, 2022.

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Rick Rogers, Mayor

## Sue Ryan

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**From:** Rick Rogers  
**Sent:** Monday, January 3, 2022 10:53 AM  
**To:** Sue Ryan  
**Cc:** Will Worthey  
**Subject:** Fw: Resigning from Position as City Councilor

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

FYI

## Rick Rogers

Mayor

Direct (503) 537-1276 City Hall (503) 537-1240 Fax (503) 537-1013

[Rick.Rogers@newbergoregon.gov](mailto:Rick.Rogers@newbergoregon.gov)



414 E. First Street · P.O. Box 970

Newberg, Oregon 97132

**Note:** The contents of this email are considered public record and can be requested by the press and public.

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**From:** Bryce Coefield <bryce.coefield@gmail.com>  
**Sent:** Monday, January 3, 2022 10:22 AM  
**To:** Rick Rogers  
**Subject:** Resigning from Position as City Councilor

This email originated from outside the City of Newberg's organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Rick!

It is with deep sadness that I write to inform you of my decision to resign as city councilor. It has been an honor to serve in this capacity but recent family developments require me to be more present during this

season of life. Please extend my love and gratitude to everyone in the city and I look forward to seeing the good work you all continue to do.

Much Love,

Bryce Coefield

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**Bryce Coefield**

# City of Newberg Alternative 1

Resolution 2022-3797  
Exhibit B

## Newberg Council Districts Alternative 1

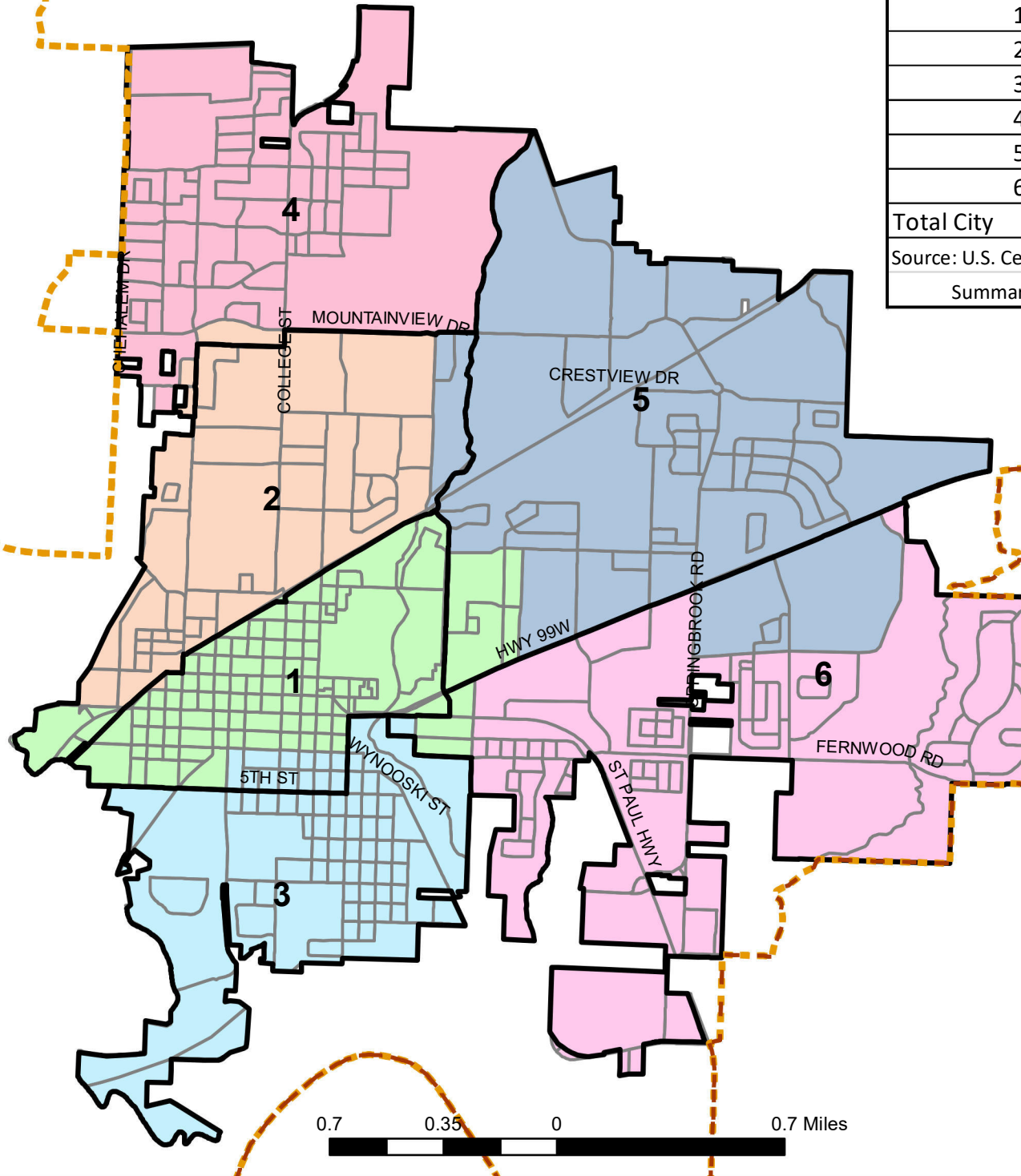
### And Deviation from Target Population (4,190)

District	Population	Deviation	% Deviation
1	4130	-60	-1.43
2	4171	-19	-0.45
3	4169	-21	-0.5
4	4327	137	3.27
5	4229	39	0.93
6	4112	-78	-1.86
<b>Total City</b>	<b>25,138</b>		

Source: U.S. Census Bureau, 2020 P.L. 94-171 Redistricting File

### Summary of Total Population

- Senate Boundaries 2021
- House Boundaries 2021
- Current Council Districts



# District 4 Council Vacancy proposed timelines

February 7, 2022  
Council Business Session





Staff need direction from City Council on the timeline for recruitment, interviews and appointment.

- Potential timelines discussion
- Question 1 – How long of a recruitment period ???
  - 2 week recruitment** from February 9 – 23.
  - 3 week recruitment** from February 9 - March 2.
  - 4 week recruitment** from February 9 – March 9



## **Question 2 – Interviews at regular Council Meeting or a Special Council Meeting ?**

**2 week recruitment** – regular Council meeting would be March 7

**3 week recruitment** – regular Council meeting would be March 7

**4 week recruitment** – regular Council meeting would be March 21

Or Alternative Dates ?

Items already on Calendar – March 30 ARPA meeting

- **Question 3 – Appointment same night as interviews or following Council meeting ?**

**2 week recruitment** – regular Council meeting would be March 7  
Following meeting would be March 21

**3 week recruitment** – regular Council meeting would be March 7  
Following meeting would be March 21

**4 week recruitment** – regular Council meeting would be  
March 21  
Following meeting would be April 4

# Purchasing Policy and Code Update

*James Walker and Christine Taylor*  
*Miller Nash LLP*

# Purchasing Policy

- a. Changes and clarifications to purchasing authority
- b. Procurement documentation, clearer procedures and processes for conducting procurements
- c. Local preference

# Code Update – NMC 3.25

- a. Changes to align NMC 3.25 with the Attorney General’s Model Public Contracting Rules and requirements of the Public Contracting Code (ORS 279A, 279B, and 279C).
- b. Revisions re rules for procuring “personal services.”

# Thank You



**James Walker**

**Christine Taylor**

**Miller Nash LLP**

[james.walker@newbergoregon.gov](mailto:james.walker@newbergoregon.gov)

[christine.taylor@millernash.com](mailto:christine.taylor@millernash.com)



## Sue Ryan

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**From:** charris1@frontier.com  
**Sent:** Friday, February 4, 2022 11:36 AM  
**To:** Sue Ryan; Rick Rogers; Elise Yarnell Hollamon; Julia Martinez Plancarte; Denise Bacon; Mike McBride; Stephanie Findley  
**Subject:** Council Meeting 2/7/22 Resolution 2022-3790 EDRLF

This email originated from outside the City of Newberg's organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Council Members:

Regarding the proposal to “loan” Escape Lodging Co. \$394,000 for its boutique hotel, don’t be fooled. This is simply a shell game, in which the city will essentially be giving Escape Lodging Co \$394,000, under the guise of an economic development loan. Read the staff report closely—the city will be providing Escape Lodging Co with a potentially interest-free \$394,000 loan, which money was derived from the city’s general fund, and the loan will be repaid with \$394,000 that would otherwise go to the city’s general fund (ie, the general fund share from the transient lodging tax). In essence, in the end, the city is reducing Escape Lodging Co’s SDCs by close to \$400,000, at the expense of the city’s general fund. (Oh, and by the way, this does not include another \$70,000 that the city will be giving Escape Lodging Co from the city’s ARPA funds.)

And why is **Escape Lodging Co** requesting this boondoggle? One reason is simply to get out of paying the systems development charges that it thinks are too high, because Beaverton’s SDCs are lower. Well, tell this to Newberg’s local builders, who have been saying for years that the city’s SDCs are higher than other cities’ SDCs. For these builders, the city’s response is to allow them to pay the SDCs in installments, with interest charged per NMC 13.05.110.

**The fair response to Escape Lodging Co’s request is to treat Escape Lodging Co no differently than local builders—let them pay the SDCs in installments, per the NMC.**

But Escape Lodging Co whines that the interest rate (currently 6.25%) is too high. Well, boo hoo. The current interest rate for construction financing of a hotel is higher yet—about 7.5%. But complaining to the city is easier than complaining to their construction lender. Escape Lodging Co should instead be jumping at the city’s offer to allow it to pay the SDCs in installments, at the lower rate charged by the city compared to the rate charged by the construction lender. If the city entered into a 5-year repayment plan, at the city’s current interest rate of 6.25%, and given Escape Lodging Co.’s projected 22,000 room nights per year, times 5 years, the interest charged works out to less than \$1 per night per room. Escaped Lodging Co.’s Beaverton hotel charges \$200/night plus.

I’ll also point out that the Strategic Assessment found at the end of the staff report is wrong when it says that the goal to “Promote development of housing affordability such as houselessness, transitional housing, workforce housing” is not applicable. The \$400,000 that, one way or another is coming from the city’s general fund, could go a long way toward promoting the development of affordable housing.

**The city is already facing an affordable housing crisis. This crisis would only be worsened by the needs of the service workers the hotel would bring in. If the City Council really believes**

**that affordable housing is a priority, then it should literally put its money where its mouth is, into affordable housing rather than into the hands of Escape Lodging Co investors.**

Charlie Harris  
(503) 538-7350 (not text-enabled)  
[charris1@frontier.com](mailto:charris1@frontier.com)



## 2022 NEWBERG CITY COUNCIL MEETING INFORMATION

Meeting Date: 2/7/22

Start: 6:00 p.m.

Stop: 8:06 p.m.

Councilors	Roll Call	Consent Res 3795 Grant acceptance	Res 3780 New Districts map	Ord 2894 Purchasing Code Waiver Bacon/McBride 5-0-2	Res 3799 Purchasing Policy	Res 3790 EDRLF loan	Res 3796 Building IGA With State
MCBRIDE	X	Yes	Yes	Yes	Yes	Yes	Yes
District 4 vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant
YARNELL HOLLAMON	X	Yes	Yes	Yes	Yes	Yes	Yes
MARTINEZ PLANCARTE	X	Yes	Yes	Yes	Yes	Yes	Yes
ROGERS	X	Yes	Yes	Yes	Yes	Yes	Yes
BACON	X	Yes	Yes	Yes	Yes	Yes	Yes
FINDLEY	Absent	Absent	Absent	Absent	Absent	Absent	Absent
ROLL CALL VOTES		Yes: 5 No: 0 Absent: 2	Yes: 5 No: 0 Absent: 2	Yes: 5 No: 0 Absent: 2	Yes: 5 No: 0 Absent: 2	Yes: 5 No: 0 Absent: 2	Yes: 5 No: 0 Absent: 2
MOTION (1 <sup>st</sup> /2 <sup>nd</sup> ):		McBride/ Martinez Plancarte	Bacon/ Yarnell Hollamon	Bacon/ McBride	McBride/Bacon	Bacon/Yarnell Hollamon	Yarnell Hollamon/Bacon
Department/ Staff:		PWS – ENG	CR	Finance	Finance	CDD	CDD
Changes:							
Tabled:							

City Recorder

[ X ] Scheduling on Forward Looking Calendar

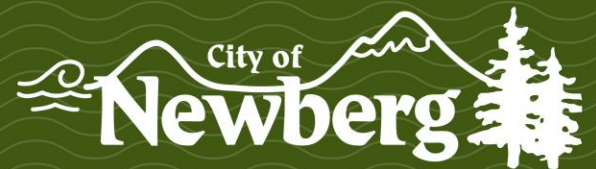
[ X ] Council Timesheets

[2 hours ] Workmen's Compensation hours

<b>Councilors</b>	<b>Roll Call</b>	<b>Res 3797 District 4 vacancy declaration</b>	<b>NURA 04</b>				
MCBRIDE	X	Yes	Yes				
District 4 vacant	Vacant	Vacant	Vacant				
YARNELL HOLLAMON	X	Yes	Yes				
MARTINEZ PLANCARTE	X	Yes	Yes				
ROGERS	X	Yes	Yes				
BACON	X	Yes	Yes				
FINDLEY	Absent	Absent	Absent				
ROLL CALL VOTES		Yes: 5 No: 0 Absent: 2	Yes: 5 No: 0 Absent: 2				
MOTION (1 <sup>st</sup> /2 <sup>nd</sup> ):		McBride/ Martinez Plancarte	Rogers/ McBride				
Department/ Staff:		CR	CDD				
Changes:							
Tabled:							

# Fund 14 - Economic Development Revolving Loan Fund – Fairfield Inn SDCs

City Council  
February 7, 2022





# Background

- Escape Lodging Company development of a 79 room Fairfield Inn discussions since October 2019.
- Location S Brutscher Street on a 1.953-acre site.
- Pre-application meeting was held on the project on October 23, 2019.
- Patrick Nofield, President of Escape Lodging Company, presented to the City Council on July 6, 2021, outlining his development concept.

# Background

Options evaluated related to Fairfield Inn SDC costs:

1. Fund 14 Economic Development Fund
2. Reduction in System Development Charges
3. ARPA Funding
4. Financing SDCs

# SDC Costs (est.)

Estimated System Development Changes (79 room hotel)

SDC Category	SDC Estimate	Units
Wastewater	\$ 407,282.01	Fixture units
Water	\$ 32,038.24	2" meter
Stormwater	\$ 5,920.16	\$ 411.14 per EDU
Transportation	\$ 318,500.78	79 room/hotel per ITE
<b>Total</b>	<b>\$ 763,741.19</b>	

Source: City of Newberg/Escape Lodging, August 24, 2021. Fee increase will occur on April 1, 2022

# TLT Revenue

## Estimated Transient Lodging Tax Revenue - Fairfield Inn

Year	Revenue	TLT Generated
Year 1	\$ 3,002,944	\$ 270,265
Year 2	\$ 3,326,751	\$ 299,408
Year 3	\$ 3,535,435	\$ 318,189
Year 4	\$ 3,760,435	\$ 338,439
Year 5	\$ 3,985,435	\$ 358,689
Year 6	\$ 4,210,435	\$ 378,939
Year 7	\$ 4,435,435	\$ 399,189
Year 8	\$ 4,660,435	\$ 419,439
Year 9	\$ 4,885,435	\$ 439,689
Year 10	\$ 5,110,435	\$ 459,939
<b>Total Revenue</b>	\$40,913,174	
<b>Total TLT Revenue</b>		\$ 3,682,185
<b>10 Year Annual Average</b>		\$ 368,219

Source: Escape Lodging, July 6, 2021

# TLT Revenue – GF/Tourism

Estimated TLT Split General Fund/Tourism

	TLT Generated	General Fund	Tourism
Year 1	\$ 270,265	\$ 175,491.98	\$ 94,773.02
Year 2	\$ 299,408	\$ 194,415.49	\$ 104,992.51
Year 3	\$ 318,189	\$ 206,610.62	\$ 111,578.38
Year 4	\$ 338,439	\$ 219,759.61	\$ 118,679.39
Year 5	\$ 358,689	\$ 232,908.60	\$ 125,780.40
Year 6	\$ 378,939	\$ 246,057.60	\$ 132,881.40
Year 7	\$ 399,189	\$ 259,206.59	\$ 139,982.41
Year 8	\$ 419,439	\$ 272,355.58	\$ 147,083.42
Year 9	\$ 439,689	\$ 285,504.58	\$ 154,184.92
Year 10	\$ 459,939	\$ 298,653.57	\$ 161,285.43



# Visitor Spending

Projected annual direct visitor spending Newberg Fairfield Inn Hotel:

- 22,000 room nights x 2.2 nights average stay equals 10,000 trips
- 10,000 trips x \$386 = \$3,860,000 annual spending

# Fund 14

- The City Council has used this program several times to help launch future business activities. For example, in 2018 and 2021 it was used to prepare an urban renewal program. In 2017 it assisted with the Hoover – Minthorn House for foundation work. In 2017 it was used for the Butler Property Appraisal. In 2015 it was used for improvements to the Second Street Public Parking Lot.
- 
- For FY 2021/2022 there is \$350,000 budgeted in Special Payments for EDRLF Loans (14-9130-601000). In addition, there is \$175,126 available in Contingency-Econ Dev (14-9180-800000).

# Reduction in SDCs

- The City Council has heard from the community that SDCs are an issue for development.
- The City Council received a presentation on August 2, 2021, but follow-up conversations have waned in establishing a Council Subcommittee with possible citizen/business participation, to evaluate and address the SDC issue.
- Due to delays and the complexity of SDC methodology staff would sidestep this topic and looked at the three other funding options.

# ARPA Funding

- Staff proposed utilization of \$70,000 of ARPA funds to reduce System Development Charges (SDCs) for transportation, water, wastewater, and stormwater for a new 79 room hotel.
- ARPA expenditure categories (EC): 2.11 Aid to Tourism, Travel, or Hospitality.
- On December 15, 201 the Newberg Budget Committee awarded \$70,000 to the Fairfield Inn project to apply to SDCs.

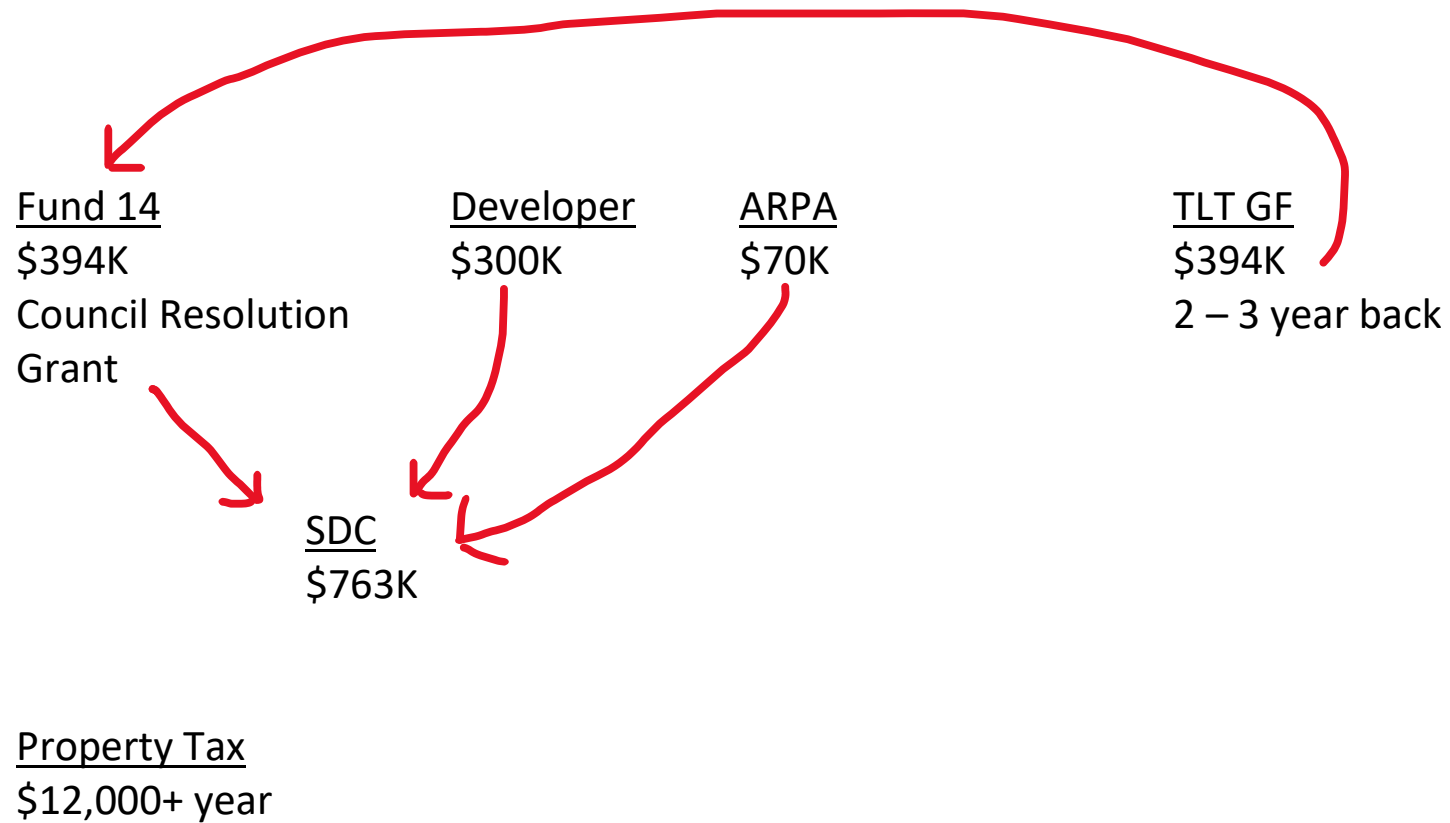
# SDC Financing

- Financing of SDCs is currently possible per NMC 13.05.110.
- Early discussions on this option were not positively received due to the interest rate the city charges to finance SDCs.
- Financing is still a possibility. Under this construct the EDRLF could be used to make the installment payments and be repaid by the TLT General Fund revenues generated.

# Proposal

- ARPA Funding - \$70,000
- Fund 14 - \$394,000 (Repayment would come from TLT revenue to the General Fund back to Fund 14. Estimated payback period 2.5 – 3 years once the hotel is operational)
- Escape Lodging (Fairfield Inn) – Balance of SDCs due

# Funding Cycle



# Recommendation

Adopt Resolution No. 2022-3790