
Title 2

ADMINISTRATION AND PERSONNEL

Chapters:

- 2.10 Council-Manager Form of Government
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- 2.40 Officials and Employees
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Chapter 2.10

COUNCIL-MANAGER FORM OF GOVERNMENT

Sections:

- 2.10.010 Established.

2.10.010 Established.

Effective upon hiring a City Manager, the City of Millersburg form of government shall be a Council-Manager form of government. (Ord. 120, passed 10-11-2016)

Chapter 2.20

CITY COUNCIL

Sections:

- 2.20.010 General election provisions.

2.20.010 General election provisions.

- (1) At the biennial general election, no more than three Councilors may be elected to serve a term of four years. At the subsequent biennial general election, no more than two Councilors may be elected to serve a term of four years.
- (2) Except as the Council provides otherwise by ordinance relating to elections, the general laws of the State apply to the conduct of all City elections, recounts of the returns therefrom and contest thereof.
- (3) The State laws governing the filing of returns by the County Clerk shall apply.
- (4) The term of office of a person elected at a regular City election shall commence the first of the year immediately following the election.
- (5) A qualified elector who has resided in the City during the six months immediately preceding an election may be nominated for an elective City office to be filled at the election. The nomination shall be by a petition that specifies the office sought, and shall be in a form prescribed by the Council. The petition shall be signed by not fewer than 10 electors. All nomination papers comprising a petition shall be assembled and filed with the County Clerk as one instrument no later than 20 days before the election.
- (6) In the event of a tie vote for candidates for an elective office, the successful candidate shall be determined by a public drawing of lots in a manner prescribed by the Council. (Ord. 112, passed 5-12-2015; Ord. 1, passed 9-17-1974; Code 2014 § 31.01)

Chapter 2.30

ORDINANCES AND RESOLUTIONS

Sections:

- 2.30.010 Power and authority.
- 2.30.020 Style.
- 2.30.030 Approval.
- 2.30.040 Resolution.
- 2.30.050 Agreements.
- 2.30.060 Effect.

2.30.010 Power and authority.

The power and authority given to the Council of the City by the Oregon Revised Statutes shall be exercised by ordinance or resolution, and a majority of all members elected to the Council may pass any ordinance or

resolution not repugnant to the laws of the United States, or the Constitution or criminal laws of the State of Oregon, necessary or convenient for carrying into effect any power or authority granted to the Council. (Ord. 2 § 1, passed 12-3-1974; Code 2014 § 31.15)

2.30.020 Style.

The style of every ordinance shall include a caption setting forth the subject matter of the ordinance and a statement that follows: “THE PEOPLE OF THE CITY OF MILLERSBURG DO ORDAIN AS FOLLOWS:”. (Ord. 2 § 2, passed 12-3-1974; Code 2014 § 31.16)

2.30.030 Approval.

- (1) Upon approval by Council of an ordinance, the enrolled copy thereof, attested by the Recorder, shall be submitted to the Mayor for signature.
- (2) The Mayor shall have three days in which to sign an ordinance. Should the Mayor not sign an ordinance, the same shall become effective without the Mayor’s signature.
- (3) If no vote be taken on said ordinance by the Council, or if a majority of the Council is not received in favor of the ordinance, the ordinance shall be deemed to have failed to become law. Otherwise, it shall become law after 30 days from its passage and be in full force and effect, unless otherwise provided; provided, that all ordinances required for the peace, health, and safety of the City, and where an emergency is declared by the Council, shall become law at once upon passage by the Council. (Ord. 167, passed 2-11-2020; Ord. 2 § 3, passed 12-3-1974; Code 2014 § 31.17)

2.30.040 Resolution.

The Council, from time to time, may pass resolutions for the carrying on of the City’s business as to matters not required to be a law of the City. The style of the resolution shall be substantially the same as an ordinance and shall include a statement as follows: “NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MILLERSBURG:”. (Ord. 2 § 4, passed 12-3-1974; Code 2014 § 31.18)

2.30.050 Agreements.

The City may enter into agreements with other government agencies, corporations and persons for the purposes of carrying on the City's business; provided, the same are approved by the Council of the City, and include the signatures of the Mayor and Recorder. (Ord. 2 § 5, passed 12-3-1974; Code 2014 § 31.19)

2.30.060 Effect.

All ordinances, resolutions or agreements heretofore passed or entered into by the City shall remain in full force and effect. An ordinance or agreement of the City may be made retroactive to a date prior to the passage of the ordinance in matters of franchise. (Ord. 2 § 6, passed 12-3-1974; Code 2014 § 31.20)

Chapter 2.40 OFFICIALS AND EMPLOYEES

Sections:

- 2.40.010 Contribution required.
- 2.40.020 Internal Revenue Code interpretation.
- 2.40.030 Contribution deducted from pay.
- 2.40.040 Effect on W-2 forms.

2.40.010 Contribution required.

The City does hereby order that, as a condition of employment, all employees of the City shall contribute six percent of their salary for the employee's contribution to the Public Employees' Retirement System effective with the December, 1994, pay period. (Ord. 85 § 1, passed 12-13-1994; Code 2014 § 32.01(A))

2.40.020 Internal Revenue Code interpretation.

The City does hereby declare that the employee's contribution of six percent of his or her salary to PERS is deemed to be "picked up" for the purposes of Internal Revenue Code § [414\(h\)\(2\)](#), and that such amount shall be forwarded to the public employee's retirement system on behalf of the employees. (Ord. 85 § 2, passed 12-13-1994; Code 2014 § 32.01(B))

2.40.030 Contribution deducted from pay.

Employees shall not have an option with regard to how they pay their required six percent contribution to PERS. It will be deducted from their pay by the City and forwarded to PERS on their behalf by the City. (Ord. 85 § 3, passed 12-13-1994; Code 2014 § 32.01(C))

2.40.040 Effect on W-2 forms.

Employees' annual W-2 forms shall be reduced by the six percent PERS contribution as hereby required. (Ord. 85 § 4, passed 12-13-1994; Code 2014 § 32.01(D))

Chapter 2.50 PLANNING COMMISSION

Sections:

- 2.50.010 Creation of Planning Commission.
- 2.50.020 Membership and expenses.
- 2.50.030 Conflict of interest activity.
- 2.50.040 Election of chair and vice-chair – Terms of office.
- 2.50.050 Meeting, rules, office of Planning Commission.
- 2.50.060 Recommendations to City Council.
- 2.50.070 State laws.
- 2.50.080 Powers and duties of Planning Commission.
- 2.50.090 City Council decision.
- 2.50.100 Renaming of streets.
- 2.50.110 Comprehensive Plan, Land Use Development Code, and public infrastructure plans development and use.

2.50.010 Creation of Planning Commission.

There is hereby created a Planning Commission for the City which shall act as the planning and land use advisory body to the City Council and shall have such other powers and authority as described in this chapter and State law. (Ord. 160, passed 9-10-2019; Ord. 18, passed 5-10-1976)

2.50.020 Membership and expenses.

- (1) There shall be nine members of the Planning Commission appointed by the City Council. The Mayor and the City Attorney shall serve as ex officio nonvoting members.
- (2) Commission members shall receive no compensation but shall be reimbursed for duly authorized expenses.
- (3) Persons appointed to membership on the Planning Commission shall serve at the pleasure of the Council and may be removed therefrom for cause by vote of the Council.
- (4) Any vacancy shall be filled by the City Council for the unexpired term of the predecessor in the office.
- (5) No more than two voting members shall be engaged principally in the buying, selling, or developing of real estate for profit as individuals, or be members of any partnership, or officers or employees of any corporation, that is engaged principally in the buying, selling, or developing of real estate for profit. No more than two voting members shall be engaged in the same kind of business, trade, or profession.
- (6) All members of the Planning Commission shall be residents of the City.
- (7) In the event that any member of the Planning Commission changes residence after appointment so that s/he no longer resides within the City, his/her membership on the Commission shall immediately terminate. (Ord. 160, passed 9-10-2019; Ord. 18, passed 5-10-1976)

2.50.030 Conflict of interest activity.

All members of the Planning Commission shall comply with all State of Oregon Ethics and Open Meeting laws in their actions, decisions, and behavior. (Ord. 160, passed 9-10-2019)

2.50.040 Election of chair and vice-chair – Terms of office.

- (1) The Commission shall, at its first meeting in January, elect one of its members to serve as chairperson and another to serve as vice-chairperson. The City Recorder or appointee of the City, shall serve as secretary to the Planning Commission and shall keep accurate, permanent, and complete records of all proceedings held before the Planning Commission. The Chairperson or the presiding officer of the Planning Commission shall be entitled to vote on all questions that are before the Commission. The Planning Commission may adopt rules governing the transaction of business which are consistent with the provisions of this chapter.
- (2) At the first meeting of the Planning Commission, the nine appointed members shall choose their terms of office by lot as follows: three for one year, three for two years, and three for three years, and shall immediately

thereafter notify the Mayor and the City Council in writing of such allotment. Their successors shall hold office for three years. (Ord. 160, passed 9-10-2019; Ord. 18, passed 5-10-1976)

2.50.050 Meeting, rules, office of Planning Commission.

A majority of the members of the Commission constitute a quorum. The Commission may make and alter rules and regulations for its government and procedure consistent with laws of this State and with the City Charter and ordinances. It shall meet at least once a month, unless the City Planner and Chair decide there is no business required of the Commission to act upon. The City Council shall assign to the Commission an office or headquarters in which to hold its meetings, transact its business, and keep its records. (Ord. 160, passed 9-10-2019; Ord. 18, passed 5-10-1976)

2.50.060 Recommendations to City Council.

All recommendations made to the Council by the Planning Commission shall be in writing. (Ord. 160, passed 9-10-2019; Ord. 18, passed 5-10-1976)

2.50.070 State laws.

The Planning Commission shall have, in addition to the powers granted hereby, the powers which are now, or may hereafter be, given to it under the general laws of the State. (Ord. 160, passed 9-10-2019; Ord. 18, passed 5-10-1976)

2.50.080 Powers and duties of Planning Commission.

Except as otherwise provided by law, the Planning Commission may:

- (1) Recommend and make suggestions to the City Council and to all other public authorities concerning laying out, widening, extending, parking, and locating of streets, sidewalks, and boulevards, relief of traffic congestion, betterment of housing and sanitation conditions, and establishment of zones of districts limiting the use, height, area, and bulk of buildings and structures;
- (2) Recommend to the City Council, and all other public authorities, plans for regulation of the future growth, development and beautification of the municipality in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, and plans consistent with future growth and development of the City in

order to secure to the City and its inhabitants sanitation, proper service of all public utilities, shipping, and transportation facilities;

(3) Recommend to the City Council and all other public authorities plans for promotion, development, and regulation of industrial and economic needs of the community as requested by the City Council;

(4) Study needs of existing local industries with a view to strengthening and developing local industries and stabilizing employment conditions;

(5) Study and propose in general such measures as may be advisable for promotion of the public interest, health, morals, safety, comfort, convenience, and welfare of the City; and

(6) Do and perform all other acts and things necessary or proper to carry out the provisions of this chapter. (Ord. 160, passed 9-10-2019; Ord. 18, passed 5-10-1976)

2.50.090 City Council decision.

The Planning Commission shall be the final decision-making body on some applications as outlined in the Land Use Development Code, and there shall be an appeal to the City Council from said decision as provided in the Land Use Development Code. (Ord. 160, passed 9-10-2019)

2.50.100 Renaming of streets.

The Planning Commission shall make a recommendation to the City Council regarding a street or streets to be renamed or renumbered. Upon receiving such recommendation, the City Council shall afford persons particularly interested, and the general public, an opportunity to be heard at a time and place to be specified in a notice of hearing published in a newspaper of general circulation. After hearing, the Council shall have the authority by ordinance to rename a street or highway. (Ord. 160, passed 9-10-2019)

2.50.110 Comprehensive Plan, Land Use Development Code, and public infrastructure plans development and use.

(1) The Planning Commission shall develop a Comprehensive Plan in accordance with applicable State law for adoption by the City Council.

(2) Following the adoption of said Comprehensive Plan by the City Council, the Planning Commission shall work to achieve the goals, policies, and objectives set forth in said Plan.

(3) The Planning Commission shall recommend a Land Use Development Code to the Council for adoption and subsequent updates. The standards and decision criteria in the Land Use Development Code will be consistent with implementing the goals, policies, and objectives of the Comprehensive Plan. The Planning Commission shall use the Land Use Development Code standards and criteria to review applications; compliance with the Land Use Development Code is prima facie evidence of compliance with the Comprehensive Plan.

(4) The Planning Commission shall recommend to the Council, for adoption and subsequent updates, plans for public facilities in accordance with applicable State and Federal requirements. (Ord. 160, passed 9-10-2019)

Chapter 2.60

PURCHASING CODE

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- 2.60.020 Interpretation of Purchasing Code.
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- 2.60.040 Conflict with Federal statutes and regulations.
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- 2.60.060 City Council as local contract review board.
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- 2.60.090 Authority of City Manager.
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Article I. Introduction

2.60.010 Purpose of Purchasing Code.

This Purchasing Code (“Code”) is adopted by the City Council as the governing body of the City of Millersburg (“City”) to establish the rules and procedures for contracts entered into and purchases made by the City. It is the policy of the City in adopting this Code to utilize public contracting and purchasing practices and methods that maximize the efficient use of City resources and the purchasing power of City funds by:

- (1) Promoting impartial and open competition;
- (2) Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
- (3) Taking full advantage of evolving procurement methods that suit the purchasing needs of the City as they emerge within various industries. (Ord. 135 § I(A), passed 3-13-2018)

2.60.020 Interpretation of Purchasing Code.

Except as specifically provided in this Code, public contracts and purchases shall be awarded, administered and governed according to ORS Chapters [279A](#), [279B](#) and [279C](#) (the “Public Contracting Code”) and the Attorney General’s Model Public Contract Rules (“Model Rules”), as they now exist.

- (1) In furtherance of the purposes of the objective set forth above in MMC [2.60.010](#), it is the City’s intent that this Code be interpreted to authorize the full use of all contracting and purchasing powers described in ORS Chapters [279A](#), [279B](#) and [279C](#).
- (2) The Model Rules adopted under ORS [279A.065](#) shall apply to the contracts and purchases of the City to the extent they do not conflict with this Code and the rules and regulations adopted by the City.
- (3) In the event of a conflict between any provisions of this Code and the Model Rules, the provisions of this Code shall prevail. (Ord. 135 § I(B), passed 3-13-2018)

2.60.030 Specific provisions' precedence over general provisions.

In the event of a conflict between the provisions of this Code, the more specific provision shall take precedence over the more general provision. (Ord. 135 § I(C), passed 3-13-2018)

2.60.040 Conflict with Federal statutes and regulations.

Except as otherwise expressly provided in ORS Chapters [279A](#), [279B](#) and/or [279C](#), applicable Federal statutes and regulations govern when Federal funds are involved. (Ord. 135 § I(D), passed 3-13-2018)

2.60.050 Definitions.

Unless a different definition is specifically provided herein, or context clearly requires otherwise, the following terms have the meanings set forth herein. Additionally, any term defined in the singular includes the meaning of the plural, and vice versa.

“Administering agency” means the contracting agency that solicited and established the original contract in a cooperative procurement for goods, services, personal services, professional services or public improvements.

“Affected person/offeree” means a person whose ability to participate in a procurement is adversely impaired by a City decision.

“Architectural, engineering and land surveying services” means professional services performed by an architect, engineer or land surveyor and includes architectural, engineering or land surveying services, separately or any combination thereof, as appropriate within the context of a section of this chapter.

“Award” means the decision to enter into a contract or purchase order with a specific offeror.

“Bid” means a response to an invitation to bid.

“Bidder” means a person who submits a bid in response to an invitation to bid.

“Business with which a City employee is associated” means any business in which a City employee is a director, officer, owner or employee, or any corporation in which a City employee owns or has owned 10 percent or more of any class of stock at any point in the preceding calendar year.

“City” means the City of Millersburg, a municipal corporation and a contracting and purchasing agency.

“City Manager” means the person appointed by the City Council to the position of City Manager.

“Closing” means the date and time announced in a solicitation document as the deadline for submitting bids or offers.

Contract. See “Public contract.”

“Contracting agency” means a public body authorized by law to conduct a procurement.

“Contractor” means the person who enters into a contract with the City.

“Contract price” means as the context requires:

- (1) The maximum payment that the City will make under a contract if the contractor fully performs under the contract, including bonuses, incentives and contingency amounts;
- (2) The maximum not-to-exceed payment specified in the contract; or
- (3) The unit prices set forth in the contract.

“Cooperative procurement” means a procurement conducted by, or on behalf of, one or more contracting agencies.

“Days” means calendar days.

“Emergency” involves circumstances that:

- (1) Could not have been reasonably foreseen;
- (2) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
- (3) Require prompt execution of a contract or amendment in order to remedy the condition.

“Findings” means the justification for a conclusion. If the justification relates to a public improvement contract, findings may be based on information that includes, but is not limited to:

- (1) Operational, budget and financial data;
- (2) Public benefits;
- (3) Value engineering;
- (4) Specialized expertise;
- (5) Market conditions;
- (6) Technical complexity; and
- (7) Funding sources.

“Goods and/or services” means supplies, equipment, materials and services, other than personal services, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto. The term includes combinations of any of the items identified in this definition.

“Grant” means an agreement under which:

- (1) The City receives moneys, property or other assistance, including, but not limited to, Federal assistance that is characterized as a grant by Federal law or regulation, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;
 - (a) The assistance received by the City is from a grantor for the purpose of supporting or stimulating a program or activity of the City; and
 - (b) No substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions; or
- (2) The City provides moneys, property or other assistance, including, but not limited to, Federal assistance that is characterized as a grant by Federal law or regulation, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;
 - (a) The assistance is given to the recipient for the purpose of supporting or stimulating a program or activity of the recipient; and
 - (b) No substantial involvement by the City is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions.

“Immediate family member” means an employee’s: spouse, and parents thereof; children, and spouses thereof; parents, and spouses thereof; siblings, and spouses thereof; grandparents and grandchildren, and spouses thereof; and domestic partner, and parents thereof.

“Offer” means a bid, proposal, quote or other response to a solicitation document.

“Offeror” means a person who submits an offer.

“Opening” means the date, time and place announced in the solicitation document for the public opening of written sealed offers.

“Original contract” means the initial contract or price agreement solicited and awarded during a cooperative procurement by an administering agency.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public body, public corporation or other legal or commercial entity, and any other person or entity with legal capacity to contract.

“Personal services” means services, other than professional services, that require specialized skill, knowledge and resources in the application of technical or scientific expertise or in the exercise of professional, artistic or management discretion or judgment.

- (1) Qualifications and performance history, expertise and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a personal services contractor, with price being secondary.
- (2) Personal services contracts include, but are not limited to, the following classes of contracts:
 - (a) Contracts for services performed in a professional capacity, including, but not limited to, services of an accountant, attorney, auditor, court reporter, information technology consultant, physician or broadcaster;
 - (b) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City is or may become interested;
 - (c) Contracts for services as an artist in the performing or fine arts, including any person identified as a photographer, film maker, actor, director, painter, weaver or sculptor;
 - (d) Contracts for services that are specialized, creative or research-oriented; and/or
 - (e) Contracts for services as a consultant (excepting those that fall under the definition of “Professional services”).

“Price agreement” means a contract for the procurement of goods or services at a set price which has:

- (1) No guarantee of a minimum or maximum purchase; or
- (2) An initial order or minimum purchase combined with a continuing contractor obligation to provide goods or services with no guarantee of any minimum or maximum additional purchase.

“Procurement” means the act of purchasing, leasing, renting or otherwise acquiring goods or services, personal services or professional services. It includes each function and procedure undertaken or required to be undertaken to enter into a contract, administer a contract and obtain the performance of a contract for goods or services, personal services or professional services.

“Professional services” means architectural, engineering, land surveying, photogrammetric, transportation planning or related services, or any combination of these services, provided by a consultant.

“Proposal” means a response to a request for proposals.

“Proposer” means a person who submits a proposal in response to a request for proposals.

“Provider” means, as the context requires, a supplier of goods or services, personal services, or professional services.

“Public contract” means a sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of personal property, goods or services, including personal services, professional services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. It does not include grants.

“Public contracting” means procurement activities relating to obtaining, modifying or administering contracts or price agreements.

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

“Public improvement contract” means a contract for a public improvement. This does not include a contract for emergency work, minor alterations, or ordinary repair or maintenance necessary to maintain a public improvement.

“Purchasing agency” means an agency that procures goods or services, personal services, or public improvements from a contractor based on the original contract established by an administering agency in a cooperative procurement.

“Qualified provider” means a person or business with a record of established projects and experiences.

“Recycled product” means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. It includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product’s form.

“Related services” means personal services, other than architectural, engineering and land survey services, that are related to the planning, design, engineering or oversight of public improvement projects or components thereof, including but not limited to:

- (1) Landscape architectural services;
- (2) Facilities planning services;
- (3) Energy planning services;
- (4) Space planning services;
- (5) Environmental impact studies;

- (6) Hazardous substances or hazardous waste or toxic substances testing services;
- (7) Wetland delineation studies;
- (8) Wetland mitigation services;
- (9) Native American studies;
- (10) Historical research services;
- (11) Endangered species studies;
- (12) Rare plant studies;
- (13) Biological services;
- (14) Archaeological services;
- (15) Cost estimating services;
- (16) Appraising services;
- (17) Material testing services;
- (18) Mechanical system balancing services;
- (19) Commissioning services;
- (20) Project management services;
- (21) Construction management services and owner’s representatives service; and/or
- (22) Land use planning services.

“Request for proposals” means a solicitation document used for soliciting proposals.

“Request for qualifications” means a written document issued by the City describing particular services to which potential contractors respond with a description of their experience and qualifications that results in a list of potential contractors who are qualified to perform those services, but which is not intended to create a contract between a potential contractor on the list and the City.

“Revenue generating agreements” means contracts or agreements for services that generate revenue and that are typically awarded to the offeror proposing the most advantageous or highest monetary return.

“Scope” means the range and attributes of the goods or services described in a procurement document.

“Signed” or “signature” means any mark, word or symbol attached to or logically associated with a document and executed or adopted by a person with the authority and intent to be bound.

“Solicitation” means as the context requires:

- (1) A request for the purpose of soliciting offers, including an invitation for bid, a request for proposal, a request for quotation, a request for qualifications, or other similar documents;
- (2) The process of notifying prospective offerors of a request for offers; and/or
- (3) The solicitation document.

“Work” means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a contract and successful completion of all duties and obligations imposed by the contract.

“Written” or “in writing” means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words, including electronic transmissions or facsimile documents when required by applicable law or permitted by a solicitation document or contract. (Ord. 135 § II, passed 3-13-2018)

Article II. Authority

2.60.060 City Council as local contract review board.

The Millersburg City Council is designated as the local contract review board of the City and has all the rights, powers and authority necessary to carry out the provisions of this Code, the Public Contracting Code, and/or the Model Rules. (Ord. 135 § III(A), passed 3-13-2018)

2.60.070 Application of Attorney General’s Model Rules of procedure.

Pursuant to ORS [279A.065\(6\)](#), the City has elected to establish its own policy for public contracting and purchasing. Except as provided herein, the Model Rules do not apply to the City. (Ord. 135 § III(B), passed 3-13-2018)

2.60.080 Inapplicability of Code.

This Code does not apply to the following:

- (1) Contracts or agreement to which the Public Contracting Code does not apply;

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- (2) Contracts, intergovernmental and interstate agreements entered into pursuant to ORS Chapter [190](#);
 - (3) Grants;
 - (4) Acquisitions or disposals of real property or interests in real property;
 - (5) Procurements from an Oregon Corrections Enterprise program;
 - (6) Contracts, agreements or other documents entered into, issued or established in connection with:
 - (a) The incurring of debt, including any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;
 - (b) The making of program loans and similar extensions or advance of funds, aid or assistance by the City to a public or private person for the purpose of carrying out, promoting or sustaining activities or programs authorized by law other than for the construction of public works or public improvements;
 - (c) The investment of funds by the City as authorized by law; or
 - (d) Banking, money management or other predominantly financial transactions that, by their character, cannot practically be established under the competitive contractor selection procedures, based upon the findings of the City Manager;
 - (7) Contracts for employee benefit plans;
 - (8) Contracts with newspapers and other publications for the placement of advertisements or public notices;
 - (9) Contracts for items where the price is regulated and available from a single source or limited number of sources;
 - (10) Insurance contracts;
 - (11) Revenue-generating agreements;
 - (12) Federal agreements where applicable Federal statutes and regulations govern when Federal funds are involved and the Federal statutes or regulations conflict with any provision of the Oregon Public Contracting Code or this Code, or require additional conditions in public contracts not authorized by the Oregon Public Contracting Code or this Code. (Ord. 135 § III(C), passed 3-13-2018)

2.60.090 Authority of City Manager.

For contracts and purchases covered by this Code, the City Manager is authorized to:

- (1) Award contracts and amendments without specific authorization by the City Council whenever the contract amount is \$100,000 or less and the proposed expenditure is included in the current fiscal year budget.
- (2) Execute contracts and amendments with specific authorization by the City Council whenever the contract or amendment amount is greater than \$100,000 and the proposed expenditure is specified and included in the current fiscal year budget.
- (3) As the purchasing agent for the City, the City Manager is authorized to:
 - (a) Advertise for bids or proposals without specific authorization from the City Council, when the proposed purchase is included within the current fiscal year budget.
 - (b) Advertise for bids or proposals when the proposed purchase is not included within the current fiscal year budget after the City Council approves the proposed budget transfer.
 - (c) Purchase goods, services and/or property without specific authorization by the City Council whenever the amount is \$100,000 or less and the proposed expenditures are specified and included in the current fiscal year budget.
 - (d) Purchase goods, services and/or property with specific authorization by the City Council whenever the amount is greater than \$100,000 and the proposed expenditure is specified and included in the current fiscal year budget.
 - (e) Purchases of any goods or services in excess of \$2,500 by City employees require authorization of the City Manager.
 - (f) Staff shall communicate purchase requirements to the City Manager and plan sufficiently in advance so that orders can be placed in economical quantities.
- (4) Delegate, in writing, the signature authority described in subsection (2) of this section and the purchasing powers described in subsection (3) of this section. In the absence of a written delegation to the contrary, and in the absence of the City Manager, the signature authority described in subsection (2) of this section and the purchasing powers described in subsection (3) of this section are delegated in order as follows:
 - (a) Assistant City Manager/City Engineer;
 - (b) Mayor.
- (5) Adopt forms, procedures, computer software and administrative rules for all City purchases regardless of the amount.
 - (a) When adopting the forms, procedures, computer software and/or administrative rules, the City Manager shall establish practices and policies that:
 - (i) Do not encourage favoritism or substantially diminish competition; and

(ii) Allow the City to take advantage of the cost-saving benefits of alternative contracting methods and practices.

(b) The City shall use these forms, procedures, computer software and administrative rules unless they conflict with the Code. (Ord. 135 § III(D), passed 3-13-2018)

2.60.100 Favorable terms.

Contracts and purchases shall be negotiated on the most favorable terms in accordance with this Code, other adopted ordinances, State and Federal laws, policies and procedures. (Ord. 135 § III(E), passed 3-13-2018)

2.60.110 Unauthorized contracts or purchases.

Public contracts entered into or purchases made as authorized herein shall be voidable at the sole discretion of the City.

(1) The City may take appropriate action in response to execution of contracts or purchases made contrary to this provision.

(2) Such actions include, but are not limited to, providing educational guidance, imposing disciplinary measures and/or holding individuals personally liable for such contracts or purchases. (Ord. 135 § III(F), passed 3-13-2018)

2.60.120 Purchasing from City employees, employees' immediate family, or elected officials of the City prohibited.

No contract shall be entered into with or purchase made from any City employee or employee's immediate family member, or any business with which the employee is associated, unless:

(1) The contract or purchase is expressly authorized and approved by the City Council; or

(2) The need for the contract or purchase occurs during a State of emergency, and the City Manager finds, in writing, that the acquisition from the employee, employee's immediate family member or business with which the employee is associated is the most expeditious means to eliminate the threat to public health, safety and welfare. (Ord. 135 § III(G), passed 3-13-2018)

Article III. Preferences

2.60.130 Discretionary local preference.

If the solicitation is in writing, the City Manager may provide a specified percentage preference of not more than 10 percent for goods fabricated or processed entirely in Oregon or services performed entirely in Oregon.

(1) When a preference is provided under this section, and more than one offeror qualifies for the preference, the City Manager may give further preference to a qualifying offeror that resides in or is headquartered in Oregon.

(2) The City Manager may establish a preference percentage of 10 percent or higher if the City Manager makes a written determination that good cause exists to establish the higher percentage, explains the reasons and provides evidence of good cause.

(3) The preference described in this section cannot be applied to a contract for emergency work, minor alterations and ordinary repairs or maintenance of public improvements. (Ord. 135 § IV(A), passed 3-13-2018)

2.60.140 Mandatory tie breaker preference.

If offers are identical in price, fitness and availability and the quality is identical, and the City desires to award the contract, the preferences provided in ORS [279A.120](#) shall be applied prior to the contract award. (Ord. 135 § IV(B), passed 3-13-2018)

2.60.150 Reciprocal preference.

Reciprocal preferences must be given when evaluating bids, if applicable under ORS [279A.120](#). (Ord. 135 § IV(C), passed 3-13-2018)

2.60.160 Preference for recycled materials and supplies.

Preferences for recycled goods shall be given when comparing goods, if applicable under ORS [279A.125](#). (Ord. 135 § IV(D), passed 3-13-2018)

Article IV. General Provisions

2.60.170 Public notice.

Unless otherwise specifically provided by this Code, any notice required to be published by this Code may be published using any method the City Manager deems appropriate, including, but not limited to, mailing notice to persons who have requested notice in writing, placing notice on the City's website, or publishing in statewide trade or local publications. (Ord. 135 § V(A), passed 3-13-2018)

2.60.180 Procedure for competitive verbal quotes and proposals.

Where allowed by this Code, solicitations by competitive verbal quotes and proposals shall be based on a description of the quantity of goods or services to be provided, and may be solicited and received by phone, facsimile or email if authorized by the City Manager.

- (1) A good faith effort shall be made to contact at least three potential providers.
- (2) If three potential providers are not reasonably available, fewer will suffice, provided the reasons three potential providers are not reasonably available is documented as part of the procurement file. (Ord. 135 § V(B), passed 3-13-2018)

2.60.190 Procedure for informal written solicitation.

Where allowed by this Code, informal written solicitations shall be made by a solicitation document sent to not less than three potential providers.

- (1) The solicitation document shall request competitive price quotes or competitive proposals and include:
 - (a) The date, time and place that price quotes or proposals are due;
 - (b) A description or quantity of the good or service required;
 - (c) Any statement of period for which price quotes or proposals must remain firm, irrevocable, valid and binding on the offeror. If no time is stated in the solicitation document, the period shall be 30 days;
 - (d) Any required contract terms or conditions; and
 - (e) Any required bid form or proposed format.

(2) Price quotes or proposals shall be received by the City Manager at the date, time and place established in the solicitation document.

(a) The City Manager shall keep a written record of the sources of the quotes or proposals.

(b) If three quotes or proposals are not reasonably available, fewer shall suffice, but the City Manager shall make a written record of the effort made to obtain quotes or proposals as part of the procurement file. (Ord. 135 § V(C), passed 3-13-2018)

2.60.200 Procurement methods for professional services and public improvements.

The City shall apply the Public Contracting Code and the Model Rules when procuring professional services and public improvements and processing protests thereof. (Ord. 135 § V(D), passed 3-13-2018)

2.60.210 Retroactive approval.

Retroactive approval of a contract means the award or execution of a contract where work was commenced without final award or execution. The City Manager may make a retroactive approval of a contract only if the responsible employee submits a copy of the proposed contract to the City Manager, along with a written request for contract retroactive approval, that contains:

- (1) An explanation of the reason work was commenced before the contract was finally awarded or executed;
- (2) A description of steps being taken to prevent similar occurrences in the future;
- (3) Evidence that, but for the failure to finally award or execute the contract, the employee complied with all other steps required to properly select a contractor and negotiate the contract; and
- (4) A proposed form of contract. (Ord. 135 § V(E), passed 3-13-2018)

Article V. Source Selection Methods for Goods or Services, Other Than Personal or Professional Services

2.60.220 Small procurements.

Contracts for or purchases of goods or services with a contract price of \$10,000 or less are small procurements.

(1) *Purchases less than \$7,500.* The City Manager may use any procurement method the City Manager deems practical or convenient, including direct negotiation or award, for small procurements of goods or services with a contemplated contract price of less than \$7,500.

(2) *Purchases between \$7,500 and \$10,000.* The City Manager may use competitive verbal quotes or proposals and informal written solicitations for small procurements of goods or services with a contemplated contract price between \$7,500 and \$10,000.

(3) *Negotiations.* The City Manager may negotiate with an offeror to clarify competitive verbal quotes or proposals or informal written proposals, or to make modifications that will make the quote or proposal acceptable or more advantageous to the City.

(4) *Award.* If a contract is awarded, the award shall be made to the offeror whose verbal quote or proposal the City Manager determines will best serve the interests of the City, taking into account price as well as any other relevant considerations, including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose, delivery and contractor responsibility.

(5) *Amendments.* Small procurement contracts may be amended if the cumulative amendments do not increase the total contract price to more than 25 percent of the original contract price.

(6) *Public Notice.* No public notice of small procurements is required. (Ord. 135 § VI(A), passed 3-13-2018)

2.60.230 Intermediate procurements.

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

(1) Intermediate procurements shall be by informal written solicitation.

(2) *Negotiations.* The City Manager may negotiate with an offeror to clarify an informal written solicitation or to make modifications that will make the quote, proposal or solicitation acceptable or more advantageous to the City.

(3) *Award.* If a contract is awarded, the award shall be made to the offeror whose competitive verbal quote or proposal or informal written solicitation the City Manager determines will best serve the interests of the City, taking into account price or any other relevant considerations, including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose, delivery and contractor responsibility.

(4) *Amendments.* Intermediate procurement contracts may be amended if the cumulative amendments do not increase the total contract price by more than 25 percent of the original contract price.

(5) *Public Notice.* Public notice is required for intermediate procurements with a contemplated contract price equal to or exceeding \$50,000. (Ord. 135 § VI(B), passed 3-13-2018)

2.60.240 Large procurements.

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

(1) The City Manager may use competitive sealed bidding as set forth in ORS [279B.055](#), or competitive sealed proposals as set forth in ORS [279B.060](#).

(2) When using either competitive sealed bidding or competitive sealed proposals, the City Manager shall follow the applicable procedures set out in the Model Rules.

(3) The City shall apply the applicable procedure set out in the Model Rules for processing protests of large procurements. (Ord. 135 § VI(C), passed 3-13-2018)

Article VI. Personal Services Contracts

2.60.250 Classification of services as personal services.

In addition to the classes of personal services contracts identified in the definition of personal services contracts, the City Manager may classify additional specific types of services as personal services. In determining whether a service is a personal service, the City Manager shall consider:

(1) Whether the work requires specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment;

(2) Whether the City intends to rely on the contractor's specialized skills, knowledge and expertise to accomplish the work; and

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- (3) Whether selecting a contractor primarily on the basis of qualifications, rather than price, would most likely meet the City's needs and result in obtaining satisfactory contract performance and optimal value.
- (4) A service shall not be classified as personal services for the purposes of this Code if:
- (a) The work has traditionally been performed by contractors selected primarily on the basis of price; or
 - (b) The services do not require specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. (Ord. 135 § VII(A), passed 3-13-2018)

2.60.260 Requests for qualifications.

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

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

personal services and have an opportunity to submit a proposal in response to request for proposals. (Ord. 135 § VII(B), passed 3-13-2018)

2.60.270 Direct negotiations.

Personal services may be procured through direct negotiations if:

- (1) The contract price does not exceed \$75,000 and the work is within a budgetary appropriation or approved by the City Council; or
- (2) The confidential personal services, including special counsel, or professional or expert witnesses or consultants, are necessary to assist with pending or threatened litigation or other legal matters in which the City may have an interest; or
- (3) The nature of the personal service is not project-driven but requires an ongoing, long-term relationship of knowledge and trust.
- (4) *Amendments.* Personal services contracts procured by direct negotiation pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than 25 percent over the original contract price; or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.
- (5) *Public Notice.* No public notice of personal services contracts procured by direct negotiations is required. (Ord. 135 § VII(C), passed 3-13-2018)

2.60.280 Informal written solicitations.

An informal written solicitation process may be used for personal services when the contemplated contract price is less than \$125,000. An informal written solicitation shall solicit proposals from at least three qualified providers. If the City Manager determines three qualified providers are not reasonably available, fewer shall suffice if the reasons three providers are not reasonably available are documented in the procurement file.

- (1) The solicitation document shall include:
 - (a) The date, time and place that proposals are due;
 - (b) A description of personal services sought, or the project to be undertaken;
 - (c) Any statement of the time period for which proposals must remain firm, irrevocable, valid and binding on the offeror. If no time is stated in the solicitation document, the period shall be 30 days;

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- (d) Any required contract terms or conditions; and
 - (e) Any required bid form or proposal format.
- (2) Selection and ranking of proposals may be based on the following criteria:
- (a) Particular capability to perform the personal services required;
 - (b) Experienced staff available to perform the personal services required, including the proposer's recent, current and projected workloads;
 - (c) Performance history;
 - (d) Approach and philosophy used in providing personal services;
 - (e) Fees or costs;
 - (f) Geographic proximity to the project or the area where the services are to be performed; and
 - (g) Such other factors deemed appropriate, including a desire to ensure an equitable distribution of work among highly qualified contractors.
- (3) The City Manager shall maintain written documentation of the solicitation, including solicitation attempts, responses and provider names and addresses in the procurement file.
- (4) *Amendments.* Personal services contracts procured by informal written solicitations pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than 25 percent over the original contract price; or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.
- (5) *Public Notice.* No public notice of personal services contracts procured by informal written solicitations pursuant to this section is required. (Ord. 135 § VII(D), passed 3-13-2018)

2.60.290 Requests for proposals.

A request for proposals shall be used to procure personal services when the contract price is \$125,000 or more or the complexity of the project requires the use of a formal competitive process to determine whether a particular proposal is most advantageous to the City.

- (1) *Request for Proposal.* The request for proposal shall include:
- (a) Notice of any pre-offer conference, including:

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- (i) The time, date and location;
 - (ii) Whether attendance at the pre-offer conference is mandatory or voluntary; and
 - (iii) A provision that statements made by representatives of the City at the pre-offer conference are not binding unless confirmed by written addendum.
- (b) The form and instructions for submission of proposals, including the location where proposals must be submitted, the date and time by which proposals must be received and any other special information, e.g., whether proposals may be submitted by electronic means;
 - (c) The name and title of the person designated for the receipt of proposals and the person designated as the contact person for the procurement, if different;
 - (d) A date, time and place that prequalification applications, if any, must be filed and the classes of work, if any, for which proposers must be prequalified;
 - (e) A statement that the City may cancel the procurement or reject any or all proposals;
 - (f) The date, time and place of opening;
 - (g) The office where the request for proposals may be reviewed;
 - (h) A description of the personal services to be procured;
 - (i) The evaluation criteria;
 - (j) The anticipated schedule, deadlines, evaluation process and protest process;
 - (k) The form and amount of any proposal security deemed reasonable and prudent by the City Manager to protect the City's interests;
 - (l) A description of the manner in which proposals will be evaluated, including the relative importance of price and other evaluation factors used to rate the proposals;
 - (m) If more than one tier of competitive evaluation will be used, a description of the process under which the proposals will be evaluated in the subsequent tiers;
 - (n) If contracts will be awarded to more than one personal services contractor, an identification of the manner in which the City will determine the number of contracts to be awarded, or that the manner will be left to the City's discretion at time of award;
 - (o) If contracts will be awarded to more than one personal services contractor, the criteria to be used to choose from the multiple contracts when acquiring personal services shall be identified;

(p) All required contract terms and conditions, including the statutorily required provisions in ORS [279B.220](#), [279B.230](#) and [279B.235](#); and

(q) Any terms and conditions authorized for negotiation.

(2) *Public Notice.* The City Manager shall provide public notice of a request for proposals for personal services.

(a) Public notice shall be given not less than 21 days prior to closing for the request for proposals, unless the City Manager determines that a shorter interval is in the public's interest, or a shorter interval will not substantially affect competition.

(b) The City Manager shall document the specific reasons for the shorter public notice period in the procurement file.

(3) *Amendments.* Personal services contracts procured by requests for proposals pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than 25 percent over the original contract price; or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work. (Ord. 135 § VII(E), passed 3-13-2018)

Article VII. Alternative Source Selection Methods for Goods or Services and Personal Services

2.60.300 Sole-source procurements.

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

(1) *Determination of Sole Source.* Before a sole-source contract may be awarded, the City Manager shall make written findings that the goods or services, personal services or professional services are available from only one source, based on one or more of the following criteria:

(a) The efficient use of existing goods or services, personal services or professional services requires the acquisition of compatible goods or services, personal services or professional services that are available from only one source;

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

- (c) The goods or services, personal services or professional services are available from only one source, and are needed for use in a pilot or an experimental project; or
 - (d) Other facts or circumstances exist that support the conclusion that the goods or services, personal services or professional services are available from only one source.
- (2) *Negotiations.* To the extent reasonably practical, contract terms advantageous to the City shall be negotiated with the sole-source provider.
- (3) *Notice.* The City Manager shall post notice of any determination that the sole-source selection method will be used on the City's website not less than 10 days prior to the date a sole-source contract will be awarded. The notice shall describe the goods or services, personal services or professional services to be procured, identify the prospective contractor and include the date and time when, and place where, protests of the use of a sole-source selection method must be filed. (Ord. 135 § VIII(A), passed 3-13-2018)

2.60.310 Special procurements.

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

- (1) *Basis for Approval.* The approval of a special solicitation method or exemption from competition must be based upon a record before the City Council that contains the following:
- (a) The nature of the contract or class of contracts for which the special solicitation or exemption is requested;
 - (b) The estimated contract price or cost of the project, if relevant;
 - (c) Findings to support the substantial cost savings, enhancement in quality or performance, or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;
 - (d) Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations;
 - (e) A description of the proposed alternative contracting methods to be employed; and
 - (f) The estimated date by which it would be necessary to let the contract(s).

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

(3) *Hearing.* The City shall approve the special solicitation or exemption after a public hearing before the City Council.

(a) At the public hearing, the City shall offer an opportunity for any interested party to appear and present comment.

(b) The City Council shall consider the findings and may approve the exemption as proposed or as modified by the City Council after providing an opportunity for public comment. (Ord. 135 § VIII(B), passed 3-13-2018)

2.60.320 Contracts.

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

(1) *Amendments.* Contract amendments shall not be considered to be separate contracts if made in accordance with the Code.

(2) *Copyrighted Materials – Library Materials.* Contracts for the acquisition of materials entitled to copyright, including, but not limited to, works of art and design, literature and music, or materials even if not entitled to copyright, purchased for use as library lending materials.

(3) *Equipment Repair.* Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.

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

(5) *Nonowned Property.* Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the City.

(6) *Specialty Goods for Resale.* Contracts for the purchase of specialty goods by the City for resale to consumers.

(7) *Sponsorship Agreements.* Sponsorship agreements, under which the City receives a gift or donation in exchange for recognition of the donor.

(8) *Renewals*. Contracts that are being renewed in accordance with their terms are not considered to be newly issued contracts and are not subject to competitive procurement procedures.

(9) *Temporary Extensions or Renewals*. Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and nonrenewable, or recently expired, contract, other than a contract for public improvements.

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

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

(11) *Used Property*. The City Manager may contract for the purchase of used property by negotiation if such property is suitable for the City's needs and can be purchased for a lower cost than substantially similar new property.

- (a) For this purpose, the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the City.
- (b) The City Manager shall record the findings that support the purchase.

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

(13) *Conference/Meeting Room Contracts*. Contracts entered into for meeting room rental, hotel rooms, food and beverage and incidental costs related to conferences and City-sponsored workshops and trainings. (Ord. 135 § VIII(C), passed 3-13-2018)

2.60.330 Emergency procurements.

When the City Manager determines that immediate execution of a contract within the City Manager's authority is necessary to prevent substantial damage or injury to persons or property, the City Manager may execute the contract without competitive selection and award or City Council approval, but, where time permits, competitive quotes should be sought from at least three providers.

(1) When the City Manager enters into an emergency contract, the City Manager shall, as soon as possible in light of the emergency circumstances, document the nature of the emergency, the method used for selection of the particular contractor, and the reason why the selection method was deemed in the best interest of the City and the public.

(2) The City Manager shall also notify the City Council of the facts and circumstances surrounding the emergency execution of the contract. (Ord. 135 § VIII(D), passed 3-13-2018)

2.60.340 Cooperative procurement contracts.

Cooperative procurements may be made without competitive solicitation as provided in the Public Contracting Code. (Ord. 135 § VIII(E), passed 3-13-2018)

Article VIII. Surplus Property

2.60.350 General methods.

Surplus property may be disposed of by any of the following methods upon a determination by the City Manager that the method of disposal is in the best interest of the City. Factors that may be considered by the City Manager include costs of sale, administrative costs and public benefits to the City. (Ord. 135 § IX(A), passed 3-13-2018)

2.60.360 Manner of disposal.

(1) The City Manager may dispose of City surplus in the following manner:

- (a) Trade-in upon the purchase of a like article;
- (b) Solicitation of written bids;
- (c) Public auction or auction service managed by a public or private agency other than the City of Millersburg;
- (d) Transfer to another agency of government; or
- (e) Donate to any agency or entity which is exempt from Federal income tax.

- (2) If all of the above options have been exhausted, the City Manager may sell for scrap value.
- (3) The City Manager may not:
 - (a) Sell it or give away to any City staff or elected official, their families or their friends;
 - (b) Sell it or give away to any vendor without following one of the options listed above. (Ord. 135 § IX(B), passed 3-13-2018)

2.60.370 Disposal of property with minimal value.

Surplus property which has a value of less than \$500.00, or for which the costs of sale are likely to exceed sale proceeds, may be disposed of by any means determined to be cost-effective, including by disposal as waste. The employee making the disposal shall make a record of the value of the item and the manner of disposal. (Ord. 135 § IX(C), passed 3-13-2018)

2.60.380 Personal-use items.

An item (or indivisible set) of specialized and personal use with a current value of less than \$100.00 may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the City Manager. (Ord. 135 § IX(D), passed 3-13-2018)

2.60.390 Restriction on sale to City employees.

City employees shall not compete, as members of the public, for the purchase of publicly sold surplus property. (Ord. 135 § IX(E), passed 3-13-2018)

2.60.400 Conveyance to purchaser.

Upon the consummation of a sale of surplus personal property, the City shall make, execute and deliver a bill of sale or similar instrument signed on behalf of the City, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser. (Ord. 135 § IX(F), passed 3-13-2018)

Article IX. Protest and Appeal Procedures

2.60.410 Appeal of debarment or prequalification decision.

- (1) *Right to Hearing.* Any person who has been debarred from competing for the City's contracts or for whom prequalification has been denied, revoked or revised may appeal the City's decision to the City Council as provided in this section.
- (2) *Filing of Appeal.* The person shall file a written notice of appeal with the City Manager within five business days after the prospective contractor's receipt of notice of the determination of debarment or denial of prequalification.
- (3) *Notification of City Council.* Immediately upon receipt of such notice of appeal, the City Manager shall notify the City Council of the appeal.
- (4) *Hearing.* The procedure for appeal from a debarment or denial, revocation or revision of prequalification shall be as follows:
 - (a) Promptly upon receipt of notice of appeal, the City shall notify the appellant of the date, time and place of the hearing;
 - (b) The City Council shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal from the City Manager; and
 - (c) At the hearing, the City Council shall reconsider, without regard to the underlying decision giving rise to the appeal, the notice of debarment, or the notice of denial, revocation or revision of prequalification, the standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.
- (5) *Decision.* The City Council shall set forth in writing the reasons for the decision.
- (6) *Costs.* The City Council may allocate its costs for the hearing between the appellant and the City.
 - (a) The allocation shall be based upon facts found by the City Council and stated in the City Council's decision that, in the City Council's opinion, warrant such allocation of costs.
 - (b) If the City Council does not allocate costs, the costs shall be paid by the appellant if the decision is upheld, or by the City if the decision is overturned.
 - (c) *Judicial Review.* The decision of the City Council may be reviewed only upon a petition in the circuit court of Linn County, filed within 15 days after the date of the City Council's decision. The appeal must be filed in accordance with all applicable State laws and trial court procedures. (Ord. 135 § X(A), passed 3-13-2018)

2.60.420 Protests and judicial review of special procurements.

An affected person may protest the request for approval of a special procurement as provided in this section.

(1) *Delivery – Late Protests.* An affected person shall deliver a written protest to the City Manager within seven days after the first date of public notice of a proposed special procurement, unless a different period is provided in the public notice.

(a) The written protest shall include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest.

(b) A protest submitted after the timeframe established under this subsection is untimely and shall not be considered.

(2) *Content of Protest.* The written protest shall include:

(a) Identification of the requested special procurement;

(b) A detailed statement of the legal and factual grounds for the protest;

(c) Evidence or documentation supporting the grounds on which the protest is based;

(d) A description of the resulting harm to the affected person; and

(e) The relief requested.

(3) *Additional Information.* The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate, by giving such persons written notice of the time and manner whereby any response shall be delivered.

(4) *City Response.* The City Manager shall issue a written disposition of the protest in a timely manner.

(a) If the City Manager upholds the protest, in whole or in part, the City Manager may, in the City Manager's sole discretion, implement the protest in the approval of the special procurement, deny the request for approval of the special procurement, or revoke any approval of the special procurement.

(b) If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.

(5) *Judicial Review.* An affected person may not seek judicial review of a denial of a request for a special procurement.

(a) Before seeking judicial review of the approval of a special procurement, an affected person shall exhaust all administrative remedies.

(b) Judicial review shall be in accordance with ORS [279B.400](#). (Ord. 135 § X(B), passed 3-13-2018)

2.60.430 Protests and judicial review of sole-source procurements.

An affected person may protest the determination that goods or services or a class of goods or services are available from only one source as provided in this section.

(1) *Delivery – Late Protests.* An affected person shall deliver a written protest to the City Manager within seven days after the first date of public notice of a proposed sole-source procurement is placed on the City’s website, unless a different period is provided in the public notice.

(a) The written protest shall include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest.

(b) A protest submitted after the timeframe established under this subsection is untimely and shall not be considered.

(2) *Content of Protest.* The written protest shall include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) Evidence or documentation supporting the grounds on which the protest is based;

(c) A description of the resulting harm to the affected person; and

(d) The relief requested.

(3) *Additional Information.* The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate by giving such person written notice of the time and manner whereby any response shall be delivered.

(4) *City Manager Response.* The City Manager shall issue a written disposition of the protest in a timely manner.

(a) If the City Manager upholds the protest, in whole or in part, the proposed sole-source contract shall not be awarded.

(b) If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.

(5) *Judicial Review.* An affected person may not seek judicial review of an election not to make a sole-source procurement.

(a) Before seeking judicial review of the approval of a sole-source procurement, an affected person shall exhaust all administrative remedies.

(b) Judicial review shall be in accordance with ORS [279B.400](#). (Ord. 135 § X(C), passed 3-13-2018)

2.60.440 Protests and judicial review of personal services procurements.

An affected person may protest the procurement of a personal services contract as provided in this section.

(1) *Delivery.* Unless otherwise specified in the solicitation document, the protest shall be in writing and delivered to the City Manager.

(a) The written protest shall include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest.

(b) Protests of the procurement of a specific contract as a personal services contract shall be made prior to closing.

(c) Protests to the award or an intent to award a personal services contract shall be made within seven days after issuance of the intent to award, or if no notice of intent to award is given, within 48 hours after award.

(d) Protests submitted after the timeframe established under this subsection are untimely and shall not be considered.

(2) *Contents of Protest.* The written protest shall:

(a) Specify all legal or factual grounds for the protest as follows:

(i) A person may protest the solicitation on the grounds that the contract is not a personal services contract or was otherwise in violation of this Code or applicable law. The protest shall identify the specific provision of this Code or applicable law that was violated.

(ii) A person may protest award or intent to award for the reason that:

(A) All proposals ranked higher than the affected persons are nonresponsive;

(B) The City failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation document;

(C) The City abused its discretion in rejecting the affected person's proposal as nonresponsive;
or

(D) The evaluation of proposals or the subsequent determination of award is otherwise in violation of this Code or applicable law;

(iii) The protest shall identify the specific provision of this Code or applicable law that was violated by the City's evaluation or award;

(b) Include evidence or supporting documentation that supports the grounds on which the protest is based;

(c) A description of the resulting harm to the affected person; and

(d) The relief requested.

(3) *Additional Information.* The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate by giving such person written notice of the time and manner whereby any response shall be delivered.

(4) *City Manager Response.* The City Manager shall issue a written disposition of the protest in a timely manner.

(a) If the City Manager upholds the protest, in whole or in part, the proposed personal services contract procurement shall be cancelled, or the contract shall not be awarded, as the case may be.

(b) If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.

(5) *Judicial Review.* Before seeking judicial review, an affected person shall exhaust all administrative remedies. Judicial review shall be in accordance with ORS [279B.420](#). (Ord. 135 § X(D), passed 3-13-2018)

2.60.450 Protests of cooperative procurements.

Protests of the cooperative procurement process, contents of a solicitation document, or award may be filed with the City only if the City is the administering agency and under the applicable procedure described herein. (Ord. 135 § X(E), passed 3-13-2018)

Chapter 2.70

PROCESS FOR LEASING OF CITY-OWNED AGRICULTURAL LAND

Sections:

- 2.70.010 Bids requested when.
- 2.70.020 Submission of bids.
- 2.70.030 Award of annual lease.
- 2.70.040 Renewal of annual lease.

2.70.010 Bids requested when.

The City of Millersburg will request bids for City-owned parcels of real property that the City intends to lease pursuant to the following timeline: The request for annual bids shall be published at least three times in the Albany Democrat–Herald Newspaper, with the first publication to occur during the last week of April, the second publication to occur during the first week of May, and the third publication to occur during the second week of May. The request for bid will also be posted in at least two public locations, and shall also be provided to any party who has requested notice. (Ord. 125 § 1, passed 3-16-2017; Ord. 108 § 1, passed 2-11-2014; Code 2014 § 34.03(A))

2.70.020 Submission of bids.

Said bids must be submitted to the City Manager no later than 4:00 p.m. on the first Monday of June of the year in which the lease will occur. The submitted bids must be accompanied by a check, payable to the City of Millersburg, for one-half of the amount of the annual bid. (Ord. 125 § 2, passed 3-16-2017; Ord. 108 § 2, passed 2-11-2014; Code 2014 § 34.03(B))

2.70.030 Award of annual lease.

The annual lease will be awarded by June 15th, and the annual land lease shall run from September 15th and automatically terminate one year later on September 14th at 11:59 p.m. (Ord. 125 § 3, passed 3-16-2017; Ord. 108 § 3, passed 2-11-2014; Code 2014 § 34.03(C))

2.70.040 Renewal of annual lease.

The annual lease with lessee may be renewed annually, for no more than two additional years beyond the expiration of the first annual lease. Said renewal must be mutually agreed to by the City and the lessee no later than April 18th of the year the annual lease is to terminate. The City and the renewing lessee may jointly agree to change, amend, or withdraw any material term for the renewed annual lease. If the City and lessee renew the lease, the annual lease between the City and the lessee must be signed by the City and the lessee by April 20th. The City will not seek bids for the renewed year if the mutually agreed renewed lease is signed by the City and the lessee no later than April 20th. (Ord. 125 § 4, passed 3-16-2017; Ord. 108 § 4, passed 2-11-2014; Code 2014 § 34.03(D))

Chapter 2.80

PUBLIC RECORDS REQUESTS – FEES

Sections:

- 2.80.010 Purpose.
- 2.80.020 Fee charged.
- 2.80.030 Submitting requests.
- 2.80.040 Procedure to calculate the estimated cost for producing public records.
- 2.80.050 Procedure for producing record requests.
- 2.80.060 Waiver of fees.

2.80.010 Purpose.

This policy is intended to implement the statutory requirement in ORS [192.440\(7\)](#) that the City make available a written procedure for making public records requests. (Ord. 111, passed 3-10-2015; Code 2014 § 34.04(A))

2.80.020 Fee charged.

The City shall charge a fee in connection with a request under ORS [192.410](#) to [192.505](#), equal to the hourly rate of the employee fulfilling the request, multiplied by the number of hours actually spent in performing such service rounded to the nearest one-tenth of an hour, and for materials or media used to furnish the requested records. (Ord. 111, passed 3-10-2015; Code 2014 § 34.04(B))

2.80.030 Submitting requests.

All records requests should be directed to the City Administrator. A request can be hand delivered or mailed to:

City of Millersburg

4222 NE Old Salem Road

Albany, OR 97321 (Ord. 111, passed 3-10-2015; Code 2014 § 34.04(C))

2.80.040 Procedure to calculate the estimated cost for producing public records.

- (1) The City Administrator, or the employee designated by the City Administrator, shall consider the request and make an estimate of the time reasonably calculated to be necessary to fulfill the request; the estimate of the actual cost shall be computed; the person making the request shall be advised of the estimated cost of the service requested.
- (2) The estimated cost shall not include the cost of making the estimate.
- (3) Any other reimbursable costs anticipated to be incurred shall be included in the estimate in accordance with ORS [192.410](#) to [192.505](#). (Ord. 111, passed 3-10-2015; Code 2014 § 34.04(D))

2.80.050 Procedure for producing record requests.

- (1) Upon deposit of the estimated cost, the City Administrator shall assign the employee who will perform the service to proceed with performing the services requested, and shall designate the time when the service shall be performed, and may impose such rules and regulations necessary to prevent interference with the regular discharge of the employee's duties.
- (2) The employee performing services requested in connection with making public records available shall keep a written record of the time spent in performing the services requested, in hours and tenths of hours, rounded to the nearest tenth.
- (3) The public records to be made available shall not be delivered to the person requesting them until any actual costs in addition to the previously deposited estimated cost have been paid, including the cost of time spent by an attorney for the public body in reviewing the public records, redacting material or segregating exempt and non-exempt records. (Ord. 111, passed 3-10-2015; Code 2014 § 34.04(E))

2.80.060 Waiver of fees.

The City Administrator may waive any fee provided by this policy if:

- (1) The time needed to fulfill the request is negligible;
- (2) There is a statutory basis for waiving;
- (3) The requested service is within the normal scope of office activities;
- (4) The resulting fee would be less than \$5.00. (Ord. 111, passed 3-10-2015; Code 2014 § 34.04(F))