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PROVIDE FOR DISPOSITION OF UNCLAIMED PERSONAL PROPERTY  
ORDINANCE NO. NS-863

1. Unclaimed Property. Whenever any personal property of substantial value belonging to someone other than the City of Bend, other than abandoned motor vehicles, is abandoned or left upon publicly owned property controlled by the City of Bend, or is seized or held by the City of Bend for any other reason, this personal property shall be held by the City of Bend Police Department at the expense of the owner or person lawfully entitled to possession of the property.

2. Recovery by True Owner. At any time within 60 days after property described in Section 1 is taken into possession by the City, except when personal property is confiscated or held as evidence, the owner or person lawfully entitled to possession of the property may reclaim it on application to the Police Department after submitting satisfactory proof of the person's ownership or right to possession of the property, and after payment of any charges or expenses incurred in the storage, preservation and custody of the property.

3. Sale of Property. From time to time and after property is unclaimed for more than 60 days, the City Police Chief may either sell at public auction any personal property described in Section 1 which is unclaimed excepting property which has been confiscated or which is held for evidence or which has been ordered destroyed by competent authority, or the Chief of Police may utilize a contracting firm, approved by the City Council, for disposition of the property on terms and conditions contained in a contract approved by the City Council. The Police Chief shall give notice of the public auction by publishing notice of the means by which the property will be disposed of on the City of Bend internet Website on an ongoing basis. Sale shall be for cash to the highest bidder. All proceeds of the sale shall be paid to the City's general fund, subject to the terms and conditions of the contract (if any) approved by the City Council between the City of Bend and a firm selected to conduct the auction.

4. Title to Property Sold. All personal property described in Section 1 which is sold shall be sold as is without any warranty, either express or implied, of any kind, including but not limited to warranties of title or fitness for any purpose. Upon receiving payment for the personal property from the successful bidder, the Police Chief or the firm selected to conduct the auction under Section 3 hereof, shall execute a bill of sale in substantially the following form:

1-15.4

**BEND CODE**

1-15.4

**BILL OF SALE**

Pursuant to an ordinance of the City of Bend, I sold personal property described as:  
(describe property)

This property was sold to (successful bidder's name) for \_\_\_\_ dollars paid to the City of Bend or (name of firm selected to conduct the auction under Section 3 hereof.)

This property was sold as is and without any warranty of any kind, either express or implied, including but not limited to warranties of title or fitness for any particular purpose.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, Police Chief (or name of firm selected to conduct the auction under Section 3 hereof).

I acknowledge purchase of this property on these terms:

\_\_\_\_\_ (name of successful bidder)

[Passed by the City Commission and approved by the Mayor July 7, 1971.]

[1-15 amended by Ord. NS-1945, passed, November 3, 2004]

**CITY COUNCIL PROCEDURES****1.100 Meetings.**

- (1) Unless provided otherwise by ordinance, the City Council shall hold regular meetings on the first and third Wednesdays of each month at such time as the Council shall determine. If the regular meeting falls on a holiday, the meeting shall be held on the day following or canceled.
- (2) Regular Council meetings shall be held in the Council Chambers of City Hall or such other place in the City as the Council shall determine.
- (3) Adjourned meetings may be held at such times as the Council may determine.
- (4) Special meetings of the Council may be called by the City Manager or any two Council members.

[Section 1.100 (1), (2), (3) and (4) amended by ORD. No. NS-1643 passed November 1, 1995]

[Section 1.100 (1) and (2) amended by Ord. NS-1741, passed February 16, 2000]

[Section 1.100 (4) amended by Ord. NS-2001, passed April 5, 2006]

**1.102 The Presiding Officer - Election and Duties.** At the first meeting in January of odd numbered years, the Councilors shall elect from their membership a mayor, who shall become the presiding officer immediately following the election. The presiding officer shall preserve strict order and decorum at all meetings, state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions or order, subject, however, to an appeal to the Council. A majority vote of the Council shall decide the appeal. The mayor shall vote last on all questions and shall sign all ordinances and resolutions adopted by the Council during his or her presence. If the mayor is absent, the presiding officer shall sign ordinances or resolutions as then adopted. Special committees shall be appointed by the presiding officer, unless otherwise directed by the Council.

[Section 1.102 amended by Ord. NS-1741, passed February 16, 2000]

**1.104 Chairperson Pro Tem.** At the time of the election of the mayor, the Councilors shall elect one of their members to the position of chairperson pro tem. The chairperson pro tem shall be presiding officer during the absence of the mayor.

**1.106 Order of Business.** Council meetings shall be open to the public, except as provided by the charter and state law. Promptly at the hour set by law on the day of each regular meeting, the members of the Council, the City Recorder, and the City Manager shall take their regular stations in the Council room, and the business of the Council shall be taken up for consideration and disposition, after roll call, in the order that such business is listed on the Council agenda. The City

Manager shall prepare the Council agenda and make it available to the public and Council prior to the Council meeting, unless the Council, by majority vote, adopts a different process for the determination of the Council's agenda.

[Section 1.106 amended by ORD. No. NS-1454 passed January 21, 1987]

[Section 1.106 amended by ORD. No. NS-2002 passed April 5, 2006]

**1.108 Call to Order - Presiding Officer.** The mayor, or in his absence, the chairperson pro tem, shall take the chair precisely at the hour appointed for the meeting, and shall immediately call the Council to order. In the absence of the mayor or chairperson pro tem, the City Recorder, or assistant, shall call the Council to order, and a temporary chairperson shall be elected by the members of the Council present. Upon the arrival of the mayor or chairperson pro tem, the temporary chairperson shall immediately relinquish the chair upon the conclusion of the business immediately before the Council.

**1.110 Roll Call.** Before proceeding with the business of the Council, the City Manager or designee shall call the roll of the members, and the names of those present shall be entered in the minutes.

[Section 1.110 amended by Ord. NS-1741, passed February 16, 2000]

**1.112 Quorum.** A majority of the Council shall constitute a quorum to do business, but a lesser number may appear and adjourn from time to time.

**1.114 Reading of Minutes.** Unless a reading of the minutes of a Council meeting is requested by a Councilor, the minutes may be approved without reading if the Recorder has previously furnished each member with a copy.

**1.116 Rules of Debate.**

- (1) The mayor or any other Councilor shall not be deprived of any of the rights and privileges of a Councilor by reason of acting as the presiding officer.
- (2) A member desiring to speak shall address the chair, and upon recognition by the presiding officer, shall speak only to the question under debate, avoiding all personalities and indecorous language.
- (3) A member, once recognized, shall not be interrupted when speaking unless it be to call to order, or as herein otherwise provided. If a member, while speaking, is called to order, he or she shall cease speaking until the question of order is determined, and, if in order, shall be permitted to proceed.
- (4) The Councilor moving the adoption of an ordinance or resolution shall have the privilege of closing the debate.

- (5) A motion to reconsider any action taken by the Council may be made only on the day the action was taken. It may be made either immediately during the same session or at a recessed or adjourned session. The motion must be made by one of the prevailing side, but may be seconded by any member. The motion may be made at any time and shall have precedence over all other motions. The motion shall be debatable. Nothing in this section shall be construed to prevent any member of the Council from making or remaking the same or any other motion at a subsequent meeting of the Council.
- (6) A Councilor may request, through the presiding officer, the privilege of having an abstract of his or her statement on any subject under consideration by the council entered in the minutes. If the Council consents, the statement shall be entered in the minutes.
- (7) The City Recorder may be directed by the presiding officer, with consent of the Council, to enter in the minutes a synopsis of the discussion on any question coming regularly before the Council.
- (8) A member shall have the right to have the reasons for his or her dissent from, or protest against, any action of the Council entered into the minutes.

**1.118 Addressing the Council.** A person desiring to address the Council shall first secure the permission of the presiding officer so to do; provided, however, that under the following headings of business, unless the presiding officer rules otherwise, any qualified person may address the Council without securing such prior permission:

- (1) Written communications. Interested parties or their authorized representatives may address the Council by written communications in regard to matters then under discussion.
- (2) Oral communications. Taxpayers or residents of the City, or their authorized representatives, may address the Council by oral communications on any matter on the agenda concerning the City's business. Preference shall be given to those persons who notify the City Recorder in advance of their desire to speak in order that the same may appear on the agenda of the Council.
- (3) Reading of protests, etc. Interested persons or their authorized representatives may address the Council by reading of protests, petitions, or communications relating to zoning, sewer and street proceedings, hearings on protests, appeals and petitions, or similar matters, in regard to matters then under consideration.
- (4) Visitors Section. All Council agenda will have a section reserved for visitor's comments. This section is intended to provide an opportunity to address the Council on items not otherwise listed on the agenda. The Presiding Officer shall determine the order and manner in which comment shall be taken on individual items listed on the agenda.

[Section 1.118 (2) amended by Ord. NS-1741, passed February 16, 2000]

Section 1.118 (4) added by Ord. NS-1741, passed February 16, 2000]

**1.120 Addressing the Council After Motion Made.** After a motion is made by the Council, no person shall address the Council without first securing the permission of the Council to do so.

**1.122 Manner of Addressing Council.** Each person addressing the Council shall first write his or her name and address on a document provided for that purpose, shall then state his or her name in an audible tone of voice, and shall also state whether he or she is a resident of the City of Bend for the record. All remarks shall be addressed to the Council as a body and not to any particular member. No person, other than the Councilors and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the presiding officer. No question shall be asked a Councilor except through the presiding officer, who may give permission in an orderly fashion.

[Section 1.122 amended by Ord. NS-1613, passed May 4, 1994]

**1.124 Decorum.**

- (1) When the Council is in session, the members must preserve order and decorum, and no member shall delay or interrupt the proceedings or the peace of the Council, disturb any member while speaking, or refuse to obey the orders of the Council or its presiding officer, except as provided by Sections 1.100 to 1.138.
- (2) Any member of the audience who makes personal, impertinent, or slanderous remarks, or who becomes boisterous while addressing the Council shall be barred, by the presiding officer, from further audience before the Council, at that particular meeting, unless permission to continue is granted by a majority vote of the Council.

**1.126 Enforcement of Decorum.** The chief of police, or designated member or members of the police department shall be sergeant-at-arms of the Council meetings. The sergeant-at-arms shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the Council meetings. Under instructions of the presiding officer, the sergeant-at-arms shall place any person who violates the order and decorum of the meeting under arrest, and cause him to be prosecuted under the provisions of the code or ordinances of the City of Bend and a violation of this section shall be deemed a disorderly conduct in a public place, and shall be prosecuted as such on a complaint to be signed by the presiding officer.

**1.128 Question of Procedure.** Questions of procedure not specifically provided for in this code or in the charter shall be governed by Robert's Rules of Order, Revised Edition.

[Section 1.130 amended by Ord. NS-1741, passed February 16, 2000]

**1.132 Persons Authorized to Be Within The Council Area.** No person, except authorized City officials, their representatives and news reporters, shall be permitted within the Council area of the Council room, except by express consent of the Council.

**1.134 Ordinances, Resolutions, Motions, and Contracts.**

- (1) Ordinances shall be prepared by the City Attorney. No ordinance shall be prepared for presentation to the Council unless ordered by a majority vote of the Council, or requested in writing by the City Manager or prepared by the City Attorney, with the approval of the City Manager or on his or her own initiative.
- (2) All ordinances, resolutions, and contract documents involving substantive matters of administration shall be approved as to form and legality by the City Attorney or authorized representative, and for administration by the City Manager or authorized representative, before presentation to the Council.

**1.136 Reports and Resolutions to Be Filed With Recorder.** Reports and resolutions shall be filed with the Recorder and entered on the minutes.

**1.138 Recording of Council Meetings.** Voice recordings of Council meetings shall be made when practicable. The recordings shall be retained and stored in a safe place by the City Manager until the Council directs their disposal. The recordings shall not be permitted to be taken outside the confines of city hall.

**1.160 City Seal.** The seal of the City consists of a representation of the sun setting behind the Three Sisters Mountains, surrounded by an outer rim containing the words, "Seal of the City of Bend, Deschutes County, Oregon," and also the figures, "1905." The seal makes an impression 1-7/8 inches in diameter.

**1.170 Claims Against the City.** The payment of bills and claims against the City shall be reviewed and approved by the City Manager or the City Manager's designee. The City Manager shall have available on a monthly basis a list of all expenditures approved for payment by the City Manager or the City Manager's designee.

**SERVICE CHARGE PROCEDURES**

**1.180 Enforcement of Service Charge Payment.** Whenever any charge for furnishing water or sewer service to any premises becomes past due, the City is entitled to the following remedies:

- (1) Where the premises are occupied by the same person or persons who incurred the water or sewer service charge, the City may terminate the water service to the occupants until the charge is paid in full.
- (2) Where the account is more than three months overdue or where the premises are no longer occupied by the same person or persons who incurred the water or sewer service charge, the money owed shall constitute a lien against the premises which were furnished the water or sewer service. The Recorder-Treasurer shall enter the lien in the docket of City liens. Notice shall be given to the owner of the premises as shown by the records of the Deschutes County Assessor.
- (3) Any unpaid lien shall accumulate interest at a rate of 10% per annum. Interest shall begin to run from the date of entry of the lien on the lien docket and continue to run until the amounts docketed are paid in full. A lien shall be enforced in the same manner as liens for street improvements are enforced.

**1.182 Denial of Service Hearing.** Applications for water service to premises where the service is terminated because of unpaid charges shall be processed by the City in customary course and shall be approved if the application is legally sufficient. A ground for denial of the application shall exist, however, if the premises continue to be occupied, at the time of the application, by a person legally competent to contract who was an occupant of the premises during the time that the unpaid charge was incurred. The City may continue to deny an application on this ground until the unpaid charge is paid in full. Water service shall not be reinstated until a deposit of \$25 is paid per dwelling unit equivalent. A person whose application is denied on this ground shall have a right of appeal to the City Council. A request for an appeal to the Council must be made no later than 5:00 p.m. of the Friday prior to the regular Council meeting at which the applicant desires to be heard. The City and the applicant have equal rights to be heard before the Council.

**CITY AGENTS****1.190 Reliance; Nonliability of City for Unauthorized Acts.**

- (1) No agent acting on behalf of the City has authority to bind the City to any obligation unless that agent is specifically authorized to do so by an official of the City who has both the authority to bind the City and the authority to lawfully delegate that power to such an agent.
- (2) No person is entitled to rely upon any offer to contract, acceptance of an offer to contract or other representation regarding an obligation of the City without first ascertaining that the person or organization purporting to be acting on behalf of the City has the actual authority to bind the City as its actual agent acting within the precise scope of authority granted by the City, as contemplated by the parties.
- (3) If the contract contemplated by the parties is required by law to be in writing, the person contracting with any purported agent of the City is responsible for determining that the agent's grant of authority from the City is in writing and properly executed and that the contemplated act of the agent is within the precise scope of that grant of authority.
- (4) The City is not liable for the act of any purported agent not actually authorized by the City to act in that capacity.

**INITIATIVE AND REFERENDUM**

**1.200** All elections related to initiative and referendum elections shall be in compliance with the rules established by the Secretary of State's office and shall comply with State Law.

**1.270 Nomination of Candidates for City Council.**

Candidates for City Councilor can only be nominated for that office by filing a nominating petition; and may not be nominated by filing a declaration of candidacy. The requirements of the nominating petition, and the procedures for filing it, shall as provided by State Law except that the nominating petition shall contain at least 150 signatures of electors within the City of Bend.

[Section 1.270 added by ORD No. NS-1654 passed April 3, 1996]

[Section 1.270 amended by ORD No. NS-1703 passed August 25, 1998]

[Section 1.200 amended and 1.200 to 1.270 repealed by Ord. No. NS-1820, passed February 6, 2002]

**PROCEDURES FOR SALE OF REAL PROPERTY OWNED BY THE CITY OF BEND**

**1.300 Provisions of ORS.** The City Council may sell City real property by any legal means after complying with the provisions of ORS 221.725 and 221.727. The City's Recorder-Treasurer shall see that the notice required by ORS 221.725 is published.

**1.302 City Council Conditions or Restrictions.** The City Council may attach such conditions or restrictions to the sale of its real property regarding terms of payment or use of land as in its discretion it feels are necessary to protect the public interest.

**1.304 Application.** Any person, firm or corporation (hereinafter referred to as "applicant") desiring to purchase real property from the City of Bend shall file an application with the City Recorder-Treasurer. The applicant shall pay the Recorder-Treasurer an amount sufficient to pay the City's costs of sale, including, but not limited to, publication costs and appraisal fees. The amount of such costs shall be determined by the City's Recorder-Treasurer. Any dispute over the amount of costs may be appealed to the City Council. This section does not apply to sales of property initiated by the Council, unless the Council so provides. Costs will be refunded to the applicant, without interest, if the City sells the property to someone other than the applicant.

**1.306 Presentation to City Council.** An application under Section 1.304 shall be forwarded to the City Council by the City's Recorder-Treasurer. If the Council finds it necessary or convenient to sell the real property in question, it shall follow the procedures set forth in ORS 221.725. After holding the public hearing required by ORS 221.725, the Council may sell the real property to the applicant or direct the City Recorder-Treasurer to solicit bids for the sale of City real property.

**1.308 Solicitation of Bids and Notice of Sale.** If the City Council chooses to sell City real property by requesting bids on the realty, notice of the sale shall be published in a newspaper of general circulation within the City of Bend at least once prior to the sale. The notice shall contain a description of the property, the minimum sale price set by the City Council, a notice that costs of sale are to be paid by the successful bidder and an announcement that the property will be offered for sale at public sale to be held in the City Council room at the City Hall on a particular date and at a particular time. The notice shall recite that the City may reject any or all bids for the property. The notice may include the reason that the Council has decided to sell the real property and any conditions of sale prescribed by the Council.

[Section 1.300 -.308 added by Ord. No. NS-1422, passed 10-2-85]

**POLICE DEPARTMENT SERVICE CHARGES**

**1.350 Authorization.** To defray the costs of certain services, the Police Department is authorized to charge a fee in an amount not to exceed the actual costs. These services include, but are not limited to: record searches, providing copies of original reports or statements, providing prints of photographs, and taking fingerprints. A schedule of fees shall be readily available in the Police Department.

**1.352 Fee Waiver.** The fees established pursuant to Bend Code 1.350 may be waived by the Chief of Police of the City of Bend or his designee if the entity requesting the information is a political subdivision as defined in ORS 192.072(1)(a), a law enforcement agency as defined in ORS 181.010, or a district attorney as defined in ORS 131.005 (8) and said request does not work an economic or staffing hardship upon the Bend Police Department. This section does not give any rights to secure any report or other information not otherwise available.

**1.354 Records.** The Police Department shall keep a full and complete record of all fees collected under the authority of this section and shall remit the same to the City treasurer at regular intervals. The treasurer shall credit the amounts received to the general fund of the City.

[Section 1.352 amended by Ord. No. NS-1421, passed 10-2-85]

**CIVIL SERVICE - FIRE FIGHTERS AND AMBULANCE PERSONNEL**

**1.400 Definitions.** As used in Sections 1.400 to 1.438, the following terms mean:

- (1) Appointing Power. Every person or group of persons who are vested by law with power and authority to select, appoint, or employ any person to hold any office, place, position, or employment subject to civil service.
- (2) Appointment. Includes all means of selection, appointing, or employing a person to hold an office, place, position, or employment subject to civil service.
- (3) Commission. The Civil Service Commission for the City of Bend.
- (4) Commissioner. Any one of the three members of the Civil Service Commission.

**1.402 Civil Service Adopted.** A system of civil service shall govern the employment of all full time paid fire fighters and ambulance technicians and ambulance supervisors employed by the City.

**1.404 Commission; Appointment; Term of Office; Vacancy.** The Civil Service Commission shall be composed of three persons, appointed by the City Commission, and shall serve without compensation. The term of office of each Commissioner shall be six years, except that the term of office of any Commissioner appointed to fill a vacancy in the office shall be for the unexpired term of the vacant office.

**1.406 Qualifications and Removal of Commissioners.** A Commissioner shall be an American citizen, a City resident and an elector of Deschutes County. The City Council may, by resolution, remove a member of the Commission from office for incompetence, dereliction of duty, malfeasance in office, or other good cause, after giving the Commissioner a copy of the charges and an opportunity to be heard in person or by counsel after not less than 10 days' notice.

**1.408 Commission: Organization; Meetings; Quorum.** Immediately after its appointment, the Commission shall organize by electing one of its members as chairperson. It shall hold meetings necessary for the proper discharge of its duties. Notice shall be given to all members, and the Bend Fire Fighters Association. The chairperson of two members of the Commission may call a meeting. Two members of the Commission constitute a quorum, and the votes of two members shall be sufficient for the decisions and the transaction of the business of the Commission.

**1.410 Commission: Duties.** The Commission shall:

- (1) Devote due time and attention to the discharge of the duties imposed upon it by the provisions of this code.
- (2) Make suitable rules and regulations not inconsistent with the provisions of this code, provide in detail the manner in which examinations may be held and appointments, promotions, transfers, reinstatements, demotions, suspensions, and discharges made. It may also provide for any other matters connected with the general subject of personnel administration to further carry out the general purposes of Sections 1.400 to 1.436 or which may be found to be in the interest of good personnel administration. The rules and regulations may be changed from time to time, and copies shall be available for public examination.
- (3) Investigate and report upon all matters touching the enforcement and effect of the provisions of Sections 1.400 to 1.436 and its rules and regulations, inspect all institutions and departments, offices, places, positions, and employments affected by these sections, and ascertain whether these sections and all rules and regulations are being obeyed. Such investigations may be made by the Commission or by any Commissioner designated for that purpose. The Commission shall investigate on petition of a citizen, duly verified, stating that irregularities or abuses exist, or setting out in concise language in writing the necessity for the investigation. In the course of the investigation, the Commission or designated Commissioner may administer oaths, subpoena and require the attendance of witnesses and the production by them of books, papers, documents, and accounts appertaining to the investigation, and to cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for such depositions in civil suits of the United States. The oaths administered have the same force and effect as the oaths administered by the circuit judge in a judicial capacity.
- (4) To hear and investigate cases before the Commission or designated Commissioner as governed by Sections 1.400 to 1.436 and the rules of practice and procedure adopted by the Commission. Technical rules of evidence do not apply and any informality or defect in the proceedings or hearing, or in the manner of taking testimony shall not invalidate any order, decision, rule, or regulation made, approved or confirmed by the Commission. No order, decision, rule or regulation made by any designated Commissioner conducting a hearing or investigation shall be of force or effect unless concurred in by at least one other member of the Commission.
- (5) Hear and determine complaints respecting the administration of personnel, allocation of positions, examination rejections, and all other matters referred to the Commission.

- (6) Provide for, formulate, and hold competitive tests, or constitute and appoint suitable agencies therefor, for the purpose of determining the relative qualifications of persons who seek employment in any classified position under civil service and to establish eligible lists for the various classified positions.
- (7) Certify to the appointing authority on written request, the names of the three persons highest on the eligible list for the class to fill a vacant position. If there are no lists, the Commission shall authorize a provisional or temporary appointment list. A temporary or provisional appointment shall not continue for a period longer than four months and no person shall receive more than one provisional appointment or serve more than four months as a provisional appointee in any one fiscal year.
- (8) Keep records as necessary for the proper administration of Sections 1.400 to 1.436.

**1.412 Those Subject to Civil Service.** The civil service applies to and is a classified service of all full time, paid positions now existing or hereafter created in the Fire Department, excluding that of Fire Chief and clerical support positions. All present incumbents and all future appointees shall be subject to civil service. All department appointments and promotions shall be made solely on merit, efficiency, and fitness, which shall be ascertained by open competitive examination and impartial investigation. No person shall be suspended, discharged, reinstated, or transferred from any such place, position, or employment contrary to the provisions of Sections 1.400 to 1.436.

**1.416 Tenure of Office; Causes and Manner of Discharge.** The tenure of every person holding an office, place, position, or employment in the classified service, and the causes and manner of their discharge, shall be determined in compliance and conformity with the terms and conditions of the City of Bend Personnel Policies, City of Bend Rules and Regulations for Civil Service for Paid Firefighters and/or the Bend Fire Fighters Association labor contract, as applicable.

**1.418 Dismissal, Demotion, Suspension; Hearing; Findings.**

- (1) No person in the classified civil service who has been permanently appointed or inducted into civil service under provision of Sections 1.400 to 1.436 shall be removed, suspended, demoted, or discharged except for a cause, and only upon the written accusation of the appointing power.

- (2) Any permanent employee who has been removed, suspended, demoted, or discharged may, within 10 days from the time of removal, suspension, demotion or discharge, file with the Commission a signed written demand for an investigation. If the demand alleges, or if it otherwise appears to the Commission, that the dismissal was not made in good faith for cause, the Commission shall conduct an investigation and hold a public hearing within 30 days from the time appeal is filed. Appellant may be represented by counsel. The investigation shall be confined to the determination of the question of whether the dismissal was made in good faith for cause. The investigation shall be confined to the determination of the question of whether the removal, suspension, demotion, or discharge was made in good faith for cause.
- (3) After the investigation the Commission may affirm the order of the appointing power, or if it finds that the removal, suspension, or demotion was not made in good faith for cause, it may overturn or modify the order. The findings of the Commission shall be certified in writing to, and immediately enforced by, the appointing power.

**1.420 Duties of all Officers and Employees to Assist the Commission.** Officers and employees of the City shall aid in carrying out the provisions of Sections 1.400 to 1.436 and the rules and regulations of the Commission, and shall afford the Commission, its members, and employees all reasonable facilities and assistance to inspect books, papers, documents, and accounts applying or in any way appertaining to offices, places, positions, and employments subject to civil service, and shall produce books, papers, documents, and accounts, and attend and testify, whenever required so to do by the Commission or any Commissioner.

**1.422 Appointments to Vacant Positions; Certification From Lists.**

- (1) Whenever a position in the classified service becomes vacant, appointments shall be made in accordance with the City of Bend Personnel Policies, City of Bend Rules and Regulations for Civil Service for Paid Firefighters and/or the Bend Fire Fighters Association labor contract, as applicable.

**1.424 Creation of Employment; Fixing of Compensation.** Section 1.400 to 1.436 shall not infringe upon the power and authority of the City to create or abolish offices, positions, or employments, or to fix the salaries and compensation of all employees.

**1.430 Civil Suits.** The Commission shall begin and conduct all civil suits necessary for the proper enforcement of Sections 1.400 to 1.436 and of the rules of the Commission. The Commission shall be represented in these suits by the City Attorney but the Commission may in any case be represented by special counsel to be appointed by it after first obtaining authorization as to appointment and compensation from the City Council.

**1.432 Prohibited Conduct.** No person shall, either alone or in cooperation with one or more persons:

- (1) Defeat, receive, or obstruct any person in respect to the right of examination or registration provided by Sections 1.400 to 1.436 or the rules and regulations of the Commission.
- (2) Falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined, registered or certified pursuant to Sections 1.400 to 1.436, or aid in so doing, or make any false representation concerning the same or the person examined.
- (3) Furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, registered or certified or to be examined, registered or certified.
- (4) Impersonate any other person or permit or aid in any manner any other person to impersonate one, in connection with any examination or registration or application or request to be examined or registered.

**1.434 Political Service Disregarded and Prohibited.** No person holding any office, place, position, or employment subject to civil service is under any obligation to contribute to any political fund or to render any political service to any person or party. No person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote, or in any manner change the official rank, employment, or compensation of any person under civil service, or promise or threaten to do so, for giving or withholding, or neglecting to make any contribution of money or services or any other valuable thing for any political purpose.

**1.436 Penalty.** A violation of a provision of Sections 1.400 to 1.436 is a Class A Civil Infraction.

[Section 1.414 repealed by Ordinance No. NS-1540, passed July 3, 1991]

[Sections 1.406, 1.408, 1.410(7)(8), 1.412, 1.416, 1.418, 1.422(1) amended by Ordinance No. NS-1709, passed December 16, 1998]

[Sections 1.410(6), 1.422(2)(3)(4), 1.426, 1.428 deleted by Ordinance No. NS-1709, passed December 16, 1998]

**1.500**

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**1.506**

**AIRPORT COMMISSION**

[Section 1.500 amended by Ord. No. NS-1470, passed March 16, 1988]

[Section 1.500 amended by Ord. No. NS-1595 passed June 2, 1993]

[Sections 1.500 through 1.506 relating to the creation and duties of the Bend Airport Commission, repealed by Ord. No. NS-1674, passed April 2, 1997]

**URBAN RENEWAL AGENCY - BEND URBAN RENEWAL AGENCY****URBAN RENEWAL**

**1.511 Urban Renewal Agency.** The City Council hereby declares, pursuant to ORS 457.045(3), that all of the rights, powers, duties, privileges, obligations, and immunities granted to and vested in the Urban Renewal Agency of the City of Bend, Oregon by the laws of the State of Oregon and the ordinances of the Council creating the agency and adopting urban renewal plans, shall be exercised by and vested in the City Council of the City of Bend. The Urban Renewal Agency of the City of Bend, Oregon, shall be known as the Bend Urban Renewal Agency. Any act of the City Council, acting as the urban renewal agency shall be, and shall be considered, the act of the urban renewal agency only and not of the City Council.

**1.513 Rules of Conduct.** The rules of conduct and procedure applicable to the City Council when acting as the City Council shall apply with like force to the Council when acting as the Bend Urban Renewal Agency, except as to those matters covered by Bend Code 1.511 to 1.519.

**1.515 Oaths and Affirmations.** No oath or affirmation, other than the oath or affirmation of office required to assume office as a City Councilor, shall be required prior to service by a City Councilor as a member of the Bend Urban Renewal Agency.

**1.517 Membership and Term of Office.** The term of office of each member of the Bend Urban Renewal Agency shall be the same as the term of office that each member holds as a member of the Bend City Council.

**1.519 Officers and Administration.** The administrative responsibilities of the Bend Urban Renewal Agency shall be discharged by the City of Bend personnel under the supervision of the City Manager. The Bend Urban Renewal Agency may select the following officers of the Bend Urban Renewal Agency, by a majority vote of the Board:

(1) Chairperson. The Chairperson must be a member of the Board and shall preside at all the meetings of the Board. Except as otherwise provided by the Board, the Chairperson shall have the authority to sign all contracts, deeds and other instruments authorized by a majority vote of the Board.

(2) Vice-Chairperson. The Vice-Chairperson must be a member of the Board and shall perform the duties of the chairperson in the absence or incapacity of the Chairperson; and in the case of resignation or death of the Chairperson, the Vice-Chairperson shall perform the duties of the Chairperson until the Board has designated a new Chairperson.

[Sections 1.510 - 1.516 added by Ord. NS-1403, passed 9-5-84]

[Sections 1.512, 1.516 amended by Ord. NS-1503, passed 11-1-89]

[Sections 1.512, 1.514, 1.516 amended by Ord. NS-1507, passed March 7, 1990]

[Sections 1.510 - 1.516 repealed by Ord. NS-1554, passed Jan. 15, 1992]

[Sections 1.511, 1.513, 1.515, 1.517 & 1.519 added by Ord. NS-1554, passed January 15, 1992]

[Sections 1.511, 1.513, 1.517 and 1.519 amended by Ord. NS-1740, passed February 2, 2000]

[Sections 1.515 and 1.519 Section 3 repealed by Ord. NS-1740, passed February 2, 2000]

[Sections 1.511, through 1.517 amended by Ord. NS-1869, passed May 21, 2003]

[Section 1.511 through 1.519 amended by Ord NS-1890, passed September 17, 2003]

**EMERGENCY MANAGEMENT****1.520 Procedures for Dealing with Emergencies in the City of Bend**

(1) The conditions required for the declaration of a state of emergency within the City of Bend shall be as set out in ORS 401.025(4), which provides: “ ‘Emergency’ includes any man-made or natural events or circumstance causing or threatening loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, crisis influx of migrants unmanageable by the county, civil disturbance, riot, sabotage and war.”

(2) A declaration of a state of emergency within the City of Bend may be issued by the City Manager or his/her designee per the established Succession of Authority (hereafter referred to as “City Manager”).

Prior to declaring an emergency, the City Manager will make every reasonable effort to contact City Councilors to inform them of the need to declare an emergency. The City Manager will submit the declaration of emergency to the Deschutes County Emergency Manager for County Commissioner approval. At its next City Council meeting, the Council shall consider ratification of the declaration of emergency with a majority vote.

(3) The City Council is responsible for approving an Emergency Operations Policy to establish procedures to prepare for and carry out any activity to prevent, minimize, respond to or recover from an emergency. The policy will provide for coordination with local, state and federal partners.

(4) The City Manager, on advice from the Incident Commander, shall have the authority to take actions that includes, but are not limited to, the following measures:

- (a) redirect City funds for emergency use and suspend standard City procurement procedures;
- (b) establish a curfew which fixes the hours during which all persons other than officially authorized personnel may not be upon the public streets or other public places;
- (c) prohibit or limit the number of persons who may gather or congregate upon any public street, public place, or any outdoor place;
- (d) barricade streets and prohibit vehicular or pedestrian traffic, or regulate

the same on any public street leading to the emergency area for such distance as may be deemed necessary under the circumstances;

- (e) evacuate persons;
  - (f) prohibit the sale of alcoholic beverages;
  - (g) prohibit or restrict the sale of gasoline or other flammable liquids;
  - (h) prohibit the sale, carrying, or possession of any weapons or explosives of any kind on public streets, public places, or any outdoor place;
  - (i) curtail or suspend commercial activity;
  - (j) turn off water, gas, or electricity;
  - (k) order such other measures as are necessary for the protection of life or property, or for the recovery from the emergency;
  - (l) adopt temporary emergency regulations to implement the foregoing powers, as necessary.
- (5) The City Manager shall have the authority, in addition to the authority provided by this ordinance, to carry out the emergency duties or functions as prescribed by the policy establishing procedures to deal with emergency management.
- (6) No person shall knowingly violate any regulation promulgated pursuant to this ordinance, and imposed in a state of emergency declared under this ordinance. Violation of an emergency regulation shall be a Class A misdemeanor.
- (7) In the event of a conflict between the provisions of this ordinance and any other ordinance of the City of Bend, the provisions of this ordinance shall control.

[Section 1.520 amended by Ordinance No. NS-1725, passed 7/21/99]

[Section 1.520 amended by Ordinance No. NS-2000, passed April 5, 2006]

[Section 1.520 amended by Ordinance No. NS-2099, July 16, 2008]

**PUBLIC CONTRACTS**

**1.550** The Bend City Council is designated as the local Contract Review Board under the State of Oregon Public Contracting Code.

- (a) The Contract Review Board may, from time to time, and in addition to delegations made under this ordinance, delegate its powers and responsibilities consistent with the Oregon Public Contracting Code, the Model Rules, or the Bend Code.
- (b) The City Manager, or his/her designated purchasing agent, and the Purchasing Division of the City of Bend Finance Department are designated as the city's "Contracting Agency" for purposes of contracting powers and duties assigned to the City of Bend as a "Contracting Agency" under the State of Oregon Public Contracting Code or the Model Rules. The director of any department of the City or his/her designee may solicit bids/quotations under the rules in this section and under the direction of the Contracting Agency.
- (c) Except as provided in these rules, and as may be determined by future delegations of authority, the powers and duties of the Contract Review Board shall be exercised by the Contract Review Board, and all powers and duties given or assigned to the Contracting Agency shall be exercised or performed by the Contracting Agency.

**1.551** Except as specifically provided herein, Public contracts shall be let by the City of Bend according to the State of Oregon Public Contracting Code, including the Model Rules adopted by the Oregon Attorney General as they now exist and as they may be amended in the future, and the Bend Code. Definitions provided by the State of Oregon Public Contracting Code or the Model Rules shall apply to City of Bend procurements, except as may be specifically provided herein.

**1.552** The following classes of public contracts are hereby exempted from competitive procurement:

- (a) Any contract exempted by the State of Oregon Public Contracting Code or Model Rules;
- (b) Contracts under \$5,000, which may be entered into by direct award under rules and procedures adopted by the Contracting Agency.

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- (c) Contracts for the purchase of computer equipment and software, which may be by requests for quotations, under the procedures in Bend Code Section 1.555(a) and (b).
- (d) Purchases through federal programs, pursuant to ORS 279A.180.
- (e) An emergency contract, provided that the Contracting Agency adheres to the requirements of ORS 279B.080 or 279C.335(5) and the Model Rules. In addition: (1) The City Manager or designee is authorized to sign all purchase order/contract, agreements; (2) In the event the emergency is of a nature that requires immediate action to prevent damage to property or health (e.g., a major water line break or sewage overflow) the department may use all the means necessary to meet the emergency and if the expenditure is in excess of \$100,000, as soon as time allows, bring the matter before the Contract Review Board for ratification or other action consistent with law.
- (f) A Public Facility Improvement Agreement entered into between the City of Bend and a person responsible for carrying out conditions of approval of a land use decision of the City of Bend. The term "Land Use Decision" has the meaning provided by ORS 197.015.
- (g) Any other contract (including sole source and brand name specification contracts) where the public interest would be promoted by exempting the contract from the competitive bidding process, provided that the Contract Review Board adheres to the Public Contracting Code and the Model Rules in making the exemption.

**1.553** Administrative staff and departments have contracting authority and responsibilities as follows:

- (1) The City Manager (or designee) is authorized to enter into all City contracts that are within the approved current year budget without further review from the Contract Review Board, provided that all major contracts (over \$100,000.00) shall have financial review and approval by the Finance Director or her/his designee prior to award. Contracts over \$100,000 that are not approved in the current year budget will require additional authority from the Contract Review Board prior to execution.

- (2) The Contracting Agency shall, consistent with the Bend Code, adopt forms, computer software, procedures, and administrative policies for all city purchases. In addition, the Contracting Agency may adopt purchasing limits and procedures for City Departments and rules establishing change order authority, provided that such rules are consistent with the Public Contract Code and Model Rules.
- (3) The City of Bend Department of Finance, Purchasing Division (referred to as the "Purchasing Division"), shall have the authority to enter into city contracts or acquisitions not to exceed \$20,000 without obtaining additional authority from the City Manager, provided that funds for such contract are in the current year budget.
- (4) Purchases of goods from city employees, or sale of goods to city employees, shall require authorization of the City Manager or designee. Provision of services by city personnel shall be in accordance with the City Personnel Policies in Chapter 5 of the City Policy Manual, and other applicable law.
- (5) Each department shall operate within its budget, or seek supplemental budgetary authority from City Council with respect to any contract that is not within the adopted budget for such department for the current year.
- (6) Purchase of used equipment: The City will purchase used (vehicles and the like) under the same procedures as new equipment. In addition, the City will adopt procedures to insure the equipment is suitable for City use: verifying source, manufacturer, seller, the condition of the equipment - checked by experts/professionals of that equipment. City will not buy used equipment if new equipment is available at a compatible price and within budget.
- (7) ADA: The City of Bend shall comply with Americans with Disabilities rules, regulations, & procedures, and will not discriminate on the basis of disability in its purchasing and contracting policies, practices, and procedures. The prospective contractor shall execute and provide a certification that it is in compliance with ADA in its employment practices, and that it shall perform its contractual obligations consistently with ADA federal requirements/regulations, state disability law, and applicable regulations.

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- (8) Sustainability - Policy Statement: The City of Bend recognizes that the actions it takes in its operations, policies and planning efforts will have impacts on sustainability in our community. It is the City of Bend's policy to encourage implementation of sustainable purchasing. Sustainable practices incorporate three broad factors: environmental stewardship, life cycle costing and equal opportunities for every person impacted by a purchase. By including sustainability in purchasing decisions, The City of Bend can promote practices that improve public and worker health, utilize economic resources responsibly, conserve natural resources, and reward environmentally conscious manufacturers while maintaining cost excellence and value standards.

**1.554** Notice of public improvement contracts may be published electronically where the Contracting Agency finds that such publication is likely to be cost effective, as provided in ORS 279C.360.

**1.555** Public contracts will be let in accordance to the ORS 279 Procedures, the Attorney General Model Rules, and the City Policy.

- (a) Contracts under \$5000.00 may be let without competitive quotes.
- (b) Contracts not to exceed \$50,000 may be let by competitive quote under the following procedures. The Contracting Agency or director of any department of the City or his/her designee, acting under the supervision of the Contracting Agency, shall informally solicit at least three price quotes from prospective contractors. If three prospective contractors are not available, then fewer quotes may be solicited, and the Contracting Agency shall maintain records of the attempts to obtain quotes.
- (c) Contracts over \$50,000 will be let by a formal competitive process (for the purpose of this section, formal solicitation is defined as an advertised solicitation with prepared bid documents). This process may be waived by the City Manager or designee if the procurement is (1) under \$100,000 allowing for informal solicitation or (2) exempted under 1.552 of this code.

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- (d) The Contracting Agency shall award the contract to the prospective contractor whose quote will best serve the interests of the City of Bend, taking into account price and other applicable factors, such as experience, specific expertise, availability, project understanding, contractor capacity, and contractor responsibility. If the contract is not awarded on the basis of the lowest price, the Contracting Agency shall make a written record of the basis for the award. The Contracting Agency will ensure the prospective contractor complies with the requirements of the Americans with Disabilities Act.
- (e) A procurement may not be artificially divided or fragmented to qualify for the informal contract award procedures provided by this section
- (f) Change orders to the purchase order/contract will follow the same rules as the original agreement (excluding competitive solicitation). Engineer/Project Manager or designee will issue an "Engineering Change Order" in accordance to the established engineering format on all public improvement (labor) contracts.

**1.556** Personal services contracts (other than those specifically exempted by the Public Contracting Code or Model Rules), are subject to the rules established by this section:

- (a) Personal service contracts will be used to retain the services of independent contractors. Nothing in this section shall apply to the employment of regular City employees.
- (b) Unless otherwise approved by the City Manager, all personal service contracts shall require the contractor to defend, indemnify, and hold harmless the city, its officers, agents and employees against and from any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance there-under and shall include a waiver of contractor's right to ORS 30.285 and ORS 30.287 indemnification and defense.
- (c) Unless otherwise approved by the City Manager, City personal service contracts shall contain a provision requiring the person or entity providing the service to obtain and maintain liability insurance coverage in at least the amount of the City's tort liability limits, naming the City as an additional named insured, during the life of the contract.

- (d) All City personal service contracts shall contain all contract provisions mandated by State and Federal law. These provisions may be incorporated in the personal service contract by reference to State or Federal laws provides otherwise. The Contracting Agency will prepare model contract provisions for use in City personal service contracts. All personal service contracts will contain specific language with regard to discrimination under the Americans with Disabilities Act. Independent contractors are required to adhere to federal accessibility requirements.
- (e) The following procedure shall be observed in the selection of personal service contractors:
  - (1) For personal service contracts involving an anticipated fee of \$10,000 or less per annum, the City Manager or his or her designated officer may negotiate a contract for such services with any qualified contractor of his or her selection.
  - (2) For personal service contracts involving an anticipated fee of more than \$10,000 per annum, the City Manager or his or her designated officer shall solicit at least three (3) prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractor's interest and ability to perform the proposed assignment.
  - (3) The City Manager or his or her designated officer may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate City employee or by an interview committee.
  - (4) Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, the City Manager or his or her designated officer shall select the prospective contractor, and shall prepare a personal service contract.
- (f) The above provisions regarding selection procedures do not apply to amendments, modifications or supplements to executed personal service contracts.
- (g) The following criteria shall be considered in the evaluation and selection of a personal service contractor:

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- (1) Specialized experience in the type of work to be performed.
  - (2) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.
  - (3) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable; and
  - (4) Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.
  - (5) Any other factors relevant to the particular contract.
- (h) The selection procedures described in this section may be waived by the City Manager, at his or her discretion where (1) an emergency exists; (2) there is only one consultant/individual available to perform the services; (3) the award of the contract is in the public's best interest; or (4) the contract is for legal services or 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.
- (i) The City Manager or his/her designee is delegated the authority to sign all personal service contracts.
- (j) Nothing contained in this section shall preclude the City from complying with provisions of Federal or State law (including requirements of grant awards) that require the City to utilize a different selection or contracting procedure, including circumstances where applicable rules require a different procedure for selecting architects, engineers and land surveyors.

**1.557** Disposition of surplus personal property may be made, at the discretion of the City Manager or his/her designee, under provisions of the State of Oregon Public Contracting Code, or the Model Rules, or under the provisions of this section:

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- (a) From time to time and after personal property owned by the City of Bend is determined by the City Manager or his/her designee to be surplus to the needs of the City, the city may sell the property at public auction. The city may utilize a contracting firm, approved by the Contract Review Board, for disposition of the property on terms and conditions contained in a contract approved by the Contract Review Board. The City shall give notice of the public auction by posting notice of the means by which the property will be disposed of on the City of Bend Internet Website, or by advertisement in a newspaper of general circulation.
- (b) Auction sales may be (but are not required to be) conducted entirely on the internet. Sale shall be for cash to the highest bidder. All proceeds of the sale shall be paid to the City, subject to the terms and conditions of the contract (if any) approved by the Contract Review Board between the City of Bend and a firm (if any) selected to conduct the auction.
- (c) All personal property sold pursuant to this section shall be sold as-is without any warranty, either express or implied, of any kind, including but not limited to warranties of title or fitness for any purpose. Upon receiving payment for the personal property from the successful bidder, the person or company conducting the auction shall execute an appropriate bill of sale or receipt, which shall recite that the sale is without warranty, as provided in this sub-section.

**1.558** If bids are solicited for a public improvement contract, and all bids exceed the budget for the project, the Contracting Agency may, prior to contract award, negotiate for a price within the project budget under the following procedures:

- (a) Negotiations will begin with the lowest, responsive and responsible bidder. If negotiations are not successful, then the Contracting Agency may begin negotiations with the second lowest responsive, responsible bidder, and so on.
- (b) Negotiations may include the inclusion of value engineering and other options to attempt to bring the project cost within the budgeted amount.
- (c) A contract may not be awarded under this section if the scope of the project is significantly changed from the description in the original bid documents.
- (d) The Contracting Agency will adhere to the provisions of ORS 279C.340 in applying this section.

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**1.559** The Contracting Agency shall adopt appropriate purchasing policies dealing with ethics, environmental (recycling) and sustainability considerations and the like, subject to review and modification by the Contract Review Board.

- (a) See attached "Purchasing Ethics/Environmental" attached (Contract Review Board to review)
- (b) See 1.553(8) Sustainability

**1.560** In the event of a conflict between any provision of the State of Oregon Public Contracting Code or the Model Rules and this chapter of the Bend Code, the provisions of the State of Oregon Contracting Code or the Model Rules shall control.

[Section 1.550 to 1.560 adopted February 16, 2005 by Ordinance No. NS-1960]

[Section 1.550 to 1.560 amended by Ord. NS-2046, passed 5/2/07]

**Dedication of 1% of Construction on Municipal Buildings for Acquisition of Art****1.562 Purpose**

It is the purpose of this Chapter and the policy of the City of Bend to dedicate one-percent of the total Eligible Costs or one-percent of the total Eligible Funds of all Improvement Projects (whichever is less) to the selection, acquisition, fabrication, installation, maintenance, project management, conservation, deaccessioning, community education, documentation and registration of Public Art.

**1.565 Definitions** As defined in this Chapter, the following terms shall apply.

- (1) **Building**: Any structure used or intended for supporting or sheltering any use or occupancy
- (2) **Eligible Costs** means the City's capitalized costs for completion of an Improvement Project, including costs for capitalized tenant improvements. Eligible Costs do not include costs for: design and engineering, administration, fees and permits, building demolition, relocation of tenants, environmental testing, environmental remediation, non-construction contingency or indirect costs, such as interest during construction, advertising and legal fees. When an improvement project involves the acquisition of real property, costs attributable to land acquisition are not Eligible Costs, while costs attributable to improvements on the real property are Eligible Costs.
- (3) **Eligible Funds** The City of Bend's monetary contribution to an Improvement Project including bonded indebtedness proceeds unless those proceeds are not eligible as follows. The following are not Eligible Funds: private development revenue, federal and state grants that preclude Public Art as an object for expenditure, Local Improvement District revenue, Water Operating Fund revenue, Water Construction Fund revenue, Sewer Systems Operating Fund revenue, Sewer Systems Construction Fund revenue and revenue from any other funding source subject to legal restrictions which preclude Public Art as an object for expenditure. . Improvement Projects exclude projects funded by systems development charges
- (4) **Improvement Project** means any project paid for wholly or in part by the City of Bend in which the City's contribution of Eligible Funds equals \$50,000 or more for the construction, rehabilitation, remodeling, improvement or purchase for a public use of any building, structure or parking facility or any portion.

- (a) Maintenance and repair does not constitute an Improvement Project.
  - (b) The purchase of improved or unimproved property by the Bend Urban Renewal Agency solely for resale or redevelopment, in which property is not otherwise to be put to a governmental use, shall not constitute an Improvement Project subject to the provisions of this Chapter.
- (5) Parking Facility means any area provided for public parking that is controlled through parking management by the City of Bend, including the Bend Centennial Parking Plaza, surface parking lots, on-street parking spaces, and areas controlled through issuance of parking permits.
- (6) Public Art means original artwork which is accessible to the public and/or public employees, and which has been approved as public art by the Regional Arts Council, acting on behalf of the City of Bend.
- (7) Regional Arts Council means the organization recognized by the State of Oregon that serves the Bend community.
- (8) Structure means that which is built or constructed.
- (9) Selection Panel means a group responsible for reviewing proposed Public Art and making recommendations to the Regional Arts Council on the selection of Public Art.

**1.570 Dedication.**

Any City of Bend official or employee acting on behalf of the City who authorizes or appropriates expenditures for an Improvement Project shall include in the capital improvement program of the City's capital budget, and disburse to the Regional Arts Council, a monetary contribution for Public Art equal to one-percent (1%) of the total Eligible Costs or one-percent of the total Eligible Funds of the Improvement Project, whichever is less, no later than by the completion of the project.

**1.575 Public Art Trust Fund**

The Regional Arts Council, under contract with the City, shall maintain a special fund called the Public Art Trust Fund into which funds dedicated to Public Art pursuant to Section 5.560 shall be deposited.

- (1) Such funds shall be deposited into the Public Art Trust Fund, and shall be allocated as follows:
  - (a) 75 percent shall be used by the Regional Arts Council for costs associated with Public Art including, but not limited to the acquisition, fabrication, and installation of Public Art.
  - (b) 15 percent shall be used by the Regional Arts Council for costs associated with Public Art, including, but not limited to costs of selection, project management, documentation, community education and registration of Public Art.
  - (c) 10 percent shall be retained by the City for the maintenance, conservation and deaccessioning of Public Art.
- (2) Such funds shall be deposited in separate accounts within the Public Art Trust Fund if separate accounting is requested by the City or required by law.
- (3) Disbursements from the Public Art Trust Fund shall be made by the Regional Arts Council.
  - (a) Disbursements shall be made according to the terms of this Chapter and any guidelines adopted hereunder by the Regional Arts Council.
  - (b) If acquisition, fabrication and installation of art is funded by revenue sources whose expenditure is restricted by the City Charter, Bend Code, or other law, the Regional Arts Council, prior to making a disbursement for Public Art from such a restricted account in the Public Art Trust Fund, shall adopt written findings demonstrating that the proposed disbursement complies with all applicable restrictions.
  - (c) The Regional Arts Council will report annually to the City on the disbursement of funds from the Public Art Trust Fund.

**1.580 Siting**

Public Art selected pursuant to this Chapter may be sited in, on or about any Improvement Project or other property owned, leased, or rented by, donated to, or otherwise made available to the City of Bend in accordance with any restrictions placed by the City.

**1.585 Guidelines.**

The Regional Arts Council shall, under contract with the City, adopt guidelines to:

- (1) Provide for annual reporting to the City;
- (2) Develop an annual plan for Public Art that takes into account the views of the City;
- (3) Provide a method for the appointment of representatives to Selection Panels;
- (4) Determine a method or methods of selecting and contracting with artists for the design, execution and siting of Public Art;
- (5) Determine the dedication and disbursement process for the Public Art Trust Fund;
- (6) Determine a process for the ongoing care, maintenance and conservation of Public Art;
- (7) Determine a process to deaccession art;
- (8) Set forth any other matter appropriate to the administration of this Chapter.
- (9) Develop a public involvement plan for selecting and siting public

**1.590 Ownership**

All Public Art acquired pursuant to this Chapter shall be acquired in the name of the City of Bend, and title shall vest in the City of Bend.

**1.593 Decisions**

The Regional Arts Council's decisions as to the acquisition, fabrication, installation, deaccessioning, management, community education and registration of Public Art, and disbursement of the Public Art Trust Fund, shall ratified by the City Council.

**1.597**

**BEND CODE**

**1.597**

**1.597 Implementation.**

The Regional Arts Council, shall implement the provisions of this Chapter, in cooperation with the City Manager or designee.

[Section 1.562 through 1.597 added by Ordinance NS-2051, adopted June 6, 2007]

**MUNICIPAL COURT****JURIES**

**1.600 Right of Jury Trial.** Every person charged with an offense defined and made punishable by a code or ordinance provision of the City which carries the possibility of a sentence of imprisonment shall have the right to a trial by a jury of six persons, upon filing written demand with the Municipal Court at least thirty days prior to the trial date set by the Municipal Court. However, any person who desires a jury trial and who fails to make a written demand in a timely manner shall not be denied their right to a jury trial. The effect of an untimely demand for a jury trial will be that a new trial date will be set and the person making the untimely demand will be charged a reasonable fee for the cost incurred by the City of Bend in re-scheduling the trial.

**1.602 Jury Selection.** Juries shall be selected in accordance with Oregon Law.

**1.608 Trial Jury Selection.** Selection of a trial jury shall be made on the day of the trial. Prior to trial, a panel of ten jurors shall be called and six names drawn from it at random. The Court may use any manner of selecting the panel of 10 jurors provided by state law. The jurors may then be questioned, first by the defense and then by the prosecution. Each side may exercise two peremptory challenges. One may first be exercised by the defense, then one by the City, then another by the defense, and a final by the City. Jurors may also be excluded for cause. Additional names shall be selected by lot to replace those jurors challenged.

**1.610 Payment of Jurors.** Those jurors notified and who appear at trial shall receive compensation from the City in accordance with the rates established by Oregon law.

**1.612 Verdicts.** All six jurors sworn to try the case must concur to render a valid verdict.

**1.616 Request for Jury Trial; Fee.** In order to have the right of trial by jury under the rules as provided by this Code, a person must give notice of the request to the Municipal Judge in writing at least thirty days prior to the trial date set by the Municipal Court. If the defendant is found guilty by the jury, there shall be assessed, in addition to court costs, a jury fee in accordance with rates established by Oregon law.

**1.618 Powers of Judge; Contempt.** The Municipal Judge shall have all inherent and statutory duties of a Justice of the Peace within the jurisdictional limits of the City. The Chief of Police shall assist the Judge in the serving of subpoenas, notices of jury duty and such other orders of the court necessary for its proper conduct. The Municipal Judge may hold any prospective juror who disregards a notice of jury duty in contempt of court and may punish the juror by fine of not more than \$100.00 or by imprisonment for not more than 50 days or by both fine and imprisonment.

**COURT COSTS**

**1.620 Amount.** Court costs in an amount set by resolution pursuant to Bend Code 1.800 - 1.806 shall be assessed against each defendant being cited into the Municipal Court of the City for any violation of a municipal ordinance, Oregon Law, or code provision whether the defendant appears, fails to appear, or is convicted after a trial in the court, except for violations of municipal provisions pertaining to motor vehicle parking violations and regulations, unless a warrant is issued to enforce defendant's appearance. The Municipal Court shall also retain a percentage of bail money posted with the Court when and to the extent authorized by the laws of the State of Oregon.

[Section 1.620 amended by Ord. No. NS-1485 passed December 21, 1988.]

**1.622 Disposal of Costs.** Court costs shall be separate and distinct from any fine or other penalty imposed in the court for a violation of any municipal ordinance or code provision. Court costs shall be considered statutory in nature and may not be suspended or otherwise disposed of. Moneys collected as court costs shall be disposed of and handled in the same manner as fines and penalties accruing from other matters in the Municipal Court.

**1.624 Reimbursement.** All defendants posting bail shall be required, prior to their release, to post the additional sum of court costs provided by Section 1.620. If a trial on the merits of the case results in an acquittal or a dismissal of the case for any cause, then the court costs shall be reimbursed to the defendant.

**1.626 State Mandated Assessments.** Assessments mandated by state law shall be collected according to the provisions of state law.

**1.628 Enforcement.** The clerk of the Municipal Court, or designee, is responsible for the enforcement of Sections 1.620 to 1.628.

**PAYMENT OF FINES AND COSTS****1.630 Time and Method of Payment.**

- (1) If a defendant is sentenced to pay a fine or cost, the Municipal Court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence, the fine shall be payable immediately.
- (2) If a defendant sentenced to pay a fine or cost is also placed on probation or the imposition or execution of sentence is suspended, the court may make payment of the fine or costs a condition of probation or suspension of sentence.

**1.632 Effect of Non-Payment.**

- (1) When a defendant sentenced to pay a fine defaults in the payment thereof or of any installment, the Municipal Court, on motion of the City Attorney or upon its own motion, may require the defendant to show cause why the default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for the defendant's appearance.
- (2) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure to make a good faith effort to make the payment, the Municipal Court may find that the default constitutes contempt and may order the defendant committed until the fine, or a specified part thereof, is paid.
- (3) The term of imprisonment for contempt for nonpayment of fines shall be set forth in the commitment order, and shall not exceed one day for each \$25 of the fine. A person committed for nonpayment of a fine shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.
- (4) If it appears to the satisfaction of the Municipal Court that the default in the payment of a fine is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or the unpaid portion thereof in whole or in part.
- (5) In addition to other procedures, the Municipal Court may pursue collections of fines by any means as allowed under Oregon law.

**ATTORNEY FOR INDIGENT: FEES**

**1.640 Appointment.** The Municipal Judge may, when required by law and upon proper showing of indigency, appoint an attorney to represent a person in Municipal Court.

**1.642 Fees.** When an attorney appointed by the Municipal Judge has completed his or her services, the Municipal Judge may issue an order for the payment of the attorney's expenses and fees from City funds as follows:

- (1) Expenses and fees may only be ordered paid after the attorney has submitted to the Municipal Judge an affidavit containing an accurate statement of all reasonable expenses paid or incurred in connection with the attorney's services and a statement of the services performed by the attorney.
- (2) Appointed attorney's fees may not exceed the following schedule:
  - (a) When a plea of guilty is entered or if for any reason the matter is concluded prior to trial, \$100.00.
  - (b) When a plea of not guilty is entered and trial is held, \$40.00 an hour, but not to exceed \$400.00 in any one case.
- (3) Payments ordered by the Municipal Judge pursuant to this section, shall not exceed the amounts budgeted by the City Council for this purpose.

**CODE ENFORCEMENT - CIVIL INFRACTION PROCEDURE****1.700 Establishment and Purpose.**

- (1) A procedure to handle certain violations of this Code and City ordinance as infractions, subject to the provisions below, is hereby established.
- (2) An infraction procedure has been established for the purpose of decriminalizing penalties for violations of this code and ordinances of the City and for the purpose of providing a convenient and practical forum for the hearing and determination of cases arising out of the violation.

**1.702 Definitions.** Except where the context clearly indicates a different meaning, the general definitions and the definitions appearing in the definitional and other sections of particular chapters of the Oregon Criminal Code and Oregon Criminal Procedure Statutes, as they now exist, are applicable to Sections 1.700 to 1.736. The following definitions shall also apply:

- (1) **City Infraction.** An offense against the City in the form of a violation of a section of this code or a City ordinance for which the violation is classified as a civil infraction shall be handled in accordance with the procedures established by Sections 1.700 to 1.736. When an infraction is of a continuing nature, a separate infraction will be deemed to occur on each calendar day the infraction continues to exist. A separate citation may be filed for each such infraction and a fine may be imposed for each such infraction regardless of whether a separate citation is filed for each day of violation.
- (2) **Fine; Fine Schedule.** The penalty to be imposed for an infraction is a fine or other civil penalty. The appropriate fine shall be determined by reference to the fine schedule in Section 1.732. The procedure established herein shall be the exclusive procedure for imposing a fine. However, this section shall not be read to prohibit in any way alternative remedies, including abatement, nor shall the City be prohibited from recovering any expense incurred in an abatement procedure.
- (3) **Person.** A person, firm, partnership, corporation or association of persons.

**1.704 Application.** The infraction procedure shall apply to those code and ordinance violations classified as civil infractions.

**1.706 Procedure.** If a City officer or police officer has reasonable grounds to believe a person has committed an infraction, the officer may issue to that person a citation for the offense. A police officer may either arrest the person or issue a citation.

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**1.708 Citation and Complaint.** The OREGON UNIFORM TRAFFIC CITATION AND COMPLAINT form may be used as the citation, complaint and summons for purposes of enforcing civil infractions.

[Section 1.708 amended by Ordinance NS-1660, passed July 17, 1996]

**1.710 Private Person May Commence Action for Infraction; Complaint; Service of Summons.**

- (1) A private person may commence an action for an infraction by certifying to the complaint before the Municipal Judge, clerk or deputy clerk of the court. This action will be entered in the court record.
- (2) A complaint under subsection (1) of this section shall contain a form of certificate in which the complainant shall certify that the complainant has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law. A certificate conforming to this section shall be deemed equivalent to a sworn complaint.
- (3) When the complaint is certified by a private person, the court shall cause the summons to be delivered to the defendant.

**1.712 Minimum Requirements for Summons.** A summons in an infraction offense is sufficient if it contains the following:

- (1) The name of the court, the name of the person cited, the date on which the citation was issued, the name of the complainant and the time and place at which the person cited is to appear in court.
- (2) A statement or designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so, and the date, time and place at which the offense is alleged to have occurred.
- (3) A notice to the person cited that a complaint will be filed with the court based on the offense.
- (4) The amount of bail, if any, fixed for the offense.

**1.714 Minimum Requirements for Complaint.** Except as provided in this section, a complaint in an infraction offense is sufficient if it contains the following:

- (1) The name of the court, the name of the City in whose name the action is brought and the name of the defendant.
- (2) A statement or designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the offense is alleged to have occurred.

**1.716 Delivery of Summons to Person Cited; Delivery of Other Parts of Citation.** An officer issuing a citation shall serve the summons upon the defendant in accordance with Oregon law and:

- (1) The defendant shall either appear in court at the time indicated in the summons or prior to such time shall deliver to the court the summons together with cash, check or money order in the amount of the bail set forth in the summons and enclosing:
  - (a) A request for a hearing; or
  - (b) A statement of matters in explanation or mitigation of the offense charged; or
  - (c) The executed appearance, waiver of hearing and plea of guilty appearing on the summons. A statement in explanation or mitigation also may be enclosed with the guilty plea.
- (2) If the defendant personally appears in court at the time indicated in the summons, pleads guilty and the judge accepts the plea, the judge shall hear any statement in explanation or mitigation that the defendant desires to make.

**1.720 Effect of Statement in Explanation or Mitigation.** If a defendant has submitted to the court a written statement as provided in paragraph (b) of subsection (1) of Section 1.718 it constitutes a waiver of hearing and consent to judgment by the court declaring a forfeiture of bail on the basis of the statement and any testimony or written statement of the arresting officer or other witnesses which may be presented to the court.

**1.722 Fixing Hearing Date; Notice to Defendant.** If the defendant requests a hearing, or if pursuant to Section 1.718 the court directs that a hearing be had, the court shall fix a date and time for the hearing and, unless notice is waived, shall at least five (5) days in advance of the hearing mail to the defendant notice of the date and time.

**1.724 Hearing Discretionary with the Court.** In any case, the court may direct a hearing be held. Otherwise, the court may enter the appropriate judgment, impose a fine, direct that the fine be paid out of the bail deposited by the defendant and remit to the defendant any amount by which the bail exceeds the fine.

**1.726 Warrant for Arrest.**

- (1) If a person cited fails to comply with the provisions of Section 1.718 of this Code, or fails to appear at any time fixed by the court, a warrant for the person's arrest may be issued.
- (2) No warrant of arrest for failure to appear may be issued pursuant to this section after a period of 60 days from the date of the entry of an order declaring a forfeiture of bail. Unless a warrant has been issued before the expiration of that period, the order of forfeiture shall be deemed the final disposition of the case.

**1.728 Trial; Burden of Proof.**

- (1) The trial of an infraction shall be by the court without a jury. The trial of an infraction shall not commence until the expiration of seven days from the date of arrest or citation for the infraction unless the defendant waives the seven-day period.
- (2) The City shall have the burden of proving the alleged code or ordinance infraction by a preponderance of the evidence.
- (3) The defendant may be represented by counsel, but counsel shall not be provided at public expense. If defense counsel is to appear, written notice shall be provided to the Municipal Court five days prior to the hearing date, excluding weekends and holidays.
- (4) If the person alleged to have committed the infraction desires that witnesses be ordered to appear by subpoena, a request in writing must be made to the court at least five days prior to the scheduled hearing. Subject to the same five-day limitation, the complaining official or City Attorney, as appropriate, may also request the court that certain witnesses be ordered to appear by subpoena. If a fine is declared in the final order, the order shall also provide that the person shall pay any witness fees payable in connection with the hearing.
- (5) The court may allow hearsay or evidence by affidavit in a trial for a civil infraction.

- (6) After due consideration of the evidence and arguments presented at the hearing, the court shall determine whether the infraction as alleged in the complaint has been established. If the infraction is not established, an order dismissing the complaint shall be entered in the Municipal Court records. If a determination is made that an infraction has been committed, an appropriate order shall be entered in the Municipal Court records. In addition to any fine, forfeiture, or both, or other civil penalty, the court shall assess court costs.

**1.730 Enforcement.**

- (1) Delinquent fines and those brought to default judgment which were assessed for infractions occurring on real property may be held as City liens against the real property and collected in the same manner as other such debts owing to the City if the owner of property is notified of the infraction before entry of judgment on the lien docket.
- (2) Nothing in this section shall prevent the City from revoking or denying any City license or permit held or desired by a person owing a fine to the City.
- (3) If any person neglects or refuses to pay a fine imposed within the time allowed by the court, the court shall have the authority to pursue collections by any means as allowed under Oregon law or to issue a warrant requiring the defendant to appear and show cause why the defendant should not be found in contempt of court. In determining whether or not the person is in contempt, the court shall follow the procedures set forth in ORS Chapter 33. A person found in contempt may be ordered confined in the City jail for each \$25.00 of the fine. However, the court shall not order any person confined pursuant to the provisions of this section to more than five days in the City jail.

**1.732 Schedule of Fines.**

- (1) Infractions for violations of the Bend City Code are classified for the purpose of determining fines into the following categories:
  - (a) Class A infractions.
  - (b) Class B infractions.
  - (c) Class C infractions.
- (2) An assessment of a fine for such infraction shall be an amount not exceeding:
  - (a) \$500 for a Class A infraction.
  - (b) \$250 for a Class B infraction.
  - (c) \$100 for a Class C infraction.

**1.734 Bail Schedule.** The court is hereby authorized to establish a bail schedule for each class of civil infractions and violations of Oregon Law. A copy of this schedule is to be kept at the office of the Municipal Court Clerk.

**1.736 Appeal.** An appeal from a judgment involving a civil infraction may be taken by either party in the manner provided for by law.

[Section 1.738 amended by Ord. No. NS-1442, passed 7-2-86]

[Section 1.738 repealed by Ord. No. NS-1495, passed 7-19-89]

[Section 1.600 to 1.736 amended by Ord. NS-1917, passed March 17, 2004]

**FEE AND SERVICE CHARGE REVENUE/COST COMPARISON SYSTEM**

**1.800 Policy.** It is the policy of the City of Bend to require the ascertainment and recovery of City costs from fees and charges levied therefor in providing City services, products and regulation hereinafter enumerated in this Ordinance. Nothing contained in this Bend Code 1.800 to 1.814 shall supersede any existing contractual obligations of City or the mandatory provisions of State law.

**1.802 Definition of Costs.** "Costs" as used in Bend Code 1.800 to 1.814 consist of the following elements:

- (1) All applicable direct costs including, but not limited to salaries, wages, fringe benefits, services and supplies, operation expenses, contracted services, special supplies, and any other direct expense incurred.
- (2) All applicable indirect costs including, but not limited to, building maintenance and operations, equipment maintenance, communication, printing and reproduction, and like expenses when distributed on a rational proration system.
- (3) Fixed assets recovery expenses, consisting of depreciation of fixed assets, and additional fixed asset expenses recovery charges calculated on the current estimated cost of replacement, divided by the approximate life expectancy of the fixed asset.
- (4) General overhead, expressed as a percentage, distributing and charging the cost of each department head and his or her supporting expenses as enumerated in Subsections (1), (2), and (3) of this section.

**1.804. Establishing Fees.** The City Manager shall periodically cause a review of City fees and charges to recover the percentage of City costs incurred in providing City services, products and regulations as enumerated in Bend Code 1.806 and recommend adjustments to the Bend City Council. Fees and charges to recover City costs as determined to the extent reasonably practical shall be established by resolution adopted by the City Council.

**1.806. Schedule of Fees and Service Charges.** The percentages of cost listed in this section shall be used as a guide in setting fees and charges.

<u>City Service, Product or Regulation</u>	<u>Percentage of Costs To be Recovered</u>
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DEVELOPMENT SERVICES:

1. Construction Plan Check	100% +
2. Building Permits	100% +
3. Plumbing Permits	100% +
4. Mechanical Permits	100% +
5. Sign Permits	50%
6. Mobile Home Inspection	100% +
7. Sewer Line Inspection	100%
8. Water Line Inspection	tbd
9. Zone Change Review	100%
10. Variance Application	100%
11. Conditional Use Application	100%
12. Comprehensive Plan Review	100%
13. Right-of-Way Vacation	100%
14. Partitioning	100%
15. Subdivision Review & Appeal	100%
16. Site Plan Review	100%
17. Street Cut Permits	100%
18. Engineering Plan Checking	100%
19. Public Improvement Inspections	100%
20. Land Use Appeals	100%
21. Street Dedication Review	100%
22. Housemoving Permit	100%
23. Electrical Permits	100%
24. Plumbing Plan Review	100%
25. Mechanical Plan Review	100%
26. Electrical Plan Review	100%
27. Fire & Life Safety Plan Review	100%

LEGAL, JUDICIAL, POLICE, FIRE AND REGULATORY SERVICES:

28. Setting Aside Criminal Record	100%
29. Cassette Tape Duplication	100% *
30. Criminal Case Discovery	tbd *
31. Court Costs	tbd
32. Regulatory Licenses (B.C. 7)	100%
33. Special Events Review & License	100%

1.806

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1.806

34. Police Accident Reports	100% *
35. Police Clearance Letter	tbd
36. Fingerprinting	tbd
37. Bicycle Licensing	tbd

LEGAL, JUDICIAL, POLICE, FIRE AND REGULATORY SERVICES, CONT'D:

38. Parking Permits	100%
39. YES Counseling Fee	tbd
40. Woodstove Inspection (Existing)	100%
41. Woodstove Inspection (New)	100%
42. Special Fire Permit	100%
43. High Fire Hazard Inspections	100%
44. Ambulance & EMT Services	50% City residents 100% nonresidents
45. Fire Reports	tbd *
46. Demolition Permits	100%

UTILITY AND ENTERPRISE SERVICES:

47. Bulk Water Sales	100% or market price, whichever is greater
48. Water Rates - Flat	100% (phased in irrigation rates)
49. Water Rates - Metered	100%
50. Water General Benefit Charge	tbd
51. Voluntary Water Turn On/Off	tbd
52. Delinquent Utility Account Notice	tbd
53. Delinquent Water Turn On/Of	100%
54. Water Line Extension	100%
55. Water Meter Installation	100%
56. Fire Line Inspection	100%
57. Water Service Installation	100%
58. Water Service Agreements	100%
59. New Utility Account Fee	tbd
60. Sewer Service	100%
61. Connection to Sewer	100%
62. Sewer General Benefit Charge	Res. 1613 & 1630
63. Industrial Discharge Permit	100%
64. Waste Dumping Fee (Septic Tanks)	100%
65. Phase II Sewer Agreements	100%
66. Cemetery Plot Sales	100%
67. Cemetery Interment	100%
68. Cemetery Perpetual Maintenance	100%

MAINTENANCE SERVICES:

**1.806****BEND CODE****1.820**

69. Parking Lot Spaces		100% or market, whichever is less
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**ADMINISTRATIVE AND FINANCE SERVICES:**

70. Photocopy and Look Up Fee		100% *
71. Map & Publication Sale		100% *
72. Document Certification		100%
73. Research City Records		tbd
74. Returned Check Collection		tbd
75. City Lien Checks		tbd
76. Bancroft Bond Administration		100%
77. New Services		100%

tbd - Fees that are shown as "tbd" are to be set by the City Council by resolution at a percentage of recovery to be determined by the Council when the rate is set.

+ - Fees that are marked by a cross shall be set at the percentage listed in this ordinance or at the fee set by State law, whichever is lower.

\* - Those items that are marked by a star are controlled by the provisions of the Oregon Public Records law. In such cases, it is the City's intent to recover 100% of the costs that may be recovered pursuant to that law.

[Section 1.800 - 1.806 added by Ordinance No. NS-1485 passed December 21, 1988]

[Section 1.806 amended by Ordinance NS-1657, passed June 19, 1996]

**1.820 Lessee Restrictions.** No readily disposable products containing or composed of polystyrene foam (styrofoam) shall be purchased or sold by lessees who initially lease or renew a lease for space from the City of Bend after January 1, 1990.

[Section 1.820 added by Ordinance No. NS-1484 passed December 21, 1988]

Ordinance No. NS-1399 passed by the City Commission the 5th day of July, 1984.

**1.900 Adoption of Systems Development Charges.** Systems development charges, the collection of which are authorized by ORS 223.297 through 223.314, are to be collected from developers of real property and users of capital improvements and may be established by the Bend City Council by resolution. Each systems development charge resolution shall set forth the fee to be charged and the methodology used to establish said charge. The resolution shall also indicate when such fees are to be paid and shall, for improvement fees, provide for a credit when a qualified public improvement is constructed by the developer or user who is being required to pay a systems development charge.

**1.930 Challenge of Expenditures.** Any citizen or interested person may challenge an expenditure of system development charge revenues based upon an alleged failure of the city to follow the requirements of ORS 223.307 by filing a written challenge with the City Manager describing, with particularity, the expenditure which the person is challenging and the reason that the challenge is alleged to be unlawful. All such challenges must be brought within two years of the date of the expenditure challenged.

**1.932 Hearing of Challenge to Expenditures.** A challenge to an expenditure of systems development charges shall be set for an administrative hearing before the City Manager, or his designee. Such hearings shall be tape recorded. The person conducting the hearing must not be one of the persons who authorized the challenged expenditure of funds. The hearings officer shall provide notice to the person challenging the expenditure and the public employees or officials who made the expenditure, of the hearing date, time and place. The person conducting the hearing shall also provide said persons an opportunity to present evidence and legal arguments concerning the matter. If the hearings officer determines that systems development charges were misspent, he or she shall forward a report to the City Council detailing the hearings officer's findings and indicating the amount of funds misspent and from where said funds were spent. The City Council shall review the hearings officer's report and replace any funds it determines have been misspent with funds derived from other sources.

[Sections 1.900 - 1.932 added by Ordinance No. NS-1535 passed June 5, 1991]

**REQUIREMENTS AND PROCEDURES FOR FILING AND REVIEWING CLAIMS PROVIDED FOR IN BALLOT MEASURE 49 FOR PROPERTY THAT IS LOCATED, IN WHOLE OR IN PART, INSIDE THE CITY OF BEND URBAN GROWTH BOUNDARY.**

**1.950(1) Purpose.**

The purpose of this section is to adopt a procedure for evaluating claims that are provided for under Ballot Measure 49 including claims that were filed under Measure 37.

**1.950(2) Definitions.**

For purposes of this Section, the following definitions shall apply:

- (A) Appraisal. Means a written statement prepared by a person certified under ORS Chapter 674 or a person registered under ORS Chapter 308.
- (B) Claim. Means a written demand for compensation filed under Sections 12 to 14 of Measure 49 and ORS 197.25, as in effect on and after the effective date of Measure 49.
- (C) Claimant. Means the person who has filed a claim. The claimant must be a current owner of the property that is the subject of the claim.
- (D) Council. Means the Bend City Council.
- (E) Department. Means the Community Development Department, or successor entity designated by the Council.
- (F) Director. Means the Director of the Community Development Department, or designee, or a successor City official designated by the Council.
- (G) Fair Market Value. As defined in Section 21(b) of Measure 49 “the amount of money, in cash, that the property would bring if the property was offered for sale by a person who desires to sell the property but is not obligated to sell the property, and if the property was bought by a person who was willing to buy the property but not obligated to buy the property. The fair market value is the actual value of the property, with all of the property’s adaptations to general and special purposes. The fair market value of property does not include any prospective value, speculative value or possible value based upon future expenditures and improvements.”
- (H) Interest. Means the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between

the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period.

- (I) Land Use Regulation. Means a provision of a city comprehensive plan, zoning ordinance, land division ordinance, or development code that restricts the residential use of private real property.
- (J) Measure 49. Means the measure enacted by the voters on November 6, 2007, which amended Oregon Revised Statutes Chapter 197.
- (K) Person. This term includes a public or private entity.
- (L) Property. Means the private real property described in a claim and contiguous private real property that is owned by the same owner, whether or not the contiguous property is described in another claim, and that is not property owned by the federal government, an Indian tribe or a public body, as defined in ORS 192.410.
- (M) Reduction in Fair Market Value. Means the difference, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest.
- (N) Urban Growth Boundary. Has the meaning given that term in ORS 195.060.
- (O) Waive or Waiver. Means an action or decision authorizing the claimant to use the property without application of the land use regulation(s) to the extent necessary to offset the reduction in fair market value of the property.

**1.950(3) Process for Determining Just Compensation for Measure 37 Claims made on or before June 28, 2007.**

The City shall follow the procedure set forth in Ballot Measure 49 to evaluate Measure 37 claims that were filed with the City on or before June 28, 2007. Vested rights claims relating to Measure 37 waivers shall be determined pursuant to a declaratory ruling process and the common law standard for vested rights including the standards contained in 4.1.1315 of the City of Bend Development Code.

**1.950(4) Claims for Compensation for Claims regarding Land Use Regulations adopted after January 1, 2007.**

- (A) Filing. All claims shall be filed with the Director in person or by U.S. Mail. The filing date is the date the claim is received by the City.
- (B) Submittal requirements.

- (1) Claimant shall file a complete Measure 49 claim form provided by the Department including:
  - (a) the name and address of each owner and the date when the property was acquired;
  - (b) the address, if any, and the assessor's map and tax lot number of the property that is the subject of the claim;
  - (c) a statement of the person's desired use of the property for residential use;
  - (d) a specific reference to each land use regulation enacted after January 1, 2007 that is alleged to restrict the person's desired use of the property and when the land use regulations were enacted;
  - (e) the amount of reduction in fair market value alleged for each regulation at issue plus interest;
  - (f) whether a previous permit was issued for development of the property including a description of the use and the case file number;
  - (g) whether a claim was filed for the subject property with the state or any other government; and
  - (h) any other information reasonably related to the review and processing of the claim as required by the Director of the Community Development Department or as provided on the Measure 49 claim form; and
  - (i) all information required to be submitted by Ballot Measure 49 and subsequent amendments to Measure 49.
  
- (2) Claimant shall also provide:
  - (a) evidence of the acquisition date of the claimant, including the instrument conveying the property to the claimant and a report from a title company identifying the person in which title is vested and the claimant's acquisition date and describing exceptions and encumbrances to title that are of record;
  - (b) the written consent of all of the owners if there is more than one owner;
  - (c) an appraisal showing the fair market value of the property one year before the enactment of each land use regulation and the fair market value of the property one year after the enactment. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under this subsection. The appraisal must: (1) be prepared by a person certified under ORS Chapter 674 or a person registered under ORS Chapter 308; (2) comply with the Uniform Standards of Professional

Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and (3) expressly determine the highest and best use of the property at the time the land use regulation was enacted; and

- (d) the applicable claim(s) review fee which shall be established by the Bend City Council.
- (3) Only one claim for each property may be filed for each land use regulation.
- (C) Claim review process. The city shall:
- (1) Deny a claim if:
    - (a) it is not filed within five (5) years from the date the land use regulation was enacted;
    - (b) an application for a comprehensive plan or zoning amendment is approved for the subject property; or
    - (c) the highest and best use of the property was not residential at the time the land use regulation was enacted.
  - (2) determine whether a claim is complete within sixty (60) days after receiving the claim;
  - (3) notify the claimant of any missing information within sixty (60) days after receiving the claim;
  - (4) after providing notice of the missing information, deem the application complete if:
    - (a) the claimant provides the missing information and the required fee; or
    - (b) the claimant provides a written statement that some or all of the missing information will not be provided and the required fee.
  - (5) deem the application complete when filed if the city fails to notify the claimant of missing information within sixty (60) days after receiving the claim;
  - (6) deem the application withdrawn if the claimant fails to provide the missing information or fee or a written statement that some or all of the missing information will not be provided within the time specified in the notice of missing information; and

- (7) issue a final determination on a claim within 180 days from the date the claim is deemed complete.

**1.950(5) Review and Recommendation.**

- (A) Claims review process. Upon receipt of a filing, the City shall follow the claims review process under Section 1.950(4).
- (B) Review criteria. The Director or his/her designee shall determine whether to recommend approval or denial of the claim based on a demonstration by the owner that:
  - (1) A city enacted land use regulation enacted after January 1, 2007 and after the property was acquired restricts the person's desired residential use of the property;
  - (2) The land use regulation has the effect of reducing the fair market value of the property;
  - (3) The highest and best use of the property at the time the property was acquired is the person's desired use of the property;
  - (4) The land use regulation is not an exempt land use regulation under the terms of Measure 49;
  - (5) The time limitations for filing a claim, as specified in Measure 49, have not been exceeded; and
  - (6) All other requirements of law have been met.
- (C) Acquisition date. The date the property was acquired is:
  - (1) The date the claimant became the owner of the property as shown in the deed records of the county in which the property is located;
  - (2) If there is more than one claimant for the same property under the same claim and the claimants have different acquisition dates, the acquisition date is the earliest of those dates;
  - (3) If the claimant is the surviving spouse of a person who was an owner of the property in fee title, the claimant's acquisition date is the date the claimant was married to the deceased spouse or the date the spouse acquired the property, whichever is later. A claimant or a surviving spouse may disclaim relief by using the procedure provided in ORS 105.623 to 105.649; and
  - (4) If a claimant conveyed the property to another person and reacquired the property, whether by foreclosure or otherwise, the claimant's acquisition date is the date the claimant reacquired ownership of the property.
  - (5) A default judgment entered after December 2, 2004 does not alter a claimant's acquisition date unless the claimant's acquisition date is after December 2, 2004.

(D) Notice of public hearing and opportunity to comment on Claim. A notice of public hearing and an opportunity to submit written comments on the Claim shall be sent to:

- (1) All property owners of record within one hundred (100) feet of the subject property;
- (2) The Board of County Commissioners and the recognized city neighborhood association in which the subject property is located; and
- (3) The Department of Land Conservation and Development.

The notice shall contain:

- (1) the address, if any, and the assessor's map and tax lot number of the property that is the subject of the claim;
  - (2) a statement of the Claimant's desired use of the property for residential use;
  - (3) the number of dwellings, lots or parcels sought by the Claimant, as well as the specific regulations alleged to restrict the use of the property;
  - (4) a statement that the Claim and any information submitted by the Claimant is available at the Department for inspection or copying at cost and the phone number of a City staff contact;
  - (5) a statement that all persons may submit written comments at or prior to the close of the final public hearing on the claim;
  - (6) a statement that judicial review of the final determination on the claim is limited to the written evidence and arguments submitted to the city;
  - (7) a statement that prior to the close of testimony, the claimant may request an additional seven (7) days to respond to new evidence or to submit written evidence and arguments in response to testimony or submittals;
  - (8) a statement that judicial review is available only for issues that are raised with sufficient specificity to afford the public entity an opportunity to respond; and
  - (9) any other information as deemed necessary by the Director.
- (E) If a claim is deemed complete and not rejected, the Director or his/her designee shall draft a staff report. The staff report will be available at least seven (7) calendar days prior to the hearing addressing:
- (1) whether the claim filed is complete; and
  - (2) a recommendation as to whether and how much to pay in compensation, or, in lieu thereof, a recommendation regarding the number of dwellings and lots that may be approved and the land use regulation(s) that should be waived.

The staff report shall consider such factors as: the amount of compensation at issue; the nature of the proposed use or development, if any; and the impact of the proposed use or development.

**1.950(6) Council Review and Decision.**

- (A) Claim processing. All claims shall be reviewed by the Council consistent with the claims review process provided under this Ordinance. The Council shall issue a final decision after providing notice and a hearing within 180 days from the date the claim is deemed complete.
- (B) Notice and hearing. The decision of the Council shall be made after a public hearing conducted in accordance with such procedures as the Council may adopt. At least thirty (30) days written notice shall be provided and the notice shall include such information as set forth in Section 1.950(5)(D).

The Council shall consider all comments received by the conclusion of the hearing and such other information in the record as the City deems relevant and material. The claimant may request an additional seven (7) days to respond to new evidence or to submit final arguments. This request must be made before the close of testimony.

- (C) Final decision. The Council may reject the claim, pay compensation, issue a waiver or approve any combination of such remedies. The decision shall otherwise be decided based on the review criteria in Section 1.950(5)(B). The Council may waive some regulations specified in the claim and deny waiver of others. The Council is not limited to those regulations listed in the claim and may impose any conditions of approval that it deems reasonable and appropriate to protect the public interest. Failure to comply with any condition of approval is grounds for revocation of the approval of the compensation for the Claim, grounds for recovering any compensation paid, and grounds for revocation of any other action taken under this Ordinance.
- (D) Notice of final decision or rejection of claim. The City shall send a copy of the Council's decision to the claimant. Notice of the Council's final decision shall also be mailed to any person who submitted written evidence or arguments during the comment period, any person entitled to notice of the hearing, and any person who appeared orally or in writing at the public hearing. The notice shall contain a brief description of the waiver, including a listing of all regulations that the Council has decided to not apply and the specific number of dwellings, lots or parcels authorized by the waiver. The notice shall also state that a claim has been, or may need to be, filed with the State, if the Council thinks that a State regulation is implicated.

**1.950(7) Burden of Proof and Record.**

The claimant shall have the burden of proof on all matters under this Ordinance. The claimant bears sole responsibility for ensuring that the record before the City contains all information and evidence necessary to support the claim. The claimant shall be precluded from submitting information or raising new issues in any subsequent proceeding unless the claimant demonstrates that the information or issue could not reasonably have been entered into the record or raised before the City.

**1.950(8) Effect of Waiver.**

- (A) A decision to waive a land use regulation shall in no way impact any obligation to demonstrate compliance with any regulations not expressly provided for in the decision or to obtain any required approvals or permits.
- (B) A use authorized by a waiver has the legal status of a lawful nonconforming use in the same manner as provided under ORS 215.130.

**1.950(9) Procedural Error.**

No procedural defect in processing a claim shall invalidate any proceeding or decision unless the party alleging the error demonstrates prejudice to a substantial right. Inadvertent failure to provide notice or complete notice shall not be grounds for invalidating a decision.

**1.950(10) Recordation of Waiver.**

The City must record a memorandum of the final waiver in the deed records for the county.

**1.950(11) Reconsideration of Waiver.**

The Council may, at its sole discretion, reconsider a decision on a claim if it appears that the decision is inconsistent with a subsequent court ruling, administrative rule or other change in the law relating to Measure 49. The decision to reconsider may be made without notice or hearing; but, the decision on reconsideration shall be made only after notice and opportunity to be heard consistent with the requirements for claim and review provided under this Ordinance. At the conclusion of the process, the Council may affirm, modify, or revoke the earlier decision. If the Council modifies or revokes a decision that resulted in payment of compensation, the Council may institute an action for recovery. If the Council modifies or revokes a decision to modify, remove, or not apply a land use regulation, it shall issue an order setting forth such remedy as it deems appropriate to protect the public interest.

**1.950(12) Appeals.**

- (A) A person that is adversely affected by a final determination under this Ordinance may obtain judicial review of that determination under ORS 34.010 to 43.100. A person is adversely affected if the person is:
- (1) an owner of the property that is the subject of the final determination or;
  - (2) a person who timely submitted written evidence, arguments or comments
- (B) Judicial review of a decision under this Ordinance is:
- (1) limited to evidence in the record at the time of the final determination; and
  - (2) available only for issues raised with sufficient specificity to afford an opportunity to respond.

**1.950(13) Ex Parte Contacts, Conflict of Interest and Bias.**

- (A) The following rules govern any challenges to any member of the City Council's participation in the review of Claims:
- (1) Any factual information obtained by a member of the City Council outside the information provided by city staff, or outside of the formal written comments process or hearing will be deemed an ex parte contact. Any member of the City Council that has obtained any material factual information through an ex parte contact must declare the content of that contact, and allow any interested party to rebut the substance of that contact. This rule does not apply to contacts between city staff and any member of the City Council.
  - (2) Whenever a member of the City Council, or any member of their immediate family or household, has a direct financial interest in the outcome of a particular Claim or lives within the area entitled to notice of the Claim, that member of the City Council shall not participate in the deliberation or decision on that application.
  - (3) All decisions on Claims must be fair, impartial and based on the applicable review standards and the evidence in the record. Any member of the City Council who is unable to render a decision on this basis must refrain from participating in the deliberation or decision on that matter.

**1.950(14) Availability of Funds to Pay Demands.**

Compensation can only be paid based on the availability and appropriation of funds for this purpose.

**1.950(15) Severability.**

If any phrase, clause, or other part or parts of this Ordinance is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses and other part or parts shall remain in full force and effect.

**1.950(16) Applicable State Law.**

For all Claims filed with the City of Bend, the applicable state law is Measure 49 as amended, modified or clarified by subsequent amendments or regulations adopted by the Oregon State Legislature or Oregon State Administrative Agencies. Any Claim that has not been processed completely under this Ordinance shall be subject to any such amendments, modifications, clarifications or other actions taken at the state level and this Ordinance shall be read in a manner so as not to conflict with such amendments, modifications, clarifications or other actions taken at the state level. This Ordinance is adopted solely to address Claims filed under the authority of those provisions of Measure 49.

[Section 1.950 added by Ordinance NS-1950, adopted on 12/1/04]

[Section 1.950 amended by Ordinance NS-1966, adopted on 04/20/05]

[Section 1.950 repealed and replaced by Ordinance NS-2093, adopted 2/20/08, and effective 12/6/07]