CITY OF SULTAN
COUNCIL RETREAT
COMMUNITY CENTER
March 14, 2015

Agenda Items:

1. Computer Training
2. Salary Commission
3. Attractive Nuisance/Property Code
4. Purchasing Policy

Schedule:

9:00 – 9:15	Mayor's Comments
9:15 – 9:45	Computer Training
9:45 – 10:15	Salary Commission
10:15 – 10:30	Break
10:30 – 12:00	Attractive Nuisance/Property Code
12:00- 12:45	Lunch - Ixtapa
12:45 – 1:30	Purchase Policy

ADA NOTICE: City of Sultan Community Center is accessible. Accommodations forpersons with disabilities will be provided upon request. Please make arrangements prior to the meeting by calling City Hall at 360-793-2231.
For additional information please contact the City at cityhall@ci.sultan.wa.us or visit our web site at www.ci.sultan.wa.us

SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

Agenda Item #:	Retreat Item 2
Date:	March 14, 2015
SUBJECT:	Council/Mayor Pay Structure
CONTACT PERSON:	Laura Koenig, City Clerk/Deputy Finance Director

Issue:
The issue before the Council is the amount and method of payment of the monthly salary for the Mayor and Councilmembers and the formation of a Salary Commission.

Summary:
The Council has discussed methods and amount of pay for Councilmembers on several occassions. Alternatives discussed included:

1. Leave the current pay structure in place
2. Change the pay to a flat rate per month
3. Set a flat rate per meeting regardless of the type (council meeting, committee, board)
4. Factor in a CPI adjustment annually
5. Create a salary commission to recommend a pay structure.

Discussion:
The Council holds two council meetings per month, three retreats and one joint meeting with the Planning Board. This totals 28 meetings per year. If a councilmember only attends these meetings they would be paid $1,375 per year. The maximum salary per year is $1,800 based on the current ordinance that was amended in 2011.

In 2014, the total number of meetings attended by the council is 437. Based on the seven members of the council, this averages out to 62 meetings per councilmember or 5 meetings per month.

The current code (Attachment A) provides for a salary for the Mayor of $500 per month. Councilmembers are paid $50 per council meeting/maximum of two per month and $25 per other meeting/maximum of two per month for a maximum total of $150 per month.

In accordance with RCW 35A.12.070 (Attachment B), the Council can not increase its own pay unless a Salary Commission is established under RCW 35.21.015. The Council can increase the Mayor's pay at any time with the proper budget amendments. RCW 35.21.015 (Attachment C) provides for establishment of a salary commission which allows mid term increases to council pay.

If the Council increases council pay without a salary commission, the pay would be effective for only new council members beginning in January 2017.

The current pay structure requires the attendance at two council meetings a month and two other meetings in order to receive the full payment of $150. Per SMC 2.05.030 " Meetings shall include regularly scheduled council meetings, special council meetings, public hearings, council

workshops, committee meetings and other city related task force or associations that the councilmember has been appointed to or requested to attend".

Councilmembers that have attend several other meetings and workshops in a month do not earn the maxiumum pay possible if they are unable to attend both council meetings due to unforeseen circumstances.

The following is a comparision of 10 cities similar in size to Sultan:

CITY/POPULATION	MAYOR	COUNCIL
Black Diamond (4,180)	$1000/month	$160/month
Blaine (4,865)	$250/meeting, maximum $500/month	$150/meeting, maximum $300/month
Buckley (4,430)	$500/month	$250/month
Colville (4,690)	$1000/month	$50/meeting
Connell (5,330)	$600/month	$175/month
Mattawa (4,460)	$500/month	$62.50/meeting
Medical Lake (4,965)	$700/month	$200/month
Omak (4,840)	$1200/month	$150/meeting
Union Gap (6,140)	$600/month	$600/month
Wapato (5,040)	$833/month	No Compensation
Average	$743/month	$221/month
		Assumes 2 meetings per month

Attachments:

A. SMC Chapter 2.05 – Council Salaries
B. RCW 35A.12.070 – Council salaries
C. RCW 35.21.015 – Salary Commissions – Sample ordinance
D. AWC Salary Data for Mayor and Council

ATTACHMENT A

Chapter 2.05
COUNCIL SALARIES

Sections:

2.05.010 Effective date.
2.05.020 Salaries set.
2.05.030 Meetings defined.
2.05.040 Deductions for nonattendance.

2.05.010 Effective date.

The salaries of the elected city officials shall be as set forth in SMC 2.05.020, commencing January 1, 2000, and shall remain in effect until such time as the city council shall otherwise provide by ordinance. (Ord. 711-99)

2.05.020 Salaries set.
The mayor and city council members shall receive salaries as follows:

Mayor	$500.00 per month
Councilmembers	$50.00 per council meeting $25.00 per other meetings not to exceed $150.00 per month

(Ord. 1126-11 § 1; Ord. 711-99)

2.05.030 Meetings defined.
Meetings shall include regularly scheduled council meetings, special council meetings, public hearings, council workshops, committee meetings and other city related task force or associations that the councilmember has been appointed to or requested to attend. (Ord. 711-99)

2.05.040 Deductions for nonattendance.
No compensation shall be paid to the mayor or councilmember who has an extended excused absence or disability that prevents attendance at all meetings during a calendar month. Pro-tem appointments during the mayor's or councilmember's absence shall receive the regular monthly salary for that position. (Ord. 711-99)

ATTACHMENT B

RCW 35A.12.070 Compensation of elective officers--Expenses.

The salaries of the mayor and the councilmen shall be fixed by ordinance and may be revised from time to time by ordinance, but any increase in the compensation attaching to an office shall not be applicable to the term then being served by the incumbent if such incumbent is a member of the city legislative body fixing his own compensation or as mayor in a mayor-council code city casts a tie-breaking vote relating to such ordinance: PROVIDED, That if the mayor of such a city does not cast such a vote, his salary may be increased during his term of office.

Until the first elective officers under this mayor-council plan of government may lawfully be paid the compensation provided by such salary ordinance, such officers shall be entitled to be compensated in the same manner and in the same amount as the compensation paid to officers of such city performing comparable services immediately prior to adoption of this mayor-council plan.

Until a salary ordinance can be passed and become effective as to elective officers of a newly incorporated code city, such first officers shall be entitled to compensation as follows: In cities having less than five thousand inhabitants, the mayor shall be entitled to a salary of one hundred and fifty dollars per calendar month and a councilman shall be entitled to twenty dollars per meeting for not more than two meetings per month; in cities having more than five thousand but less than fifteen thousand inhabitants, the mayor shall be entitled to a salary of three hundred and fifty dollars per calendar month and a councilman shall be entitled to one hundred and fifty dollars per calendar month; in cities having more than fifteen thousand inhabitants, the mayor shall be entitled to a salary of twelve hundred and fifty dollars per calendar month and a councilman shall be entitled to four hundred dollars per calendar month: PROVIDED, That such interim compensation shall remain in effect only until a salary ordinance is passed and becomes effective as to such officers, and the amounts herein provided shall not be construed as fixing the usual salary of such officers. The mayor and councilmen shall receive reimbursement for their actual and necessary expenses incurred in the performance of the duties of their office, or the council by ordinance may provide for a per diem allowance. Procedure for approval of claims for expenses shall be as provided by ordinance.

ATTACHMENT C

RCW 35.21.015
Salary commissions.

(1) Salaries for elected officials of towns and cities may be set by salary commissions established in accordance with city charter or by ordinance and in conformity with this section.

(2) The members of such commissions shall be appointed in accordance with the provisions of a city charter, or as specified in this subsection:

(a) Shall be appointed by the mayor with approval of the city council;

(b) May not be appointed to more than two terms;

(c) May only be removed during their terms of office for cause of incapacity, incompetence, neglect of duty, or malfeasance in office or for a disqualifying change of residence; and

(d) May not include any officer, official, or employee of the city or town or any of their immediate family members. "Immediate family member" as used in this subsection means the parents, spouse, siblings, children, or dependent relatives of the officer, official, or employee, whether or not living in the household of the officer, official, or employee.

(3) Any change in salary shall be filed by the commission with the city clerk and shall become effective and incorporated into the city or town budget without further action of the city council or salary commission.

(4) Salary increases established by the commission shall be effective as to all city or town elected officials, regardless of their terms of office.

(5) Salary decreases established by the commission shall become effective as to incumbent city or town elected officials at the commencement of their next subsequent terms of office.

(6) Salary increases and decreases shall be subject to referendum petition by the people of the town or city in the same manner as a city ordinance upon filing of such petition with the city clerk within thirty days after filing of the salary schedule. In the event of the filing of a valid referendum petition, the salary increase or decrease shall not go into effect until approved by vote of the people.

(7) Referendum measures under this section shall be submitted to the voters of the city or town at the next following general or municipal election occurring thirty days or more after the petition is filed, and shall be otherwise governed by the provisions of the state Constitution, or city charter, or laws generally applicable to referendum measures.

(8) The action fixing the salary by a commission established in conformity with this section shall supersede any other provision of state statute or city or town ordinance related to municipal budgets or to the fixing of salaries.

(9) Salaries for mayors and councilmembers established under an ordinance or charter provision in existence on July 22, 2001, that substantially complies with this section shall remain in effect unless and until changed in accordance with such charter provision or ordinance.

[2001 c 73 § 4.]

NOTES:

Findings -- Intent -- 2001 c 73: "The legislature hereby finds and declares that:

(1) Article XXX, section 1 of the state Constitution permits midterm salary increases for municipal officers who do not fix their own compensation;

(2) The Washington citizens' commission on salaries for elected officials established pursuant to Article XXVIII, section 1 of the state Constitution with voter approval has assured that the compensation for state and county elected officials will be fair and certain, while minimizing the dangers of midterm salary increases being used to influence those officers in the performance of their duties;

(3) The same public benefits of independent salary commissions should be extended to the setting of compensation of municipal elected officers; and

(4) This act is intended to clarify the intent of the legislature that existing state law authorizes:

(a) The establishment of independent salary commissions to set the salaries of city or town elected officials, county commissioners, and county councilmembers; and

(b) The authority of the voters of such cities, towns, and counties to review commission decisions to increase or decrease such salaries by means of referendum." [2001 c 73 § 1.]

Severability -- 2001 c 73: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 73 § 6.]

CITY OF LAKE STEVENS

Lake Stevens, Washington
ORDINANCE NO. 914

AN ORDINANCE OF THE CITY OF LAKE STEVENS, WASHINGTON ESTABLISHING A SALARY COMMISSION FOR THE CITY; ADDING A NEW CHAPTER 2.51 TO THE LAKE STEVENS MUNICIPAL CODE AND PROVIDING FOR SEVERABILITY

WHEREAS, RCW 35.21.015, authorizes the City to establish by ordinance an independent salary commission with authority to set the salary of the Mayor and members of the City Council and provides that the Commission's action fixing such salaries shall supersede any provision in a city ordinance related to fixing salaries;

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF LAKE STEVENS, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. A new Chapter 2.51 entitled "Salary Commission" is hereby added to the Lake Stevens Municipal Code which shall read as follows:

2.51.010 Purpose.

A. It is the policy of the City of Lake Stevens to base salaries of elected officials on realistic standards so that officials may be paid according to the duties of their offices, so that citizens of the highest quality may be attracted to public service.

2.51.020 Created -Membership, appointment, compensation, term.

A. The Lake Stevens Citizens' Commission on Salaries of Elected Officials, also to be known as the Salary Commission, is hereby created and shall consist of five members, to be appointed by the Mayor with the approval of the City Council.

B. A member of the Commission shall serve for a three year term without compensation, and shall be a US citizen and a resident of the City for at least one year preceding the appointment. The initial members shall be appointed for staggered terms of one, two or three years.

C. No member of the Commission shall be appointed to more than two terms.

D. A member of the Commission shall not be an officer, official, or employee of the City or an immediate family member of an officer, official, or employee of the city. For purposes of this section, "immediate family member" means the parents, spouse,

siblings, children, or dependent relatives of an officer, official, or employee of the city, whether or not living in the household of the officer, official, or employee.

2.51.030 Vacancies.

In the event of a vacancy in office of commissioner, the Mayor shall appoint, subject to approval of the City Council, a person to serve the unexpired portion of the term of the expired position.

2.51.040 Removal.

A member ofthe Commission may be removed from office by the Mayor, with the approval of the City Council only for cause of incapacity, incompetence, neglect of duty, or malfeasance in office, a crime involving moral turpitude, or for a disqualifying change of eligibility. The unexcused absence of any member of the Commission from two (2) consecutive meetings of the Commission shall constitute relinquishment of that person's membership on the Commission.

2.51.050 Duties.

A. The Commission shall meet every three years between July 1st and November 30th commencing the year 2014. The members of the Commission shall elect a chair from among the members. The Commission shall set a schedule of salaries by an affirmative vote of the majority of the Commission. Three members present at any meeting shall constitute a quorum.

B. The Commission shall study the relationship of salaries to the duties of the elected officials and shall set the salaries for the respective position. If after such review the Commission determines that the salary paid to an elected City official should be increased or decreased, the Commission shall hold a public hearing within 30 days before filing the Commission's written salary schedule with the City Clerk.

C. Any increase or decrease in salary established by the Commission shall become effective and incorporated into the city budget thirty (30) days after the filing thereof, following Commission review without further action of the City Councilor the Commission except as provided in section 2.51.060

D. Salary increases established by the Commission shall be effective as to all city elected officials, regardless of their terms of office.

E. Salary decreases established by the Commission shall become effective as to incumbent city elected officials at the commencement of their next subsequent term of office.

F. Staff support shall be provided to the Commission as needed by the Commission.

2.S1.060 Referendum.

Any salary increase or decrease established by the Commission pursuant to this chapter shall be subject to referendum petition by the voters of the City, in the same manner as a City ordinance, upon filing of a referendum petition with the City Clerk within thirty days after filing of a salary schedule by the Commission. In the event of the filing of a valid referendum petition, the salary increase or decrease shall not go into effect until approved by a vote of the people. Referendum measures under this section shall be submitted to the voters of the City at the next following general or municipal election occurring thirty days or more after the petition is filed, and shall otherwise be governed by the provisions of the State Constitution and the laws generally applicable to referendum measures. By adoption of this provision it shall not be the intent to adopt the powers of Referendum generally.

2.S1.070 Meetings to be open.

All meetings, actions, hearings and business of the Salary Commission shall be undertaken in compliance with the Open Public Meetings Act, Chapter 42.30 RCW as if the Commission was a "governing body" as defined in that Act; provided, that notice of all meetings of the Commission shall be issued pursuant to RCW 42.30.080.

Section2. This ordinance shall take effect and be in full force five days from and after its passage, approval and publication, as required by law.

Section 3. Severability, if any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

PASSED by the City Council and APPROVED by the Mayor this ~day of August, 2014.

2500 to 7,499	Mayor	Council Members
Algona (3,090)	$1500/month	$250/month
Benton City (3,255)	$750/month	$75/meeting
Black Diamond (4,180)	$1000/month	$160/month
Blaine (4,865)	$250/meeting, maximum $500/month	$150/meeting, maximum $300/month
Brier (6,345)	$1000/month, $50/meeting, plus paid medical or equivalent dollar amount.	$200/month, $50/meeting.
Buckley (4,430)	$500/month	$250/month
Cashmere (3,010)	$400/month	$100/month
Chehalis (7,370)	$150/month	$100/month
Chelan (4,020)	$1572/month plus $25/meeting up to 3 meetings/month	$400/month plus $50/meeting up to 3 meetings/month
Chewelah (2,615)	$658/month	$100/month
Clarkston (7,225)	$600/month	$250/month
Clyde Hill (2,995)	$100/month, $100/meeting	$50/meeting
Colfax (2,765)	$600/month	$75/meeting
Colville (4,690)	$1000/month	$50/meeting
Connell (5,330)	$600/month	$175/month
Dayton (2,545)	$1000/month	$150/month
Deer Park (3,870)	$1000/month	$200/month
Duvall (7,325)	$1500/month	$500/month
Eatonville (2,840)	$1402/month	$50/meeting
Elma (3,130)	$500/month	$250/month
Everson (2,570)	Medical/dental/vision coverage for family in lieu of salary	$150/month
Fircrest (6,555)	$121/month, $150/regular meeting, $50/special meeting	$121/month, $100/regular meeting, $50/special meeting
Forks (3,565)	No compensation	No compensation
Goldendale (3,420)	$1000/month	$50/meeting, maximum $100/month
Granger (3,495)	$650/month	$40/meeting, no maximum
Granite Falls (3,390)	$1000/month	$100/month
La Center (3,050)	$525/month plus $60/meeting	$175/month plus $60/meeting
Mattawa (4,460)	$500/month	$62.50/meeting
Medical Lake (4,965)	$700/month	$200/month
Medina (3,055)	No compensation	No compensation
Milton (7,265)	$1500/month	$400/month
Montesano (4,075)	$550/month	$200/month
Moxee (3,720)	$500/month	$175/month
Normandy Park (6,375)	No compensation	No compensation
North Bend (6,280)	$2000/month	$400/month
Ocean Shores (5,880)	$4000/month	$350/month
Okanogan (2,595)	$724/month	$125/month
Omak (4,840)	$1200/month	$150/meeting
Orting (7,065)	$1000/month	$100/month
Pacific (6,830)	$750/month	$200/month
Prosser (5,815)	$5350/month	$250/month
Quincy (7,235)	$1200/month	$470/month
Raymond (2,890)	$371/month	$247/month
Ridgefield (6,035)	$100/council meeting, $60 additional meeting, maximum $6000/year	$50/meeting, maximum $3000/year
Selah (7,395)	$620/month	$325/month
Sequim (6,910)	$25/hour	$15/hour
Stanwood (6,530)	$1200/month	$325/month
Steilacoom (6,060)	$750/month	$300/month
Sultan (4,665)	$500/month	$150/month
Union Gap (6,140)	$600/month	$600/month
Wapato (5,040)	$833/month	No Compensation
Warden (2,710)	$400/month	$40/meeting up to $160 month
Woodland (5,695)	$3300/month	$150/month, $25/meeting, maximum $250/month
Zillah (3,140)	$1000/month	$60/meeting

SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

ITEM NO: D-3

DATE: March 11, 2015

SUBJECT: Attractive Nuisance/ Property Code

CONTACT PERSON: Stacy MacGregor, Senior Planner
Viki Forte', Community Service Officer

ISSUE:
Staff is seeking direction from council to make amendments to the current Nuisance Code with goals of establishing an enforceable code with clear remedies, penalties and rights of the public. Staff is also requesting direction from council on enforcement goals.

SUMMARY:
The work program for 2015 includes an update to SMC Title 8: Health and Safety (Attachment A). This title contains the Nuisance Code and codes to regulate other potential public disturbances. Additionally, Title 9: Public Peace, Morals, and Welfare and Title 6: Animals collectively share the same issues in code language and enforceability. Potential updates were brought to Council in 2013 without clear direction from staff. Staff would again like Council to consider a comprehensive update to the public disturbance and public welfare regulations (Titles 6, 8, and 9) along with considering adopting all or part of the International Property Maintenance Code (Attachment B) as a way to establish community standards, to ensure public health and safety and to preserve and improve the aesthetics of all our neighborhoods.

DISCUSSION:
The code under consideration is the purview of the Community Service Officer (CSO). The CSO works closely with the citizens of Sultan, the Sherriff's department, the Health District, and the city planner to enforce the community's vision and desires as codified in the Municipal Code. Code language is only as good as its enforcement and the CSO is the city's liaison between Council describing its vision in specific code language and the application of that vision.

The three titles that broadly make up public disturbances suffer from internal inconsistencies; vague language that is subjective; enforcement that is often too onerous or simple impossible to enact; absent of specific, council and staff identified issues; lacks clear process for addressing violations; and identifies possible non-issues as enforceable offenses.

The issues that staff would like to address in a code update include the following:

- Junk and Inoperable Vehicles
- Trash, garbage and rubbish
- Vehicles and machinery
- Vegetation
- Sidewalks and Street
- Structures
- Public Defecating and Urinating
- Abandoned Structures/Boarding up/Trespassing
- International Property Maintenance ode
- Other nuisances as defined
- Develop Enforcement Procedures that allow from voluntary compliance and eliminate misdemeanors for all or most offences.
- Eliminate internal conflicts and regulations that are not within the City's jurisdictional authority
- Strengthen definitions and violations that are subjective

ATTACHMENTS:

A - Sultan Municipal Code Titles 6, 8, and 9
B – International Property Maintenance Code

Title 6
ANIMALS

Chapters:

6.04 Animal Control
6.08 Horses
6.12 Animals Running at Large
6.16 Fowl Running at Large

Chapter 6.04
ANIMAL CONTROL

Sections:

6.04.010 Definitions.
6.04.020 Animal control officer – Powers and duties.
6.04.030 Prohibited activities.
6.04.032 *Repealed.*
6.04.040 Right of entry and inspection.
6.04.050 Biting dogs.
6.04.060 Declaration of potentially dangerous dog or dangerous dog – Procedure and notification requirements.
6.04.061 Appeal of notice of potentially dangerous or dangerous dog.
6.04.062 Certification of registration of a dangerous dog required.
6.04.063 Term of certificate of registration.
6.04.064 Potentially dangerous dog – Confinement on and off premises of owner.
6.04.065 Dangerous dog – Confinement off premises of owner.
6.04.066 Duty of owner to notify animal control officer of change in status of potentially dangerous or dangerous dog.
6.04.067 Potentially dangerous and dangerous dog – Confiscation – Conditions – Penalties for owners of dogs that attack – Dog fights, penalty.
6.04.070 Animal license – Required.
6.04.080 Animals – Rabies inoculations.
6.04.090 Issuance – Contents – Tags – Duplicates.
6.04.100 Fees.
6.04.110 Impounding animals – When authorized.
6.04.120 Redemption, destruction or adoption of unlicensed animals.
6.04.130 Impounded animals – Adoption conditions.
6.04.140 Impounded animals — Return to owner – Claiming impounded animals.
6.04.150 Charges for impound.
6.04.160 Violation – Penalties generally.

6.04.010 Definitions.

As used in this chapter, unless the context requires otherwise:

A. "Abandon" means leaving an animal for 24 hours or more without care, or dropping an animal on private property without the owner's permission or in a public place.

B. "Abatement" means the termination of any violation of this title by lawful and reasonable means as determined by the animal control officer in order that a person or persons presumed to be the owner of an animal comply with this chapter.

C. "Animal" means any mammal, bird, reptile or amphibian.

D. "Animal control officer" means any individual employed, contracted with, or appointed by the animal control authority for the purpose of aiding in the enforcement of this chapter or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals, and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal.

E. "Animal control authority" means any person, firm, association or corporation appointed or authorized by the mayor to enforce or assist in the enforcement of the provisions of this title. The term shall specifically include, but not necessarily be limited to, any designated animal control officers, police officers, and employees of the animal shelter.

F. "Bail" means money or its equivalent deposited by the defendant to secure his appearance for an animal control ordinance offense.

G. "Confined" means being confined indoors, or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping, or in a securely fenced yard with a locked gate.

H. "Dangerous dog" means any dog that:

1. Inflicts severe injury on a human being without provocation on public or private property; or

2. Kills a domestic animal without provocation while the dog is off the owner's property; or

3. Has been previously found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans.

I. "Dogs not declared dangerous" means a dog that is not to be declared a dangerous dog because the threat, injury or damage was sustained by a person who at the time was:

1. Committing a willful trespass or other tort upon the premises occupied by the owner of the dog; or was

2. Tormenting, abusing, or assaulting the dog, or has done so in the past; or was

3. Committing or attempting to commit a crime.

J. "Dog" means any mammal of the canine family.

K. "Dog license" means a required license issued annually to each individual dog pursuant to the provisions of this chapter.

L. "Dog running at large" means any dog off or outside the premises of the owner not restrained by a rope, line, leash, chain, or other similar means. If a dog is not restrained by a tether of some kind, not engaged in supervised training, or not a working dog in the field, that dog shall be deemed at large.

M. "Guard dog" means any dog which has been trained and is used for the purpose of protecting persons or property by exhibiting hostile and aggressive propensities or which attacks on signal or command.

N. "Kennel" means the operation of any business in which four or more dogs of more than four months of age are kept on the premises, or the structure operated or contracted by the city in which impounded dogs are kept.

O. "Owner" means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control, custody or possession of an animal or by reason of the animal being seen residing consistently at a location, shall be presumed to be the owner.

P. "Person" means an individual, partnership, company, association, or any other legal entity.

Q. "Pet shop" means any person regularly engaged in the business of breeding or selling animals of any species.

R. "Potentially dangerous dog" means any dog that when unprovoked:

1. Inflicts bites on a human or a domestic animal either on public or private property; or

2. Chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to cause injury or otherwise to threaten the safety of humans or domestic animals.

S. "Public nuisance" means any dog which molests any passerby, bites a person or animal, habitually chases vehicles or persons, habitually attacks other animals traveling upon public grounds, damages or destroys property of persons other than the owner of the dog, scatters garbage and tips over garbage cans, habitually runs at large, disturbs the peace, comfort, health, or repose of any person of reasonable sensitivity by making loud, long, unnecessary or continuous noises.

T. "Quarantine" means secured at the direction of the animal control authority.

U. "Severe injury" means any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

V. "Veterinarian" means a practicing veterinarian licensed pursuant to the laws of the state to perform any of the acts set forth in RCW 18.92.105.

W. "Veterinary hospital" means any business established, maintained and operated by a veterinarian which is operated for the diagnosis and treatment of diseases or injuries of animals. (Ord. 1036-09 § 2 (Exh. A))

6.04.020 Animal control officer – Powers and duties.
The animal control officer shall:

A. Have police power in the enforcement of all provisions of this chapter relating to the licensing and impounding of dogs and the citation of persons for violation of this chapter.

B. Establish a place where all dogs subject to impoundment may be kept and held safely and provided with proper and sufficient food, water and shelter.

C. Impound and keep safely any dog which is found doing any of the acts set forth in SMC 6.04.030 and 6.04.060, or any dog which is apparently abandoned.

D. Issue uniform animal control ordinance citations pursuant to this chapter and citations in complaints within the city, to appear as witnesses, and to perform all other acts necessary for enforcement of this chapter.

E. Investigate reports of biting dogs, animal neglect or abuse as set forth by this chapter. (Ord. 1036-09 § 2 (Exh. A))

6.04.030 Prohibited activities.
It is unlawful for any person to:

A. Interfere with or hinder an animal control and/or police officer while in the exercise of his duties.

B. Remove any detained animal from the city kennel, contract facility or a department vehicle without the consent of the police department or animal control officer.

C. Refuse to allow an animal control or police officer to properly impound an animal.

D. Fail to prevent any animal from running at large or to allow an animal to be unleashed on public premises, property or right-of-way except in those areas specifically designated to permit animals.

E. Own a dangerous dog in contravention of this chapter.

F. Own a dog that is deemed a public nuisance by being involved in three incidents within one year's time.

G. Own any animal affected with a contagious disease who runs at large or is exposed in any public place whereby the health of man or beast may be affected, except that such animal may be removed from the premises for the owner or other person by a veterinarian, animal control officer or police officer.

H. Own an animal not vaccinated with a modified live-virus vaccine for rabies within the past two years.

I. Own any animal for which he has failed to display a license upon such animal when it is

off the owner's property, if such license is required under SMC 6.04.070.

J. Use or permit another to use an animal license or license identification not issued to such person for the specific animal.

K. Remove a license identification from any animal without the owner's permission.

L. Make a false or misleading statement or representation regarding the ownership or right to custody or control of an animal.

M. Tease, tantalize or provoke any animal with the intent to cause fear or anger.

N. Fail to keep every female animal in heat confined in a manner that such female animal cannot come into contact with another animal except for planned breeding.

O. Allow an animal in a posted prohibited area.

P. Knowingly or negligently commit acts of cruelty to animals:

1. Under circumstances not amounting to first degree animal cruelty not defined under state law. General acts of cruelty include but are not limited to:

a. To subject any animal under a person's ownership, custody or control to neglect, defined as confinement without proper food, water and shelter.

b. To kill without legal privilege any animal under the ownership, custody, or control of another person.

2. For any person to overdrive, overload, drive when overloaded, overwork, torture, torment, deprive of necessary sustenance, cruelly beat, mutilate or cruelly kill or cause or procure any such cruel treatment of any animal while having the charge or custody of any such animals as owner or otherwise, or for any owner or person having the charge or custody of any animal to permit the animal to be subjected to any of the above acts.

3. Confine an animal within or on a motor vehicle at any location under such conditions as may endanger the health or well-being of the animal, including but not limited to extreme temperatures, lack of food, water or attention, or confinement with a dangerous animal.

4. For any person owning, having charge or custody of any animal, to deprive any such animal of necessary and adequate food for more than 36 hours and/or water for more than 24 hours.

5. For any person having charge or custody of any animal, to deprive such animal of necessary, adequate, sanitary, and humane shelter from the elements.

6. Abandon an animal.

7. Failing to report striking an animal with a motor vehicle, whether accidental or negligently.

Q. Allow the excessive accumulation of animal feces in any open area, run, cage or yard wherein animals are kept and to fail to remove or dispose of feces.

R. Fail to remove the fecal matter deposited by his/her animal on public or private property of another before the owner and/or animal leaves the immediate area where the fecal matter was deposited.

S. Fail to have in his/her possession the means necessary to remove his/her animal's fecal matter when accompanied by said animal on public property or public easement.

T. Be in possession of property and knowingly permit frequent, continuous, and/or repetitive barking or noise made by any animal, which originates from the property and which unreasonably disturbs or interferes with the peace, comfort and repose of property owners or possessors.

U. Permit any animal to damage public property or the private property of another.

V. Fail to make an appearance in court pursuant to a uniform animal control complaint and the provisions of this chapter or fail to appear pursuant to an order of the court in such matter under this chapter.

W. Violation of any of the provisions of this section shall constitute a misdemeanor under SMC 6.04.160(E). (Ord. 1036-09 § 2 (Exh. A))

6.04.032 Community event restrictions.
Repealed by Ord. 1148-12. (Ord. 1036-09 § 2 (Exh. A))

6.04.040 Right of entry and inspection.
A. Pursuant to consent of the owner or occupant of any premises, an animal control officer or police officer may enter and inspect said premises to determine compliance with the provisions of this chapter.

B. An animal control officer or police officer may enter the private property of another in the absence of the owner or occupant when in their judgement an animal on such premises needs immediate assistance or to prevent its death or serious injury.

C. An animal control officer or police officer may enter the private property of another to enforce this chapter with a search warrant or when otherwise authorized by law.

D. An animal control officer or police officer is authorized to remove any animal from a motor vehicle, at any location, when they reasonably believe it is confined in such conditions which endanger the health and well-being of the dog. The animal shall be removed and impounded with the removing officer leaving written notice of the removal and impound, and the officer's name, in a secure and conspicuous location or inside the vehicle.

E. An animal control officer or police officer may enter the private property of another, with or without a warrant, when in hot pursuit to take possession of any animal observed at large.

F. An animal control officer or police officer may enter the private property of another and

remove a dog which is creating a public nuisance.

G. An animal control officer or police officer may enter the private property of another and remove a dog acting as a dangerous or potentially dangerous dog. (Ord. 1036-09 § 2 (Exh. A))

6.04.050 Biting dogs.
A. Any owner of a dog, any person who is bitten by a dog or any doctor, veterinarian or hospital which has information that a person has been bitten by a dog shall immediately report such bite, giving the name and address of the bitten person if known to him.

B. The owner of a dog alleged to have bitten a person must produce valid certification of a current rabies vaccine or the animal will be quarantined as described in this chapter for a period of at least 10 days. Such dog may not be transported outside the city limits without the written permission of the police department. (Ord. 1036-09 § 2 (Exh. A))

6.04.060 Declaration of potentially dangerous dog or dangerous dog – Procedure and notification requirements.
A. The animal control officer shall identify and classify potentially dangerous dogs and dangerous dogs. The agency may find and declare an animal potentially dangerous or dangerous if the animal control officer has probable cause to believe that the animal falls within the definitions set forth in SMC 6.04.010(H) or (R). Probable cause may be based upon:

1. The written statement of a citizen who is willing to testify that he or she witnessed the animal acting in a manner which causes it to fall within the definition of SMC 6.04.010(H) or (R); or

2. Actions of the dog witnessed by any animal control officer or law enforcement officer; or

3. Other substantial evidence.

B. Upon declaring a dog potentially dangerous or dangerous under subsection (A) of this section, the animal control officer shall prepare a written notice that the dog is dangerous or potentially dangerous. At a minimum, the notice shall state:

1. A description of the dog including breed, color, sex and license number, if known;

2. The name and address of the owner, if known;

3. The location of the animal if not in the custody of the owner;

4. The facts upon which the notice is based;

5. The requirements for containment and restraint of the dog, if applicable, as determined by the animal control officer, that the requirements for containment and restraint shall be complied with immediately upon receipt of the notice and that failure to comply with the requirements of containment and restraint shall result in the immediate confiscation and impoundment of the dog, pursuant to SMC 6.04.067;

6. The criminal penalty for violation of the requirements for containment and restraint imposed by the animal control officer, including a statement advising that if the requirements are not timely met, the animal control officer shall have the authority to issue a criminal citation or report such noncompliance to the office of the prosecuting attorney, which shall also have authority to issue a criminal citation, and that if the dog is declared potentially dangerous, similar incidents in the future could result in the dog being declared dangerous pursuant to SMC 6.04.010(H);

7. A statement advising:

a. That the notice may be appealed to the city hearing examiner as specified in SMC 2.26.125; and

b. That the failure to file a timely and complete appeal will constitute a waiver of all rights to an appeal under city code; and

8. A statement that the notice constitutes a final determination that the dog is either potentially dangerous or dangerous.

C. The notice shall be served on the owner by one of the following methods:

1. Certified mail to the owner's last known address. The service shall be deemed complete upon the third day following the day upon which the notice was placed in the mail; or

2. Personal service. If the declaration is personally served, proof of personal service of the declaration shall be made by a written declaration under penalty of perjury executed by the person effecting service, declaring time, date and manner in which service was made; or

3. If the owner cannot be located as provided in subsection (C)(1) or (2) of this section, by publication in a newspaper of general circulation. The service shall be deemed complete 14 days following the day upon which the notice was published. (Ord. 1036-09 § 2 (Exh. A))

6.04.061 Appeal of notice of potentially dangerous or dangerous dog.

A. Any owner of a dog which has been declared potentially dangerous or dangerous by the animal control officer pursuant to SMC 6.04.060 may appeal the declaration to the Sultan city hearing examiner pursuant to the provisions of SMC 2.26.125.

B. The enforcement stay contained in SMC 2.26.125(B) shall not apply to the declaration that a dog is potentially dangerous or dangerous, except that no dog declared potentially dangerous or dangerous shall be destroyed as provided by this chapter during the pendency of an appeal as provided herein.

C. At the hearing, the animal control officer shall have the burden of proving the dog declared dangerous or potentially dangerous falls within the definition of SMC 6.04.010(H) and (R), which burden shall be met by a preponderance of the evidence.

D. The decision of the hearing examiner shall be final and conclusive with an optional right of reconsideration as provided in SMC 2.26.125 and may then be reviewable by an action

for writ of review filed in Snohomish County superior court as provided in Chapter 2.26 SMC. (Ord. 1036-09 § 2 (Exh. A))

6.04.062 Certification of registration of a dangerous dog required.
A. It shall be unlawful for a person or persons to keep, own or otherwise maintain a dangerous dog in the city without a certificate of registration issued under this section.

B. Following the declaration of dangerous dog, the owner of a dangerous dog must obtain a certificate of registration for the dog with the licensing authority within 15 days as provided in this section.

C. The licensing authority is authorized to issue a certificate of registration to the owner of a dangerous dog upon payment of a $200.00 registration fee and if the owner presents sufficient evidence of the following:

1. A proper enclosure of a dangerous dog;

2. Either:

   a. A surety bond issued by a surety insurer qualified under Chapter 48.28 RCW and in a form acceptable to the licensing authority in the sum of at least $250,000, payable to any person injured by the dangerous dog; or

   b. A policy of liability insurance, such as homeowner's insurance, issued by an insurer qualified under RCW Title 48 and in a form acceptable to the licensing authority in the amount of at least $250,000, insuring the owner for any personal injury inflicted by the dangerous dog;

3. That the dog has been microchipped;

4. That the dog has been licensed; and

5. That the dog has been neutered or spayed. (Ord. 1036-09 § 2 (Exh. A))

6.04.063 Term of certificate of registration.
The term for a certificate of registration issued pursuant to SMC 6.04.062 is one year from the date of issuance or until the dog is moved to another address, whichever is less. Renewal applications for the certificate of registration must contain sufficient evidence of the information required in SMC 6.04.062 as well as payment of the application fees. (Ord. 1036-09 § 2 (Exh. A))

6.04.064 Potentially dangerous dog – Confinement on and off premises of owner.
It shall be unlawful for the owner of a potentially dangerous dog:

A. To suffer or permit the dog to be on the property where the owner resides and outside the owner's dwelling unless the dog is contained by a secure fence or under control; or

B. To suffer or permit the dog to leave the property where the owner resides unless the dog is under control and securely muzzled. The muzzle shall be worn in a manner which will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal. (Ord. 1036-09 § 2 (Exh. A))

6.04.065 Dangerous dog – Confinement off premises of owner.
It shall be unlawful for the owner of a dangerous dog to suffer or permit the dog to be outside the proper enclosure of a dangerous dog unless the dog is securely muzzled and under control. The muzzle shall be worn in a manner which will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal. (Ord. 1036-09 § 2 (Exh. A))

6.04.066 Duty of owner to notify animal control officer of change in status of potentially dangerous or dangerous dog.
A. The owner of a potentially dangerous or dangerous dog shall immediately notify the animal control officer when the dog:

1. Is loose or unconfined off the premises of the owner;

2. Has bitten or injured a human being or another animal;

3. Is sold, given away, or moved to another address; or

4. Dies.

B. If a potentially dangerous or dangerous dog is sold, given away, or moved to another location, the owner shall provide the name, address, and telephone number of the new owner, or the address and telephone number of the new location, to the animal control officer prior to moving the dog, whether within or outside of the city. All requirements of this chapter must be met by the new owner prior to moving the dog if the dog remains within the city. If the dog is retained by the same owner, but moved to another address, the requirements of this chapter must be met prior to moving the dog.

C. If a potentially dangerous or dangerous dog dies, the owner shall supply to the animal control officer, within 30 days of death, a veterinarian certificate of death or other proof that the dog has died. (Ord. 1036-09 § 2 (Exh. A))

6.04.067 Potentially dangerous and dangerous dog – Confiscation – Conditions – Penalties for owners of dogs that attack – Dog fights, penalty.
A. Any potentially dangerous dog shall be immediately confiscated by the animal control officer if:

1. The dog is either not contained by a secure fence or under control while on the property where the owner resides and outside of the owner's dwelling; or

2. The dog is off the property where the owner resides, and the dog is either not under control or not securely muzzled. In addition, the owner shall be guilty of a misdemeanor punishable in accordance with RCW 9A.20.021.

B. Any dangerous dog shall be immediately confiscated by the animal control officer if:

1. The dog is not validly registered pursuant to SMC 6.04.062;

2. The owner does not maintain continuous liability insurance coverage or surety bond required under SMC 6.04.062; or

3. The dog is not in a proper enclosure of a dangerous dog and either not under control or not securely muzzled. In addition, the owner shall be guilty of a gross misdemeanor punishable in accordance with RCW 9A.20.021.

C. If a dog is confiscated under subsection (A) or (B) of this section, the animal control officer must serve notice pursuant to this chapter upon the dog owner within 72 hours of the confiscation, specifying the reason for the confiscation of the potentially dangerous or dangerous dog, that the owner is responsible for redemption of the dog pursuant to SMC 6.04.120, and that the dog will be destroyed in an expeditious and humane manner if the deficiencies for which the dog was confiscated are not corrected within 15 calendar days of the receipt of the notification. The animal control officer shall destroy the confiscated potentially dangerous or dangerous dog in an expeditious and humane manner if any deficiencies required by the notice are not corrected within 15 days of service of the notification.

D. Any dog which threatens the safety of any animal or person, whether designated as potentially dangerous or dangerous, may be immediately confiscated by the animal control officer prior to a notice being served pursuant to SMC 6.04.060. Within 72 hours of the confiscation, the animal control officer shall serve notice under SMC 6.04.060 on the owner. If the requirements included in the notice are satisfied and the dog is redeemed pursuant to SMC 6.04.120, the dog shall be released. The animal control officer shall destroy the confiscated dog in an expeditious and humane manner if the requirements included in the subsequent notice are not satisfied or the dog is not redeemed within 15 calendar days of the notification.

E. If a potentially dangerous dog of an owner with a prior conviction under this chapter attacks or bites a person or a domestic animal, the dog's owner is guilty of a misdemeanor, punishable in accordance with RCW 9A.20.021. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that he or she was in compliance with the requirements for ownership of a potentially dangerous dog pursuant to this chapter and the person or domestic animal attacked or bitten by the defendant's dog trespassed on the defendant's real or personal property or provoked the defendant's dog without justification or excuse.

F. If a dangerous dog of an owner with a prior conviction under this chapter attacks or bites a person or another domestic animal, the dog's owner is guilty of a class C felony, punishable in accordance with RCW 9A.20.021. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that he or she was in compliance with the requirements for ownership of a dangerous dog pursuant to this chapter and the person or domestic animal attacked or bitten by the defendant's dog trespassed on the defendant's real or personal property or provoked the defendant's dog without justification or excuse. In addition, the dangerous dog shall be immediately confiscated by the animal control officer, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

G. The owner of any dog that aggressively attacks and causes severe injury or death of any human, whether or not the dog has previously been declared potentially dangerous or dangerous, shall be guilty of a class C felony punishable in accordance with RCW 9A.20.021. It is an affirmative defense that the defendant must prove by a preponderance

of the evidence that the human severely injured or killed by the defendant's dog:

1. Trespassed on the defendant's real or personal property which was enclosed by fencing suitable to prevent the entry of small children and designed to prevent the dog from escaping and marked with clearly visible signs warning people, including children, not to trespass and to beware of dog; or

2. Provoked the defendant's dog without justification or excuse on the defendant's real or personal property which was enclosed by fencing suitable to prevent the entry of small children and designed to prevent the dog from escaping and marked with clearly visible signs warning people, including children, not to trespass and to beware of dog. In such a prosecution, the state has the burden of showing that the owner of the dog either knew or should have known that the dog was potentially dangerous as defined in this chapter. The state may not meet its burden of proof that the owner should have known the dog was potentially dangerous solely by showing the dog to be a particular breed or breeds. In addition, the dog shall be immediately confiscated by the animal control officer, quarantined, and upon conviction of the owner destroyed in an expeditious and humane manner.

H. Any person entering a dog into a dog fight is guilty of a class C felony punishable in accordance with RCW 9A.20.021. (Ord. 1036-09 § 2 (Exh. A))

6.04.070 Animal license – Required.
Any person owning a dog or cat shall procure a license for each such animal each fiscal year or any part thereof and pay a fee as required by the city's adopted fee resolution or ordinance.

Such license shall be procured within 30 days after the date a dog or cat is brought by the owner into the city, or any dog or cat four months of age kept for more than 30 days within the city limits. (Ord. 1036-09 § 2 (Exh. A))

6.04.080 Animal – Rabies inoculations.
It shall be the duty of the owner of any dog or cat which is more than four months of age kept in the city to have such dog or cat inoculated against rabies with a modified live virus type vaccine, and no license shall be issued for any dog unless the applicant exhibits a certificate of such inoculation by a veterinarian or, in the case of dogs owned by a kennel or pet shop, a statement of such inoculation signed and sworn to by the owner of that kennel or pet shop.

The certificate of inoculation or sworn statement must demonstrate that such vaccination is valid for immunity against rabies for the entire period for which the license is issued; however, if a veterinarian certifies to some physical condition of a dog which would prevent such inoculation for any period, no inoculation shall be required for the dog, and the license may be issued for that dog. (Ord. 1036-09 § 2 (Exh. A))

6.04.090 Issuance – Contents – Tags – Duplicates.
A. Upon payment to the city clerk or designee of the required license fee as set by fee resolution or ordinance, the city clerk or designee shall issue to the person a license and metal tag bearing the word "Sultan" and having thereon the year and number corresponding to that of the license and the stub.

B. The city clerk or designee shall keep a record of each license which may be in the form of a stub upon which shall be recorded the essential facts of the license: the name, address and phone number of the owner, the sex, name, sufficient information to identify the animal, the date and any other data deemed necessary or desirable to carry out the general purpose of this chapter. Licenses are for a specific animal to a specific owner and are not transferable between owners or animals.

C. If a license tag is lost, an owner may secure a duplicate tag from the city clerk or designee on satisfactory proof of loss. (Ord. 1036-09 § 2 (Exh. A))

6.04.100 Fees.
A. Fees for the annual license for each animal shall be set by resolution. All charges and penalties paid in accordance with the terms of this chapter shall be paid to the Sultan city clerk or designee.

B. All licenses shall expire on the first day of the following year in which the license is issued. (Ord. 1036-09 § 2 (Exh. A))

6.04.110 Impounding animals – When authorized.
Whenever any animal is found performing any of the activities described in this chapter, or has bitten any person or animal, an animal control officer, police officer, any owner or any private person may impound it by immediately delivering such animal to the place designated for such impoundment.

The animal control officer, upon receiving any animal, shall make a complete registry, entering the breed, color and sex of such animal and whether licensed. If licensed, they shall enter the name and address of the owner, and the number of the license tag.

Not later than two working days after the impounding of any animal at a city of Sultan facility, the owner shall be notified, or if the owner of the animal is unknown, written notice shall be posted for three days at the Sultan City Hall and/or Sultan Post Office describing the animal and the place and time of taking. The owner of any animal so impounded may reclaim such animal upon payment of the license fee, if unpaid, and all costs and charges incurred by the city for impounding and maintenance of the animal. (Ord. 1036-09 § 2 (Exh. A))

6.04.120 Redemption, destruction or adoption of unlicensed animals.
Unless an unlicensed animal or impounded animal is redeemed by its owner from a city of Sultan facility within three working days after impoundment in a manner consistent with SMC 6.04.110, the animal may be destroyed or adopted in a manner consistent with SMC 6.04.130. If such animal has been impounded because of the biting of a person and does not have a vaccination which is valid for immunity against rabies at such time, such animal shall be kept in impoundment and quarantine for such period of time as is necessary to observe said dog for the required 10-day quarantine period commencing after the biting of a person.

The owner of any animal impounded at a city of Sultan facility may reclaim such animal upon payment of the license fee, if unpaid, and all costs and charges incurred by the city for impounding and maintenance of the animal. (Ord. 1036-09 § 2 (Exh. A))

6.04.130 Impounded animals – Adoption conditions.
The decision of whether to release an animal to an individual for the purposes of adoption shall be discretionary with the animal control officer or his/her designee. In making the determination the animal control officer or his/her designee shall base his decision on what is in the best interest of the animal and what is in the best interest of public safety. Factors which shall be considered include, but are not limited to, the age of the individual requesting adoption, the premises where the animal will be kept, condition, size and/or temperament of the animal. Dogs which have been declared dangerous under the provisions of this chapter or Chapter 16.08 RCW, or potentially dangerous under the provisions of this chapter, will not be available for adoption.

An animal may be redeemed by persons other than the owner only if the following qualifications are met:

A. That the animal is in good health, or that adequate provisions for medical care of the animal will be taken;

B. That the animal is not dangerous;

C. That the animal is immunized against rabies prior to adoption;

D. That the animal is licensed upon adoption if the owner lives within the city;

E. The adoptive owner agrees to furnish proper care to the animal in accord with this chapter;

F. Payment of required fees, including any medical care costs incurred during impoundment;

G. The adoptive owner agrees to spay or neuter the animal if medically feasible prior to completion of the adoption process. (Ord. 1036-09 § 2 (Exh. A))

6.04.140 Impounded animals — Return to owner – Claiming impounded animals.
A. Any impounded animal at a city of Sultan facility shall be released to the owner upon payment of impoundment, care and license fees unless in the discretion of the animal control officer or his/her designee there is an ongoing investigation of a violation of this chapter or state law. The animal control officer or his/her designee may release the animal to the owner's authorized representative; full identification of the owner and their authorized representative must be provided to animal control prior to release.

B. The owner of any animal impounded at a city of Sultan facility may reclaim such animal upon payment of the license fee, if applicable, and all costs and charges incurred by the impound facility for the keeping and maintenance of the animal and may be subject to an impound fee payable to the city of Sultan as set by resolution of the city council whether or not the owner claims or retakes possession of the animal.

C. The owner of any animal impounded pending legal action pertaining to violations of this chapter and/or other judicial actions or hearings, pertaining to his/her ownership/responsibilities regarding the animal, shall be liable for all fees prescribed by fee schedule, upon conviction. (Ord. 1036-09 § 2 (Exh. A))

6.04.150 Charges for impound.
Charges for impounds will be established by resolution by the Sultan city council. (Ord. 1036-09 § 2 (Exh. A))

6.04.160 Violation – Penalties generally.
A. Violations of or noncompliance with any provisions of this chapter is an offense which may result in the issuance of a citation by the animal control officer or police officer, notwithstanding other charges or costs and/or remedies under this chapter.

B. Each day any person is in violation of this chapter is a separate offense.

C. The first two citations issued within a one-year period shall be an infraction. Any subsequent citation issued within the one-year period shall be deemed a misdemeanor.

D. The fine for an infraction shall be in the amount of $50.00. The process for contesting the citation is as designated on the back of the citation.

E. The penalty for a misdemeanor shall be set at a maximum of $1,000 and 90 days in jail.

F. In addition to any penalty imposed as provided by subsection (C) of this section, a court may order the impoundment and/or destruction of any dog found to be dangerous.

G. The citation shall be issued to the owner as defined in this chapter. (Ord. 1036-09 § 2 (Exh. A))

Chapter 6.08
HORSES

Sections:

6.08.010 Purpose.
6.08.020 Minimum ground area – Required.
6.08.030 Minimum ground area – Designated for each animal.
6.08.040 Fence requirements – Running at large prohibited.
6.08.050 Keeping in barn or under direct control of attending person.
6.08.060 Stallions.
6.08.070 Breeding of mares.
6.08.080 Equine breed defined.
6.08.090 Violation – Penalty.

6.08.010 Purpose.
It is declared by the city council of the city of Sultan, that to protect the health, safety and welfare of the residents of the city of Sultan, it is necessary to establish and enforce rules and regulations to govern the keeping, housing, grazing and tethering of horses within said city; such that a danger to the health, safety and welfare of the residents of said city has been created and caused an emergency to exist. (Ord. 319 § 1, 1971)

6.08.020 Minimum ground area – Required.
No horse, mare, colt or filly shall be kept, housed or allowed to graze within the city of Sultan unless such horse, mare, colt or filly is kept, housed or allowed to graze upon an area of ground which equals one-half acre (a ground area of 21,760 square feet). (Ord. 319 § 2, 1971)

6.08.030 Minimum ground area – Designated for each animal.
If two or more horses, mares, colts or fillies are housed, kept or allowed to graze within the city of Sultan, such horses, mares, colts or fillies must be kept, housed or allowed to graze on a ground area of sufficient size to provide at least one-half acre of grazing land for each horse, mare, colt or filly kept on said land. (Ord. 319 § 3, 1971)

6.08.040 Fence requirements – Running at large prohibited.
Any area of ground whereon a horse or horses, mare, colt or filly are kept, shall be surrounded by a sturdily built and secure fence which shall be regularly maintained to provide for the safety of the residents of the city of Sultan; provided further, that it is unlawful, under any condition, to allow any horse, mare, colt or filly to run at large in the city of Sultan. (Ord. 319 § 4, 1971)

6.08.050 Keeping in barn or under direct control of attending person.
A horse, mare, colt or filly may be otherwise kept in the city of Sultan, only if it is kept constantly within the walls of a structure with a complete roof used as a barn; provided further, that whenever any horse, mare, colt or filly so kept is taken from such barn, it must at all times be kept under the direct control of the person attending it. (Ord. 319 § 5, 1971)

6.08.060 Stallions.
No stallion kept within the city of Sultan shall be left unattended unless securely kept within the fenced-in area described above in SMC 6.08.040, or in a barn. (Ord. 319 § 6, 1971)

6.08.070 Breeding of mares.
It is unlawful for any person to cause or allow a mare to be bred within the city of Sultan within 150 feet of any street, walk or thoroughfare within said city, unless such act occurs within the confines of a walled-in structure with complete roof (barn). (Ord. 319 § 7, 1971)

6.08.080 Equine breed defined.
All members of the equine breed not specifically mentioned in this chapter, are deemed to have been included within the terms, horse, mare, colt or filly. (Ord. 319 § 8, 1971)

6.08.090 Violation – Penalty.
Failure to perform any act required or the performance of any act prohibited by this article is designated as an infraction for the first and second offense and as a criminal offense for each violation thereafter. The penalties for said violations are as follows:

A. First offense, $25.00;

B. Second offense, $50.00;

C. Third offense and each additional offense, $100.00 per offense and/or imprisonment for a period not to exceed three days;

D. Criminal offense bail, $100.00 per offense. (Ord. 471, 1985; Ord. 319 § 9, 1971)

Chapter 6.12
ANIMALS RUNNING AT LARGE

Sections:

6.12.010 Prohibited upon unenclosed lands or upon streets.

6.12.020 Dangerous animals prohibited at large.
6.12.030 Public pound – Established.
6.12.040 Officers to receive and care for animals found.
6.12.050 Impoundment – Notice requirements.
6.12.060 Impoundment – Claiming by owner.
6.12.070 Impoundment – Sale at auction.
6.12.080 Impoundment – Owner to receive proceeds if claimed within one year.
6.12.090 Impoundment – Poundmaster's duties – City marshal's duties.
6.12.100 Impoundment – Fees.
6.12.120 Hindering impoundment unlawful – Penalty.
6.12.130 Violation – Penalty.

6.12.010 Prohibited upon unenclosed lands or upon streets.
No horse, sheep, goat, ass, mule, jenny, colt, filly or swine, and no cattle of any kind shall be allowed to run at large or be herded any hour of the day or night, upon any unenclosed lands, public or private, within the limits of the city of Sultan, or upon any public street, avenue, alley or other public place in said city, and if two or more of said animals are housed, kept, or allowed to graze within the city of Sultan, said animals must be housed, kept or allowed to graze on a ground area of sufficient size to provide at least one-half acre of grazing land for each of said animals. (Ord. 439, 1983; Ord. 38 § 1, 1910; Ord. 27 § 1, 1908)

6.12.020 Dangerous animals prohibited at large.
No stallion, bull, boar or any vicious animal shall be permitted to run at large or be herded, or be driven or led when such animal is not safely secured upon any unenclosed lands, public or private, or upon any public street, avenue, alley or other public place of said city. (Ord. 27 § 2, 1908)

6.12.030 Public pound – Established.
The enclosure and shed to be hereafter designated by the council heretofore provided as a public pound, is established as the public pound of said city. (Ord. 27 § 4, 1908)

6.12.040 Officers to receive and care for animals found.
A. Any animal, described in this chapter, found running at large within the limits of said city in violation of the provisions of this chapter may be taken up by any person and delivered to the marshal, poundmaster or to any police officer of said city and it shall be the duty of any of said officers to receive any animal so delivered and to take up any and all animals described in this chapter found violating the provisions of this chapter within the limits of said city and to impound the same.

B. Such animals so taken up and impounded shall be provided with proper care, food and water while so confined. (Ord. 27 § 5, 1908)

6.12.050 Impoundment – Notice requirements.
A. The marshal, poundmaster or police officer, impounding any animal, shall give written notice thereof within 24 hours of said impounding, containing a description of the animal or animals so impounded, to the owner, if known, or if not known then by posting a notice in a conspicuous place at the entrance of the pound and posting a similar notice at the front entrance of the City Hall, and also at two other public places in said city, which notice shall state that the animal or animals described therein have been taken up and impounded and

will be sold at public auction to the highest bidder for cash at a time therein named, which time shall not be less than three days from the time of service or posting of said notice, to pay the legal fees and costs and expenses of the taking up, keeping and selling the same.

B. Such sale shall take place between the hours of 9:00 a.m. and 4:00 p.m. of said day.

C. The notice required by this section will be effectual, if given as provided in this chapter, either by the city marshal or poundmaster. (Ord. 27 § 6, 1908)

6.12.060 Impoundment – Claiming by owner.
If at any time before such sale the owner of any animal or animals so taken up or impounded shall claim the same, he shall be entitled to the possession thereof upon presentation to the city marshal, poundmaster, or other person in charge of said pound, the receipt of the city clerk/treasurer for all legal fees, charges and expenses incident to such taking up, keeping and impounding. (Ord. 27 § 7, 1908)

6.12.070 Impoundment – Sale at auction.
At the time named in such notice, if such animal or animals are not prior thereto claimed and redeemed as prescribed in SMC 6.12.060, the city marshal or poundmaster shall sell such animal or animals at public auction to the highest bidder for cash and shall immediately pay the proceeds of such sale to the city clerk/treasurer and give a receipt thereto to the purchaser. (Ord. 27 § 8, 1908)

6.12.080 Impoundment – Owner to receive proceeds if claimed within one year.
If the owner or owners of any such animal or animals sold under the provisions of this chapter make satisfactory proof of ownership any time within one year from the date of such sale, he or they will be entitled to receive the net proceeds of such sale so paid into the city treasury, after deducting all legal charges, costs and expenses. (Ord. 27 § 9, 1908)

6.12.090 Impoundment – Poundmaster's duties – City marshal's duties.
A. It shall be the duty of the poundmaster or other person in charge of said pound, to securely keep said pound and properly care for all animals that may be delivered into his custody until the same shall be released or sold as provided in SMC 6.12.070.

B. Upon receipt of any animal he shall forthwith report to the city marshal the name of the person delivering the same to him the day and hour of its receipt and a description to a reasonable certainty of the animal or animals and the name of the owner or owners if known; he shall also report to the city marshal the release of all animals coming under his charge, showing the name of the owner to whom delivered, together with the amount realized with such release.

C. The city marshal shall keep a correct record of all matters above described in this section and the same shall be preserved as one of the records of his office and be open to public inspection. (Ord. 27 § 10, 1908)

6.12.100 Impoundment – Fees.
The fee to be charged for the taking up and impounding of any animal and for the care and keeping of such of each animal and the manner and time of payment thereof shall be established by resolution of the city council from time to time as such council deems proper. (Ord. 441, 1983; Ord. 27 § 11, 1908)

6.12.120 Hindering impoundment unlawful – Penalty.
If any person willfully prevents or hinders, or attempts to prevent or hinder, the impounding of any animal running at large in said city, or otherwise violating the provisions of this chapter, or by force removes or attempts to remove any animal from the public pound without the authority of the poundmaster, or other person in charge of said pound, or aids in any attempt to remove any animal or animals from said pound, such persons shall be in violation of this chapter, which shall constitute an infraction or criminal offense. The penalties for said violations are set forth in SMC 6.12.130. (Ord. 471, 1985; Ord. 27 § 13, 1908)

6.12.130 Violation – Penalty.
Failure to perform any act required or the performance of any act prohibited by this article is designated as an infraction for the first and second offense and as a criminal offense for each violation thereafter. The penalties for said violations are as follows:

A. First offense, $25.00;

B. Second offense, $50.00;

C. Third offense and each additional offense, $100.00 per offense and/or imprisonment for a period not to exceed three days;

D. Criminal offense bail, $100.00 per offense. (Ord. 471, 1985; Ord. 294 § 14, 1968)

Chapter 6.16
FOWL RUNNING AT LARGE

Sections:

6.16.010 Prohibited.
6.16.020 Impoundment – Requirements.
6.16.030 Impoundment – Fee.
6.16.040 Impoundment – Sale and notice procedure.
6.16.050 Violation – Penalty.

6.16.010 Prohibited.
No chicken, duck, goose or other domestic fowl, except pigeons, shall be allowed to run at large, or be herded, upon any unenclosed lands, public or private, within the limits of said city, or upon any street, avenue, alley or other public place in said city. (Ord. 77 § 1, 1915)

6.16.020 Impoundment – Requirements.
Any fowl described in this chapter found running at large in violation of its provisions may be taken up by any person and delivered to the city marshal, poundmaster or any police officer; and it shall be the duty of such officers to receive any fowl so taken up, and to take up any such fowl found in violation of this chapter and to impound the same. (Ord. 77 § 2, 1915)

6.16.030 Impoundment – Fee.
A. The fee to be charged to taking up and impounding any domestic fowl shall be as set forth in SMC 6.16.050.

B. In addition to such fee there shall be charged $4.50 per day for the care and feeding of

each fowl impounded, to be paid as aforesaid. (Ord. 471, 1985; Ord. 77 § 3, 1915)

6.16.040 Impoundment – Sale and notice procedure.
All procedure relative to notice and selling of impounded fowls shall be as provided in Chapter 6.12 SMC for notice and sale of impounded animals unless otherwise specially provided in this chapter. (Ord. 77 § 4, 1915)

6.16.050 Violation – Penalty.
Failure to perform any act required or the performance of any act prohibited by this article is designated as an infraction for the first and second offense and as a criminal offense for each violation thereafter. The penalties for said violations are as follows:

A. First offense, $25.00;

B. Second offense, $50.00;

C. Third offense and each additional offense, $100.00 per offense and/or imprisonment for a period not to exceed three days;

D. Criminal offense bail, $100.00 per offense. (Ord. 471, 1985; Ord. 77 § 5, 1915)

Title 8
HEALTH AND SAFETY

Chapters:

8.04 Nuisances
8.06 Fireworks
8.08 Fastening Animals to or Posting Placards on Structures
8.10 Public Disturbance Noise
8.12 Regulation of Panhandling

Chapter 8.04
NUISANCES

Sections:

8.04.010 Defined.
8.04.020 Maintaining or permitting prohibited.
8.04.030 Affecting health – Designated.
8.04.040 Offending morals and decency – Designated.
8.04.050 Affecting peace and safety – Designated.
8.04.060 Abatement – Inspection of premises.
8.04.070 Abatement – Notice – Generally.
8.04.080 Abatement – Notice – Form.
8.04.090 Abatement – Notice – Mailing and filing.
8.04.100 Abatement – Failure by owner – Conditions for immediate removal by city.
8.04.110 Abatement – Conditions for removal by court action.
8.04.120 Abatement – Other methods not excluded.
8.04.130 Abatement – Cost and assessment.
8.04.140 Violation – Penalty.

8.04.010 Defined.
A public nuisance is a thing, act, omission, occupation, condition or use of property which:

A. Substantially annoys, injures, or endangers the comfort, health, repose or safety of the public;

B. In any way renders the public insecure in life or in the use of property;

C. Offends the public morals or decency;

D. Interferes with, obstructs or tends to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way. (Ord. 376 § 2, 1979)

8.04.020 Maintaining or permitting prohibited.
No person, persons, firms or corporation shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the city of Sultan. (Ord. 376 § 1, 1979)

8.04.030 Affecting health – Designated.

The following acts, omissions, places, conditions and things are specifically declared to be public health nuisances, but shall not be construed to exclude other health nuisances coming within the definition of SMC 8.04.010:

A. All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public;

B. Carcasses of animals, birds or fowl not buried or otherwise disposed of in a sanitary manner within 24 hours after death;

C. Accumulations of decayed animal or vegetable matter, trash, or rubbish, rotting lumber, bedding, packing material, scrap metal or any material whatsoever in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed;

D. All stagnant water in which mosquitoes, flies or other insects may multiply;

E. All noxious weeds (a weed being defined as any plant that grows out of place), and other rank growth of vegetation upon public or private property, and all grass, weeds, shrubs, bushes, trees or vegetation growing or which have grown and died, on any property and are a fire hazard or a menace to public health, safety or welfare;

F. Tent caterpillars;

G. The escape of smoke, soot, cinders, noxious acids, fumes, gases, ash or industrial dust within the city limits in such quantities as to endanger the health of persons of ordinary sensibilities or cause injury to property;

H. The pollution of any well or cistern, stream, lake, canal or body of water by sewage or industrial wastes or other substances;

I. Any use of property, substances or things emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, effluvia or stenches repulsive to the physical senses of persons which annoy, discomfort, injure or inconvenience the health of persons within the city;

J. All abandoned wells not securely covered or secured from public use;

K. All public exposure of persons having a contagious disease;

L. The distribution of samples of medicines or drugs unless such samples are placed in the hands of an adult person;

M. Garbage cans which do not have a tight-fitting lid;

N. All other acts, omissions of acts, occupations and uses of property which are deemed by the Snohomish County board of health to be a menace to the health of the inhabitants of this city. (Ord. 376 § 3, 1979)

8.04.040 Offending morals and decency – Designated.

The following acts, omissions, places, conditions and things are specifically declared to be public nuisances offending public morals and decency, but such enumeration shall not be

construed to exclude other nuisances offending public morals and decency coming within the definition of SMC 8.04.010:

A. All disorderly houses, bawdy houses, houses of ill fame, gambling houses and buildings or structures kept or resorted to for the purpose of prostitution, promiscuous sexual intercourse or gambling;

B. All gambling devices which are not licensed or permitted by the city council;

C. Any place or premises where city ordinances or laws relating to public health, safety, peace, morals or welfare are openly, continuously or repeatedly violated;

D. Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of the laws of the state of Washington or the ordinances of the city. (Ord. 376 § 4, 1979)

8.04.050 Affecting peace and safety – Designated.
The following acts, omissions, places, conditions and things are declared to be public nuisances affecting peace and safety, but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the provisions of SMC 8.04.010:

A. All snow and ice not removed from public sidewalks;

B. All unauthorized signs, signals, markings or devices which purport to be or may be mistaken as official traffic-control devices placed or maintained upon or in view of any public highway or railway crossing;

C. All trees, hedges, billboards or other obstructions which prevent persons from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk;

D. All limbs of trees which project over a public sidewalk, less than eight feet above the surface thereof or less than 14 feet above the surface of a public street;

E. All trees, limbs, buildings, structures, power and light poles and their appurtenances, or equipment which poses a reasonable threat to life or property in the event that such trees, limbs, buildings, structures, power and light poles and their appurtenances or equipment were to fall on adjacent public or private property;

F. All use or display of fireworks except as provided by the laws of the state of Washington and ordinances of the city;

G. All buildings or structures so old, dilapidated and out of repair or which have been so damaged by fire or flood as to be dangerous, unsafe, unsanitary or otherwise unfit for human use;

H. All wires over streets, alleys or public grounds which are strung less than 15 feet above the surface of the street or ground;

I. All loud, discordant and unnecessary noises or vibrations of any kind between the hours of 10:00 p.m. and 8:00 a.m.;

J. All motorcycles, automobiles, chainsaws, lawnmowers or other motorized equipment which are not equipped with the original equipment muffler or noise-deadening device or other replacement muffler or noise-deadening device recommended by the engine manufacturer;

K. The keeping or harboring of any animal or fowl which by the emission of offensive odors or by frequent or habitual howling, yelping, barking, crowing or making of other noises, annoys or disturbs persons within the city;

L. Allowing vicious animals to run at large and all activities prohibited by Chapters 6.04, 6.08, 6.12 and 6.16 SMC;

M. All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by the ordinances of the city or which, although made in accordance with such ordinances, are kept or maintained for an unreasonable length of time after the purpose whereof has been accomplished;

N. All open and unguarded pits, wells, excavations or unused basements;

O. All abandoned refrigerators or iceboxes from which the doors and other covers have not been removed or which are not equipped with a device for opening from the inside;

P. Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the street or sidewalk;

Q. Violations of the ordinances of the city or laws of the state of Washington relating to the storage of flammable liquids;

R. The dismantling, reconstruction or repair of any vehicle or piece of machinery upon any street, alley or other public place, except minor repairs of an emergency nature;

S. All vehicles or machines parked or driven on any city street, alleyway or highway with a leaking fuel tank;

T. All vehicles used to transport flammable or explosive liquids or gases or corrosive acids, parked within the city limits, unless said vehicle is in the lawful delivery of said liquids, gases or acids;

U. All automobiles, trailers, house trailers, mobile and motor homes, boats, and all other vehicles or parts thereof, which have been left out of doors, unsheltered, for a period of 30 days; provided further, that none of the above may be left on any city street, alleyway or highway for more than 72 hours without the specific permission of the chief of police;

V. Any fence or other structure or thing on private property abutting or fronting upon any public street, sidewalk or place, which is in a sagging, leaning, fallen, decayed or other dilapidated or unsafe condition;

W. The existence upon the sidewalk in front of any premises of any debris, litter or substantial quantity of dirt;

X. All dangerous, unguarded machinery, in any public place, or so situated or operated on private property as to attract the public;

Y. Leading, driving or riding any horse or other livestock upon or over any sidewalk or public park;

Z. Crossing curbs or sidewalks with vehicles where no regular provision has been made for such crossing, without first protecting the same with appropriate risers and planking;

AA. All other conditions or things which are liable to cause injury to the person or property of anyone. (Ord. 484, 1986; Ord. 438, 1983; Ord. 376 § 5, 1979)

8.04.060 Abatement – Inspection of premises.
A. Whenever a complaint is made to the chief of police that a public nuisance exists within the city of Sultan, the chief of police or building inspector shall forthwith inspect or cause to be inspected the premises and shall make a written report of his findings.

B. Whenever practicable, the inspecting officer shall cause photographs to be made of the premises and shall file the same in the office of the city clerk. (Ord. 376 § 6(a), 1979)

8.04.070 Abatement – Notice – Generally.
If the inspecting officer determines that a public nuisance exists on private property and that there is great and immediate danger to the public health, safety, peace, morals or decency, the chief of police may serve notice on the owner or, if the owner cannot be found, on the occupant or person causing, permitting or maintaining such nuisance to abate or remove such nuisance within one to 72 hours, at the discretion of the inspecting officer and shall state that unless such nuisance is so abated, the city will cause the same to be abated and will charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the same, as the case may be. (Ord. 376 § 6(b) (1), 1979)

8.04.080 Abatement – Notice – Form.
The notice shall be substantially in the following form:

NOTICE TO ABATE UNSAFE OR UNLAWFUL CONDITION

(Name and address of person notified)

As owner, agent, lessee or other person occupying or having charge or control of the building, lot or premises at _____, you are hereby notified that the undersigned, pursuant to Ordinance No. _____ of the City of Sultan, has determined that there exists upon or adjoining said premises the following condition contrary to the provisions of Subsection _____ of Section _____.

You are hereby notified to abate said condition to the satisfaction of the undersigned within ____ hours/days of the date of this notice or to appear at the office of _____ at ____ o'clock ___.m., and show cause, if any you have, why said condition should not be abated by the City, and the expenses thereof charged to you as a personal obligation. Abatement is to be accomplished in the following manner:

Dated:_____ (Name of Enforcement Officer)
By:
_____

(Ord. 376 § 6(b) (1), 1979)

8.04.090 Abatement – Notice – Mailing and filing.
A. A copy of the notice provided for in SMC 8.04.070 and 8.04.080 shall be sent to the owner and may be sent to any other of said persons sought to be charged with the responsibility of abatement. The notice shall be sent by mail, postage prepaid, and addressed as follows:

1. To the Owner. As such person's name and address appears on the records of the Snohomish County treasurer, or as known to the enforcement officer of the person authorized by the enforcement officer to give such notice;

2. To Any Other Such Person. As such person's name and address are known to the enforcement officer or the person authorized by him to give notice.

B. The person giving such notice shall file a copy thereof in the office of the enforcement officer, together with an affidavit or certificate stating the time and manner in which such notice was given. The failure of any owner or other person to receive such notice shall not affect in any manner the validity of any proceedings taken under this chapter. (Ord. 376 § 6(b) (2), 1979)

8.04.100 Abatement – Failure by owner – Conditions for immediate removal by city.
If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, the health officer, in case of a health nuisance, or the chief of police, in other cases, shall cause the abatement or removal of such public nuisance. (Ord. 376 § 6(c), 1979)

8.04.110 Abatement – Conditions for removal by court action.
If the inspection officer determines that a public nuisance exists on private premises but that the nature of such nuisance is not such as to threaten great and immediate danger to the public health, safety, peace, morals or decency, he may file a written report of his findings with the mayor who may cause an action to abate such nuisance to be commenced in the name of the city. (Ord. 376 § 6(d), 1979)

8.04.120 Abatement – Other methods not excluded.
Nothing in this chapter shall be construed as prohibiting the abatement of public nuisance by the city of Sultan or its officials in accordance with the laws of the state of Washington. (Ord. 376 § 6(e), 1979)

8.04.130 Abatement – Cost and assessment.
In addition to any other penalty imposed by this chapter for the erection, contrivance, creation, continuance of maintenance of a public nuisance, the cost of abating a public nuisance by the city shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance, and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as other special taxes. (Ord. 376 § 7, 1979)

8.04.140 Violation – Penalty.
A. Any person or organization violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not to exceed $500.00 or imprisonment not to exceed six months, or by both such fine and imprisonment.

B. Each day of violation of any provision of this chapter shall be considered a separate offense and such offender may be punished separately therefor. (Ord. 376 § 8, 1979)

Chapter 8.06
FIREWORKS

Sections:

8.06.010 Purpose.
8.06.020 State law adopted.
8.06.030 City – Local public agency – Local government – Defined.
8.06.040 Public display – Permit required.
8.06.050 Retail sales – Permit required.
8.06.060 Inspections required.
8.06.070 Activities to be conducted in a safe and reasonable manner.
8.06.080 Retail permit – Appeal.
8.06.090 Permit revocation.
8.06.100 Penalty.
8.06.110 Severability.

8.06.010 Purpose.
It is the intent of this chapter to provide a procedure for the granting of permits, and the possession, sale and discharge of fireworks. (Ord. 1037-09 § 2 (Exh. A))

8.06.020 State law adopted.
Chapter 70.77 RCW pertaining to fireworks is adopted by this chapter by reference as though stated in its entirety in this chapter. (Ord. 1037-09 § 2 (Exh. A))

8.06.030 City – Local public agency – Local government – Defined.
The terms "city," "local public agency," and "local government," as used in the sections of Chapter 70.77 RCW that are adopted by reference in this chapter, shall mean the city of Sultan. (Ord. 1037-09 § 2 (Exh. A))

8.06.040 Public display – Permit required.
A permit for a public display of fireworks may be issued by the city council if and when they deem it advisable. The city may place reasonable conditions on any permit issued. (Ord. 1037-09 § 2 (Exh. A))

8.06.050 Retail sales – Permit required.
It is unlawful for any person, firm, partnership or corporation to engage in the retail sale of fireworks within the city without first having obtained a permit from the city. Application for a permit shall be made in writing accompanied by a permit fee as established in the city's fee schedule as adopted by resolution. The city may place reasonable conditions on any permit issued. (Ord. 1037-09 § 2 (Exh. A))

8.06.060 Inspections required.
Prior to the issuance of any permit, the building official or his or her designee shall perform an inspection of any structure or building intended for retail activity, wholesale activity, manufacturing activity, fireworks storage, or public display of fireworks, to determine whether such structures or buildings comply with the requirements of the Revised Code of Washington, the Washington Administrative Code or the city code. No permit shall be

issued until such structures or buildings comply with applicable laws. (Ord. 1037-09 § 2 (Exh. A))

8.06.070 Activities to be conducted in a safe and reasonable manner.
A. All retailers of fireworks or persons publicly displaying fireworks shall be responsible for conducting activities in a manner that is safe and responsible and in compliance with all federal, state, and local laws and regulations. The issuance of any permit required by this chapter shall in no way relieve any person from the duty of complying with all federal, state, and local laws and regulations or conducting activities in a safe and reasonable manner. The issuance of a permit shall not be deemed an endorsement by the city of Sultan of the activity engaged in.

B. The city shall not be liable to any person, corporation, entity or holder of property for any damage that is caused by or derived from the display of fireworks, and the person displaying fireworks assumes all risks of such display, and shall hold the city and its employees and officials harmless from any and all claims or causes of action for damage caused by or derived from such display. (Ord. 1037-09 § 2 (Exh. A))

8.06.080 Retail permit – Appeal.
The person applying for a retail permit to sell fireworks may appeal in writing the denial of the permit or the conditions of the permit to the city council. The appeal shall be based solely upon written information provided by the applicant, and no hearing shall be required. The determination of the city council of the appeal shall be final. (Ord. 1037-09 § 2 (Exh. A))

8.06.090 Permit revocation.
Violations of any provision of Chapter 70.77 RCW, this chapter, or a permit issued hereunder, or any failure or refusal on the part of the permittee to obey any rule, regulation or request of the fire chief or his or her designee concerning fireworks, shall be grounds for the revocation of a fireworks permit. (Ord. 1037-09 § 2 (Exh. A))

8.06.100 Penalty.
Except as otherwise provided in this chapter, any person violating any provision of this chapter or any permit issued pursuant to this chapter is guilty of a misdemeanor punishable by imprisonment for a maximum term fixed by the court of not more than 90 days, or by a fine in an amount fixed by the court of not more than $1,000, or by both such imprisonment and fine. A person is guilty of a separate offense for each day or occurrence during which he or she commits, continues, or permits a violation of any provision of, or permit issued under, this chapter. The inclusion in this chapter of criminal penalties does not preclude enforcement of this chapter through civil means. (Ord. 1037-09 § 2 (Exh. A))

8.06.110 Severability.
This chapter is severable and if any portion of it shall be declared invalid or unconstitutional, the remaining portion shall remain valid and enforceable. (Ord. 1037-09 § 2 (Exh. A))

Chapter 8.08
FASTENING ANIMALS TO OR POSTING PLACARDS ON STRUCTURES

Sections:

8.08.010 Unlawful acts.
8.08.020 Violation – Penalty.

8.08.010 Unlawful acts.
It is unlawful for any person to tie or fasten any horse or other animal to any telephone pole, telegraph pole or light pole, or any hydrant or shade tree situated upon any of the public streets or highways within the corporate limits of the city of Sultan, or to post any bill or placard upon any such telephone pole, telegraph pole or light pole, or hydrant or shade tree. (Ord. 61 § 1, 1912)

8.08.020 Violation – Penalty.
Any person violating any of the provisions of this chapter, shall be guilty of a misdemeanor and upon a conviction thereof, shall be fined in a sum not exceeding $25.00 and costs for each offense. (Ord. 61 § 2, 1912)

Chapter 8.10
PUBLIC DISTURBANCE NOISE

Sections:

8.10.010 Definitions.
8.10.020 Exemptions.
8.10.030 Infraction.
8.10.040 Enforcement.
8.10.050 Separate offenses.
8.10.060 Punishment.
8.10.070 Evidence in proceedings.

8.10.010 Definitions.
For the purposes of this chapter, the following definitions shall apply:

"Public disturbance noise" shall mean the following sources of sound:

A. Frequent, repetitive or continuous sound from any horn or siren attached to a motor vehicle except as a warning of danger or specifically permitted or required by law;

B. Frequent, repetitive or continuous sound in connection with the starting, operating, repairing, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle, or internal combustion engine in any residential zone which unreasonably interferes with the peace, comfort and repose of owners or occupants of real property in the residential zone;

C. Loud or raucous sound from any activity which unreasonably interferes with the operation of any school, church, hospital, sanitarium or nursing or convalescent facility;

D. Frequent, repetitive or continuous sound which emanates from a building structure or property, and created by musical instrument, whistle, sound amplifier, stereo, jukebox, radio, television or other device capable of reproducing or creating sound, such as sounds originating from a band session, tavern operation or commercial sales lot which unreasonably interferes with the peace, comfort and repose of owners or occupants of nearby property;

E. Sound from a motor vehicle audio sound system, such as a radio, tape player or

compact disc player, when the volume is such that the sound can be clearly heard by a person of normal hearing at a distance of more than 50 feet from the vehicle itself;

F. Sound from carried or transported portable audio sound equipment, such as a radio, tape player or compact disc player, when the volume is such that the sound can be clearly heard by a person of normal hearing at a distance of more than 50 feet from the source of the sound;

G. Frequent, repetitive or continuous sound which emanates from a residence, structure or property, and created by audio sound equipment, musical instruments or social gatherings which unreasonably interferes with the peace, comfort and repose of owners or occupants of neighboring residential properties;

H. Sound from squealing or screeching of motor vehicle tires in contact with the ground or other roadway surface because of rapid acceleration, braking or excessive speed around corners except such sounds which arise from actions to avoid danger;

I. Sound originating from a motor vehicle on the public highway when the vehicle does not have a muffler in good working order or is otherwise not in compliance with applicable laws and regulations;

J. Sound from yelling, shouting, hooting, whistling or singing on or near the public streets occurring between the hours of 11:00 p.m. and 7:00 a.m. which unreasonably interferes with the peace, comfort and repose of owners or occupants of real property;

K. Sound originating from residential real property relating to temporary projects for the maintenance or repair of homes, grounds or appurtenances, including sounds from lawnmowers, power hand tools, snow removal equipment and the like when the same occurs between the hours of 10:00 p.m. and 7:00 a.m. weekdays and 10:00 p.m. and 9:00 a.m. on weekends;

L. Sounds originating from construction sites and activities, including but not limited to sounds from construction equipment, power tools and hammering between the hours of 10:00 p.m. and 7:00 a.m. weekdays and 10:00 p.m. and 9:00 a.m. on weekends except such sounds which arise from emergency construction work to protect public or personal health and safety. (Ord. 1011-09 § 1; Ord. 799-02)

8.10.020 Exemptions.

Though the following sources of sound may fall within the definitions of a "public disturbance noise" as defined in the previous section, the following sounds shall be exempt and shall not be a public disturbance noise:

A. Noise originating from aircraft in flight and sounds which originate in airports and are directly related to flight operations;

B. Noise created by safety and protective devices, such as relief valves where noise suppression would defeat the safety relief intent of the device;

C. Noise created by fire or security alarms, or noise created by emergency equipment;

D. Noise created by auxiliary equipment on motor vehicles used for highway maintenance;

E. Noise created by a special event so long as the event is in compliance with the terms and conditions of its special event permit;

F. Noise created by natural phenomenon;

G. Noise created by public utility facilities including electrical substations;

H. Noise created from local school marching bands while practicing;

I. Noise created by bells, chimes or carillon not operated for more than five minutes in any one hour from the hours of 7:00 a.m. to 10:00 p.m., but not including such noise as is artificially created and amplified and broadcast via loud speaker; and

J. Noise created by the operation of equipment or facilities of surface carriers engaged in commerce by railroad. (Ord. 799-02)

8.10.030 Infraction.
It is unlawful and a civil infraction for any person to cause or allow to be emitted a nonexempt public disturbance noise as defined by this chapter. (Ord. 799-02)

8.10.040 Enforcement.
Where the definition of "public disturbance noise" includes sound that unreasonably interferes with the peace, comfort and repose of owners or possessors of real property or neighboring property, a civil infraction notice may only be issued after receipt of such a complaint. In all other instances, a civil infraction notice may be issued without a complaint. (Ord. 1011-09 § 1; Ord. 799-02)

8.10.050 Separate offenses.
For enforcement purposes, sound emitted during separate days shall be deemed a separate violation. A day is a 24-hour period beginning with the first violation and infraction. (Ord. 1011-09 § 1; Ord. 799-02)

8.10.060 Punishment.
A first violation and infraction of this chapter shall be punished with a penalty of $100.00. A second violation and infraction of this chapter shall be punished with a penalty of $500.00. A third and/or subsequent violation and infraction of this chapter is a misdemeanor and shall be punished with a fine of $500.00 and/or incarceration in jail for a period not to exceed 30 days. (Ord. 1011-09 § 1; Ord. 799-02)

8.10.070 Evidence in proceedings.
In any proceeding under this chapter, evidence of sound level through the use of sound level meter readings shall not be necessary to establish the commission of the violation. (Ord. 1011-09 § 1; Ord. 799-02)

Chapter 8.12
REGULATION OF PANHANDLING

Sections:

8.12.010 Purpose.
8.12.020 Definitions.
8.12.030 Place of panhandling.

8.12.040 Panhandling by coercion.
8.12.050 Evidence.
8.12.060 Penalties.

8.12.010 Purpose.
The purpose of this chapter is to protect citizens from the fear and intimidation accompanying certain kinds of panhandling, to promote tourism and business, and to preserve the quality of urban life while providing safe and appropriate venues for constitutionally protected activity. (Ord. 1083-10 § 1 (Exh. A))

8.12.020 Definitions.
In this chapter:

A. "Automated teller machine" means a machine, other than a telephone:

1. That is capable of being operated by a customer of a financial institution;

2. By which the customer may communicate to the financial institution a request to withdraw, deposit, or transfer funds, make payment, or otherwise conduct financial business for the customer or for another person directly from the customer's account or from the customer's account under a line of credit previously authorized by the financial institution for the customer; and

3. The use of which may or may not involve personnel of a financial institution.

B. "Coercion" means:

1. To approach or speak to a person in such a manner as would cause a reasonable person to believe that the person is being threatened with either imminent bodily injury or the commission of a criminal act upon the person or another person or upon property in the person's immediate possession;

2. To persist in panhandling after the person solicited has given a negative response;

3. To block, either individually or as part of a group of persons, the passage of a solicited person;

4. To engage in conduct that would reasonably be construed as intended to compel or force a solicited person to accede to demands;

5. To use violent or threatening gestures toward a person;

6. Willfully providing or delivering, or attempting to provide or deliver, unrequested or unsolicited services or products with a demand or exertion of pressure for payment in return; or

7. To use profane, offensive, or abusive language; this is inherently likely to provoke an immediate violent reaction.

C. "Exterior public pay telephone" means any coin or credit card reader telephone that is:

1. Installed or located anywhere on a premises except exclusively in the interior of a

building located on the premises; and

2. Accessible and available for use by members of the general public.

D. "Public transportation facility" means a facility or designated location that is owned, operated, or maintained by a city, county, county transportation authority, public transportation benefit area, regional transit authority, or metropolitan municipal corporation within the state.

E. "Public transportation stop" means an area officially marked and designated as a place to wait for a bus, a light rail vehicle, or any other public transportation vehicle that is operated on a scheduled route with passengers paying fares on an individual basis.

F. "Public transportation vehicle" has the meaning given that term in RCW 46.04.355, as currently adopted or as it may be amended in the future.

G. "Self-service car wash" means a structure:

1. At which a vehicle may be manually washed by its owner or operator with equipment that is activated by the deposit of money in a coin-operated machine; and

2. That is accessible and available for use by members of the general public.

H. "Self-service fuel pump" means a fuel pump:

1. From which a vehicle may be manually filled with gasoline or other fuel directly by its owner or operator, with or without the aid of an employee or attendant of the premises at which the fuel pump is located; and

2. That is accessible and available for use by members of the general public.

I. "Panhandling" and all derivative forms of "solicit" mean to ask, beg, or plead, whether orally or in a written or printed manner, for the purpose of immediately receiving contributions, alms, charity, or gifts of items of value for oneself or another person. (Ord. 1083-10 § 1 (Exh. A))

8.12.030 Place of panhandling.

A. Panhandling near Designated Locations and Facilities.

1. It is unlawful for any person to solicit another person within 15 feet of:

a. An automated teller machine; or

b. The entrance of a building, unless the solicitor has written permission from the owner or occupant; or

c. An exterior public pay telephone; or

d. A self-service car wash, unless the panhandler has written permission from the owner or occupant of the business; or

e. A self-service fuel pump, unless the panhandler has written permission from

the owner or occupant of the business; or

f. A public transportation stop; or

g. Any parked vehicle as occupants of such vehicle enter or exit such vehicle.

2. It is unlawful for a person to panhandle from another person:

a. On private property, unless the panhandler has written permission from the owner or occupant;

b. After sunset or before sunrise;

c. In any public transportation facility or vehicle.

B. For purposes of subsection (A) of this section, measurement will be made in a straight line, without regard to intervening structures or objects, from the nearest point at which a solicitation is being conducted to whichever is applicable of the following:

1. The nearest entrance or exit of a facility in which an automated teller machine is enclosed or, if the machine is not enclosed in a facility, to the nearest part of the automated teller machine;

2. The nearest entrance or exit of a building;

3. The nearest part of an exterior public pay telephone;

4. The nearest part of the structure of a self-service car wash;

5. The nearest part of a self-service fuel pump;

6. The nearest point of any sign or marking designating an area as a public transportation stop; or

7. Any door of a parked vehicle that is being used by an occupant of such vehicle to enter or exit such vehicle. (Ord. 1083-10 § 1 (Exh. A))

8.12.040 Panhandling by coercion.
It is unlawful for a person to panhandle by coercion. (Ord. 1083-10 § 1 (Exh. A))

8.12.050 Evidence.
Evidence to support a conviction for a violation of this chapter may include, but is not limited to, testimony of witnesses, videotape evidence of the violation, and other admissible evidence. (Ord. 1083-10 § 1 (Exh. A))

8.12.060 Penalties.
Violation of SMC 8.12.030(A)(1) shall be a misdemeanor and, upon conviction thereof, a person is subject to a penalty of $1,000, incarceration for up to 90 days, or both a fine and a penalty. Violation of SMC 8.12.030(A)(2) or 8.12.040 shall be a gross misdemeanor and, upon conviction thereof, a person is subject to a penalty of $5,000, incarceration for up to one year, or both a fine and a penalty. (Ord. 1083-10 § 1 (Exh. A))

Title 9
PUBLIC PEACE, MORALS AND WELFARE

Chapters:

9.08 Marihuana
9.09 Park Regulations
9.12 *Repealed*
9.14 Special Events
9.16 Litter
9.17 Juvenile Use and Possession of Tobacco
9.20 Disorderly Conduct
9.22 *Repealed*
9.28 Liquor Prohibitions for Persons under 21
9.30 Malt Liquor by the Keg
9.32 Weapons on Premises Where Liquor Is Dispensed
9.34 Discharge of Firearms and Use of Other Weapons

Chapter 9.08
MARIHUANA

Sections:

9.08.010 Purpose.
9.08.020 Defined.
9.08.030 Possession – Amount prohibited.
9.08.040 Possession – Allowing in public places prohibited.
9.08.050 Violation – Penalty.

9.08.010 Purpose.
This chapter is deemed an exercise of the police power of the city of Sultan for the protection of the health, welfare, safety and peace of the people of the city, and its provisions shall be liberally construed for accomplishment of that purpose. (Ord. 359 § 1, 1977)

9.08.020 Defined.
A. Marihuana is defined for the purpose of this chapter as: all parts of the plant of the genus Cannabis L., including all subspecies, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin.

B. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake mixture made from the seeds of such plant, or preparation of the mature stalks (except the resin extracted therefrom) fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. (Ord. 359 § 2, 1977)

9.08.030 Possession – Amount prohibited.
It is unlawful for any person to be in possession of 40 grams or less of marihuana unless such possession is authorized by the terms of the Uniform Controlled Substances Act,

Chapter 69.50 RCW, and the burden shall be upon the defendant to show that such possession is so authorized. (Ord. 359 § 3, 1977)

9.08.040 Possession – Allowing in public places prohibited.
A. It is unlawful for the owner(s) of any business or the president, chairman or leader of any establishment or organization or the manager, employee or person in charge of any business, establishment or organization to knowingly allow any person to be in possession of marihuana on any premises owned or used for said business, establishment or organization.

B. Knowledge will be imputed to the owner(s) of any business or the president, chairman or leader, of any establishment or organization if any of their managers, employees or persons in charge knowingly allow the possession of marihuana in violation of this chapter. (Ord. 359 § 4, 1977)

9.08.050 Violation – Penalty.
A. A violation of this chapter shall be a misdemeanor and punished by a fine not exceeding $250.00.

B. Nothing in this chapter shall restrict the state of Washington from exercising its police power in the regulation of controlled substances. (Ord. 359 § 5, 1977)

Chapter 9.09
PARK REGULATIONS

Sections:

9.09.010 Police power.
9.09.020 Definitions.
9.09.025 Use permit required.
9.09.026 Terms and conditions for park use permits.
9.09.027 Deposits and fees for park use permits.
9.09.030 Sign posting and structures prohibited.
9.09.033 Distribution of handbills.
9.09.035 Facility use.
9.09.037 Storage of equipment.
9.09.040 Removal or destruction of park property prohibited.
9.09.050 Molesting wild animals prohibited.
9.09.055 Pets in parks.
9.09.057 Horses prohibited.
9.09.060 Selling refreshments or merchandise prohibited.
9.09.065 Soliciting prohibited.
9.09.070 Use by groups or assemblies.
9.09.080 Vehicles restricted.
9.09.085 Skateboard park areas.
9.09.090 Camping prohibited.
9.09.095 Golf prohibited.
9.09.100 Endangering persons or property prohibited.
9.09.110 Firearms.
9.09.115 Weapons prohibited.
9.09.120 Fires prohibited.

9.09.125 Fireworks prohibited.
9.09.127 Sound-amplifying devices.
9.09.130 Intoxicating liquor and illegal drugs prohibited.
9.09.135 Littering – Trash deposit.
9.09.140 Park hours.
9.09.150 Trespassing.
9.09.160 Disorderly conduct and profanity prohibited.
9.09.165 Smoking and tobacco use prohibited.
9.09.170 Violation – Penalty.

9.09.010 Police power.
The provisions of this chapter constitute the park use regulations of the city of Sultan. They are adopted pursuant to the city's police powers granted under Article 11, Section 11 of the Washington Constitution, and are necessary for the public health, safety and welfare. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.020 Definitions.
The terms used in this chapter, unless clearly contrary to or inconsistent with the context in which used, shall be construed as follows:

A. "City" means the city of Sultan.

B. "Mayor" means the mayor of the city of Sultan or his/her designee.

C. "Park" means and includes all parks, trails, squares, greenways, parkways, grounds or other areas maintained by the city of Sultan and devoted to purposes of play, recreation and pleasure of the general public.

D. "Smoking and tobacco use" means the carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment and any other use of tobacco products or other smoking materials.

E. "Structure" means any piece of work artificially built up or composed of parts jointed together in some definite manner.

F. "Use permit" means a permit issued under SMC 9.09.025 for those uses of city parks specified therein. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.025 Use permit required.
Any person intending to conduct any activity in any city park shall first obtain from the mayor or his/her designee a use permit issued pursuant to this section through SMC 9.09.027, as they now exist or hereafter may be amended. For purposes of this section, activities subject to the requirement to obtain a use permit include but shall not be limited to the following:

A. Reserving any room or part of any community center, athletic field, picnic facility, stage, or other defined area of a park for a certain time or series of times; and/or granting the exclusive use thereof during the time reserved.

B. Posting any signs, posters or notices; placing or erecting any structure or obstruction of any kind, whether temporary or permanent; cutting or removing any tree or plant material.

C. Making any improvement to or constructing a public work in a park.

D. Conducting a commercial activity; using any outdoor electrical power outlet; laying cables or extending wires in, under or over a park land; using any park or facility during the hours it is closed to the public.

E. Making any use of any park for an event or activity that differs in kind from the use and enjoyment of the park for recreational facilities purposes by the general public.

No permit is required under this section for city activities, including those by employees or authorized city contractors acting in the scope and course of their duties or for other governmental officials acting under authority of law as determined by the mayor or his/her designee in his/her discretion.

All permits issued under this section shall be wholly of a temporary nature, shall vest no permanent right, and may be immediately revoked for any violation of the terms of the permit or this chapter, as determined in the discretion of the mayor or his/her designee.

Any permit issued under this section shall not preempt or modify any conditional use or other permit issued or required by the city. The mayor or his/her designee may issue use permits directly under the authority of this chapter or may adopt administrative rules for doing so. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.026 Terms and conditions for park use permits.
The mayor or his/her designee may impose such terms and conditions upon any use permit as the mayor or his/her designee determines appropriate in the exercise of his or her discretion to protect the health, safety and welfare of the public and/or the park to: (A) avoid or limit unnecessary interference with other uses or users of the park; (B) minimize disturbance of the surrounding neighborhood; (C) ensure that the park will be returned to the same condition after the activity or event as it was beforehand.

Such terms and conditions include but shall not be limited to conditions requiring the user to:

A. Furnish and pay for public liability and property damage insurance naming the city as an additional insured and in such amounts as reasonably necessary to provide full coverage for personal injury, death, and property damage arising from or as a result of the event or activity;

B. Execute an indemnity and/or hold harmless agreement; and/or

C. Make a reasonable security deposit or provide a bond.

The provisions of SMC 9.09.025 through 9.09.027, including the terms and conditions of any use permit issued hereunder, shall not be construed to authorize infringement upon the rights of petition, assembly, or free expression protected by the First Amendment of the United States Constitution and/or Article I, Sections 3, 4, and 5 of the Washington Constitution.

If an applicant asserts that a term or condition proposed by the mayor or his/her designee infringes upon a constitutional right, the mayor or his/her designee shall have the burden of

showing that the proposed term or condition is a reasonable restriction on the time, place and manner of exercising the right, or is otherwise lawful. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.027 Deposits and fees for park use permits.
Any person seeking issuance of a use permit shall first pay such fees or charges as required by resolution of the city council, or as authorized by the mayor or his/her designee under this section.

Such fees and charges may include a deposit against expected costs of city services necessary to support the event or activity, including but not limited to costs for parks maintenance, solid waste removal, and police overtime and such other costs incurred by the city as a result of the event or activity authorized by the use permit.

No refund of fees, charges or expenses shall be made except upon timely cancellation of an event or activity authorized by a supplemental park permit.

The mayor or his/her designee is authorized to make refunds of fees and to return all or any portion of any security deposit when no longer needed and after all costs that may be charged against the use permit have been paid.

If costs exceed the amount of any deposit or financial security, the mayor or his/her designee is authorized to bill the use permit holder, who shall remit such charges within 30 days.

Delinquent accounts may be sent to collection. No use permit shall be issued to any entity having a delinquent account. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.030 Sign posting and structures prohibited.
It is unlawful to place or erect any sign, board, billboard or similar device of any kind in any park, or create, place or erect any structure, unless authorized by the terms of a use permit issued by the mayor or his/her designee. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.033 Distribution of handbills.
It is unlawful to exhibit or distribute any handbills, circulars, or signs in any park in any manner that interferes with or obstructs the normal use of the park or the normal passage of people or vehicles within or through the park. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.035 Facility use.
The misuse of a park facility or the failure to conform with any of the regulations of this chapter, the instructions of city employees, the terms and conditions of a park use permit, or other permit shall be sufficient reason for revoking said permit and/or denying any future permits. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.037 Storage of equipment.
Persons using parks should not expect storage space for equipment necessary for their activity. If temporary storage is provided, the city shall not be responsible for loss or damage to the equipment or property stored. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.040 Removal or destruction of park property prohibited.
It is unlawful to remove, destroy, mutilate or deface any structure, monument, statue,

fountain, wall, fence, railing, vehicle, bench, shrub, tree, lawn, grass, plant, flower, lighting system or sprinkling system or any other property or thing lawfully in any park, except as authorized by the terms and conditions of any duly issued use permit. No foreign matter of any sort (including without limitation sawdust or sand) may be added to any field for any reason unless authorized by the terms of a use permit issued by the mayor or his/her designee. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.050 Molesting wild animals prohibited.
It is unlawful to tease, feed, annoy, disturb, molest, catch, injure, threaten, kill, throw any stone or missile of any kind at, strike with any stick or weapon, or to fetter any animal, bird, fowl or fish in any park. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.055 Pets in parks.
Dogs, pets or domestic animals are not permitted on any artificial turf, picnic area, tennis courts or play area in any park or in any park structure unless specifically permitted by posting. This section shall not apply to animal guides or service dogs.

Dogs and other pets or domestic animals shall be kept on a leash no greater than 15 feet in length, and under control at all times.

Any person whose dog or other pet is in any park shall be responsible for the conduct of the animal and shall promptly remove and dispose of properly all animal waste deposited by such animal.

No person shall allow his or her dog or other pet to bite, disturb, or harass any park user, wildlife, or other pets. No person shall allow his or her dog or other pet to bark or make noise continuously or otherwise disturb the peace and tranquility of the park. No person shall permit his or her dog or other pet to damage, destroy or remove park vegetation.

This section is in addition to the provisions of Chapter 6.04 SMC, Animal Control, and shall be supplemental to such chapter. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.057 Horses prohibited.
Horses are not permitted in any park at any time. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.060 Selling refreshments or merchandise prohibited.
It is unlawful to sell refreshments, merchandise or any other thing in any park without first obtaining a park use permit. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.065 Soliciting prohibited.
Except as may be specifically provided by law, no person shall solicit contributions for himself or others in any park. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.070 Use by groups or assemblies.
Parks and/or picnic shelters shall be available for any person, group or assembly on a first-come, first-served basis, subject to priority use as determined by the mayor or his/her designee for classes, special events, public forums, or athletic programs. Any person, group or assembly seeking to use a park or picnic shelter shall first obtain a use permit pursuant to SMC 9.09.025 through 9.09.027. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.080 Vehicles restricted.

It is unlawful to operate, ride or drive any wheeled device, sled, or vehicle over, across or through any park, except along designated paths, drives or streets; provided, however, motorized devices are restricted solely to streets and drives.

It is unlawful to operate, ride or drive any wheeled device or vehicle at a speed in excess of 10 miles per hour in any park.

It is unlawful to stand or park any vehicle except where so designated and posted. It is unlawful to operate, ride or drive any vehicle for the purpose of testing or ascertaining its fitness or service. It is unlawful to use or operate vehicles in any portion of a park devoted to skateboards. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.085 Skateboard park areas.
Any area of a park devoted to skateboards shall be governed by rules promulgated by the mayor or his/her designee, and as may be posted at the entrance to the skateboard area. A violation of any such rules, whether or not posted, shall be a violation of this chapter. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.090 Camping prohibited.
It is unlawful to camp in any park except at places so designated and posted. In addition to any other applicable penalty, any person violating this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $250.00. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.095 Golf prohibited.
Golf activities shall not be permitted in any park except as authorized by a use permit duly issued prior to commencement of the activity. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.100 Endangering persons or property prohibited.
It is unlawful to knowingly hurl or propel any object or to take any physical action in any park which endangers or is likely to endanger any persons or property or interfere with park purposes. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.110 Firearms.
It is unlawful to discharge a firearm in any park. This section shall not apply to police officers or to city employees acting pursuant to and in accordance with their authority and applicable law. This section shall not apply in designated and posted shooting, trap-shooting and skeet-shooting ranges in any park. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.115 Weapons prohibited.
It is unlawful in any park to carry, discharge or use any airgun, bow and arrow, crossbow, slingshot, or other device the purpose of which is to propel an object from the person using it. It is unlawful in any park to use or brandish any knife or any other device in a manner which threatens or endangers any person or property. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.120 Fires prohibited.
It is unlawful to build or have any fire in any park except where so designated and posted. Portable grills, barbecues or hibachis are permitted so long as they do not otherwise violate this chapter or the Sultan Municipal Code. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.125 Fireworks prohibited.
It is unlawful in any park to use, exhibit, display or possess any fireworks or consumer fireworks as those terms are defined in RCW 70.77.126 and 70.77.136. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.127 Sound-amplifying devices.
Except as authorized by a park use permit, or a conditional use permit, or except as necessary for the preservation of public peace or safety, it is unlawful to use any public address system, loudspeaker, "boombox radio," or other sound amplifying device in any park. No person shall use, operate or play in any park a radio, tape player, disc player, television, musical instrument, record player or any other machine or device capable of producing sound without the use of headphones or a similar personal listening device or at a volume level where discernible noise can be heard more than 10 feet from the device. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.130 Intoxicating liquor and illegal drugs prohibited.
It is unlawful to possess a container of any alcoholic beverage or illegal drug(s) while in any park. In addition to any other applicable penalty, any person violating this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $250.00. For purposes of this section, "possession" means having a container within one's immediate reach or control. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.135 Littering – Trash deposit.
It is unlawful to throw or deposit any refuse or other material in any park, including but not limited to any artificial surfaces, play fields or picnic areas, except in designated receptacles; or to take garbage or refuse to a park for disposal; or to deposit garbage or refuse generated outside a park in a receptacle within the park designated for deposit of trash by the public. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.140 Park hours.
Parks are open to the public daily from dawn until dusk. It is unlawful for any person to enter a closed park except as authorized by a use permit, or a conditional use permit.

Additionally, the mayor or his/her designee may make and enforce special park closure hours for specific parks or areas within parks if the mayor or his/her designee determines that such special park closure hours are necessary or appropriate to protect public property or public safety, to prevent nuisances, or to prevent breaches of the peace.

The mayor or his/her designee may immediately close any park or area within a park at any time for emergencies, temporary cleaning and repair, public safety, or any other similar reason. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.150 Trespassing.
No person except an authorized city employee or other person duly authorized pursuant to law shall enter or go upon any park area which has been posted as a "No Admittance" or "No Trespassing" area, or at a time a park is closed to the public. In addition to any other applicable penalty, any person violating this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $250.00. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.160 Disorderly conduct and profanity prohibited.
Under the proposed regulations, it is unlawful to use profane or abusive language or to conduct oneself in a disorderly manner as defined by RCW 9A.84.030, including but not limited to a state of intoxication or being noticeably under the influence of drugs, in any park. "Profane or abusive language" means obscenity or fighting words constituting unprotected speech. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.165 Smoking and tobacco use prohibited.
It is unlawful for any person to smoke or light cigars, cigarettes, tobacco or other smoking material within city parks. The public works department shall post signs in appropriate locations prohibiting smoking in the city's parks. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

9.09.170 Violation – Penalty.
Any violation of or any failure to comply with any of the provisions of this chapter in which no penalty is otherwise specified shall constitute a civil infraction as contemplated by RCW 7.80.120 and any person convicted thereof may be punished by a civil fine or forfeiture in the sum of $250.00.

Payment of the civil fine within 24 hours of the issuance of the notice of infraction issued under this chapter shall reduce the amount of the fine owing by 50 percent. (Ord. 1174-13 § 1; Ord. 1017-09 § 1)

Chapter 9.12
PEDDLERS AND SOLICITORS

(Repealed by Ord. 1073-10)

Chapter 9.14
SPECIAL EVENTS

Sections:

9.14.010 Purpose and policy.
9.14.020 Intent.
9.14.030 Definitions.
9.14.040 Exemptions.
9.14.050 Administration.
9.14.060 Permit required.
9.14.070 Permit fee.
9.14.090 Permit application.
9.14.100 Permit requirements.
9.14.110 Permit conditions.
9.14.120 Denial of application.
9.14.130 Indemnification.
9.14.140 Insurance required.
9.14.150 Revocation or suspension.
9.14.160 Appeal.
9.14.170 Penalty for violation.
9.14.180 Severability.

9.14.010 Purpose and policy.

Special events are of infrequent occurrence and temporary nature and may be associated with promotions, holidays, festivals, etc. Special events shall be allowed by a special events permit granted by the mayor or designated appointee.

Special events, such as fun runs, roadway foot races, fundraising walks, parades, carnivals, shows, exhibitions, and fairs promote tourism, foster economic revitalization of downtown and neighborhoods and provide cultural activities for residents. Events such as neighborhood block parties help build community connections that bring families and neighborhoods together. The city of Sultan encourages such events within an environment that allows for the excitement and fun anticipated, yet adequately provides for the protection of citizens, visitors and all participants involved. (Ord. 1045-09 § 1)

9.14.020 Intent.
It is the specific intent to place the obligation of complying with the requirements of this chapter upon the applicant or sponsor, and nothing contained in this chapter is intended to be construed to create or form the basis for liability on the part of the city, or its officers, employees or agents for any injury or damage resulting from the failure of the applicant or sponsor to comply with the provisions stated herein.

Applicants are responsible for following all pertinent city codes and regulations when undertaking a special event in Sultan. (Ord. 1045-09 § 1)

9.14.030 Definitions.
For the purpose of this chapter, words and phrases used herein are as follows:

"Applicant" shall mean any person or organization who seeks a special event permit to conduct or sponsor an event governed by this chapter.

"Athletic event" shall mean an occasion in which a group of persons collect to engage in or watch a sport or form of exercise on private or public property and/or on a city street, sidewalk, alley, or other street right-of-way, which obstructs, delays or interferes with the normal flow of pedestrian or vehicular traffic, or does not comply with traffic laws or controls. Athletic events include, but are not limited to, bicycle and foot races.

"Block party" shall mean events being held by people living in a neighborhood, families and close friends (not larger publicized events open to the general public) on a private property or a street which may close or block a street, or a portion thereof, to vehicular traffic, and/or use of the street for the festivity including barbecues, picnics, music or games.

"Community and/or regional event" includes but is not limited to festivals, fairs, parades, carnivals, fun runs, fundraising walks and rides, and exhibits on public or private property that attract participation from the Sky Valley community and areas outside the Sky Valley and impact city services such as police, traffic management, and garbage collection and public property such as city streets and parks.

"Parade" shall mean a march or procession consisting of any number of persons, animals, or vehicles, or a combination thereof, on any city street, sidewalk, alley, or other right-of-way, which obstructs, delays or interferes with the normal flow of pedestrian or vehicular traffic, or does not comply with traffic laws and controls.

"Permit application fee" shall mean the fee to be paid by the special event permit applicant at the time the application is filed with the city clerk. Such fee shall be set by the city council.

"Permittee" shall mean any person or organization who has been issued a special events permit by the mayor or appointed designee. The permittee shall have authority, subject to approval by the city, to determine participation in commercial activities during a special event.

"Refundable deposit" shall mean the amount of money required of a permittee by the public works department in order to assure adequate cleanup of the special event site. The deposit shall be returned to the permittee upon the completion of the event and approval of the public works department.

"Special events permit" shall mean the permit issued by the mayor or appointed designee after the applicant has met all applicable reviews and requirements set forth in this chapter. (Ord. 1045-09 § 1)

9.14.040 Exemptions.
The provisions of this chapter shall not apply to:

A. Funeral and wedding processions;

B. Groups required by law to be so assembled;

C. Pedestrian processions along a route that is restricted to sidewalks and crossing streets only at pedestrian crosswalks in accordance with traffic regulations and controls;

D. Gatherings of 30 or fewer people in a city park, unless merchandise or services are offered for sale or trade;

E. Temporary sales conducted by businesses, such as holiday sales, grand opening sales, or anniversary sales;

F. Garage sales or rummage sales;

G. Other similar events and activities which do not directly affect or use city property and/or city services as determined solely by a majority of the city council. (Ord. 1045-09 § 1)

9.14.050 Administration.
The mayor or designated appointee shall, after consultation with appropriate departments and agencies, have discretionary authority regarding special event permits. The mayor or designated appointee may approve, deny, or condition an application for a special events permit. (Ord. 1045-09 § 1)

9.14.060 Permit required.
A. Any person desiring to conduct or sponsor a special event on private or public property, and/or which will necessitate the use of the public right-of-way, shall first obtain a special events permit.

B. When such an event will be an exercise of rights protected by the First and Fourteenth

Amendments to the United States Constitution, or Article I, Section 3, 4, 5, or 11 of the Washington State Constitution, the application shall be processed promptly, without charging a fee for political or religious activities or imposing terms or conditions that infringe upon constitutional freedoms, and in a manner that respects the liberties of applicants and the public.

C. An internal review process will be conducted for parades, athletic events or other special events that occur exclusively on city property and are conducted in full by the city of Sultan. (Ord. 1045-09 § 1)

9.14.070 Permit fee.
The fee for issuance of a special events permit shall be set by the fee schedule adopted by the city council. (Ord. 1045-09 § 1)

9.14.090 Permit application.
A. Any person wishing to sponsor a special event shall apply for a special event permit by filing a complete application with the city clerk, on a form provided by the city, at least 30 calendar days prior to the date on which the event is to begin to occur.

Complete applications for special events permits submitted less than 30 days in advance will be accepted but may be approved at the sole discretion of the mayor or mayor's designee given sufficient time to adequately review the application and meet the requirements set forth in this chapter.

B. The mayor or designated appointee shall issue the special events permit once the application has been approved after review of appropriate agencies to include police, fire, public works, building and planning, and others as determined by the mayor or designated appointee, and the applicant has agreed in writing to comply with the terms and conditions of the permit.

C. The mayor or designated appointee shall approve, conditionally approve, or deny an application based on the recommendations of city departments involved in the review process. (Ord. 1045-09 § 1)

9.14.100 Permit requirements.
A. Special event uses are to be temporary and approved for a particular zoning district by the planning/building director.

B. Temporary signage and temporary structures will be allowed subject to provisions of this code pursuant to the interpretive authority and discretion of the planning/building director.

C. Requests for temporary parking facilities for special events and street closures for special events shall be subject to provisions of this code pursuant to the interpretive authority and discretion of the public works director.

Each site occupied by a special use/event must provide or have available sufficient parking and vehicular maneuvering area for customers and must provide safe and efficient interior circulation and ingress and egress to and from public right-of-way.

D. Requests for fire and emergency medical services shall be subject to requirements and

interpretive authority and discretion of the fire district.

E. Requests for police services shall be subject to provisions of this code pursuant to the interpretive authority and discretion of the police chief.

F. Expenses for fire, police, medical services, parks, and public works crews needed for coverage and cleanup at the special event are the responsibility of the applicant, even if the permit fee has been waived. A deposit for expenses is due when the permit is issued. Any unused deposit, not under dispute, will be returned upon request within 45 days following the event.

G. Temporary business licenses are required for all vendors. A temporary business license fee shall be set by council resolution.

H. Applicants are required to provide 10 calendar days' notice to surrounding property owners within 500 feet of the event after an application is approved. The mayor or mayor's designee has discretion to allow a shorter notification period to surrounding property owners upon good cause shown; and provided, that no risk or burden to the city or surrounding property owners ensues.

I. Applicants must obtain local, county, state and federal permits as required.

J. A copy of the approved permit and vendor business licenses will be available on site throughout the event. (Ord. 1045-09 § 1)

9.14.110 Permit conditions.
The mayor or designated appointee may condition the issuance of a special events permit by imposing reasonable requirements concerning time, place, and manner of the event; and such requirements as are necessary to protect the safety and rights of persons and property and the control of traffic.

After issuing a permit, the mayor or designated appointee may further reasonably condition the permit based on public comment following notification by the applicant of the approved permit. Public comment must be received within five business days of notification. (Ord. 1045-09 § 1)

9.14.120 Denial of application.
A special event permit may be denied solely at the discretion of the mayor or mayor's designated appointee based upon a determination that:

A. The event would endanger public safety and/or interfere with access to emergency services;

B. The event would seriously inconvenience the general public;

C. The event would unreasonably infringe upon the rights of abutting properties;

D. The event would conflict with another proximate event or interfere with construction or maintenance work in the immediate vicinity;

E. There is not sufficient safety personnel or other necessary city staff to accommodate the

event;

F. The applicant failed to complete the application form after being notified of the additional information or documents required;

G. Information contained in the application of supplemental information requested from the applicant is found to be false in any material detail;

H. The applicant cannot meet, or is unwilling to meet, all of the requirements of this chapter or any special conditions imposed by any of the reviewing agencies;

I. The applicant fails to obtain local, county, state and federal permits or approvals as required;

J. Other issues in the public interest were identified by the mayor or designated appointee;

K. Failure to prepay deposit for expenses. (Ord. 1045-09 § 1)

9.14.130 Indemnification.
A. Prior to the issuance of the special event permit, the applicant must agree to reimburse the city for any costs incurred by the city in repairing damage to city property occurring in connection with the permitted event.

B. Permittee agrees to defend, indemnify and save harmless the city, its appointed and elected officers and employees from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the city, its elected officials or employees for damages because of personal or bodily injury, including death at any time therefrom, sustained by any person or persons and on account of damage to property or loss therefrom, arising out of any activity under or in connection with the special event, except only such injury as shall have been occasioned by the sole negligence of the city, its appointed or elected officers or employees.

C. The mayor or designated appointee has the authority to require a refundable deposit as suggested by the public works department for reimbursement of the costs for cleanup services. (Ord. 1045-09 § 1)

9.14.140 Insurance required.
A. The permittee shall provide the city with proof of commercial general liability insurance generally in the amount of $1,000,000 combined single limits per occurrence, and an endorsement naming the city of Sultan as an additional insured when required as a condition of approval by the mayor or designated appointee.

B. Certificates of insurance shall be submitted to the city for approval 14 working days prior to the event. Acceptability of insurance is subject to approval by the mayor or mayor's designee. (Ord. 1045-09 § 1)

9.14.150 Revocation or suspension.
A. A special events permit issued under this chapter shall be temporary, shall vest no permanent rights in the applicant, and may be immediately revoked or suspended by the mayor or designated appointee if:

1. The applicant has made a misstatement of material fact in the information supplied; the applicant has failed to fulfill a term or condition of the permit in a timely manner; or a check submitted by the applicant in payment of an expense or fee for a permit has been dishonored;

2. The applicant requests the cancellation of the permit or cancels the event;

3. The activity endangers or threatens persons or property, or otherwise jeopardizes the health, safety or welfare of persons or property;

4. The activity conducted is in violation of any of the terms or conditions of the special events permit;

5. An emergency or supervening occurrence requires the cancellation or termination of the event in order to protect the public health or safety;

6. Fails to pay deposit for city expenses.

B. The city shall refund the permit fee in the event of a revocation caused by an emergency or supervening occurrence; the city shall refund the balance of the fee less the costs incurred if the cancellation occurs at the request of an applicant who is in compliance with this chapter. (Ord. 1045-09 § 1)

9.14.160 Appeal.
The applicant has the right to appeal permit conditions or denial of application to the city council. The city council shall have full discretion in determining whether and how to hear and resolve such appeal. The city council's decision shall be final. (Ord. 1045-09 § 1)

9.14.170 Penalty for violation.
Any person, association, firm, partnership, or corporation that violates any of the provisions of this chapter shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine not to exceed $1,000 and by imprisonment not exceeding 90 days or both such fine and imprisonment. Each day or portion of a day in which a violation is committed constitutes a separate offense. (Ord. 1045-09 § 1)

9.14.180 Severability.
If any part, provision or section of this chapter is held to be void or unconstitutional, all other parts not expressly so held shall continue in full force and effect. (Ord. 1045-09 § 1)

Chapter 9.16
LITTER

Sections:

9.16.010 Purpose.
9.16.020 Grammatical interpretation and definitions.
9.16.030 Prohibited acts – Generally – Penalty.
9.16.040 Receptacles – Placement in public places.
9.16.050 Receptacles – Use.
9.16.060 Receptacles – Damaging unlawful.
9.16.070 Responsibility for litter removal.
9.16.080 Mandatory litter bags.

9.16.090 Sweeping into gutters prohibited – Maintenance of abutting sidewalks.
9.16.100 Handbills – Throwing in public places prohibited.
9.16.110 Handbills – Depositing on uninhabited or vacant property prohibited – Mail or newspapers exempt.
9.16.120 Throwing by persons in vehicles prohibited.
9.16.130 Vehicle loading as to prevent leakage – Responsibility for removal of fallen objects.
9.16.140 Enforcement – Officers and procedures.
9.16.150 Provisions of chapter nonexclusive.
9.16.160 Violation – Penalty.

9.16.010 Purpose.
A. The purpose of this chapter is to accomplish litter control in the city of Sultan.

B. This chapter is intended to place upon all persons within the city, the duty of contributing to the public cleanliness of the city and appearance in order to promote the public health, safety and welfare and to protect the economic interests of the people of the city against unsanitary and unsightly conditions.

C. It is further the intent of this chapter to protect the people against the health and safety menace and the expense incident to littering. (Ord. 340 § 14, 1975)

9.16.020 Grammatical interpretation and definitions.
As used in this uniform litter control chapter, unless the context clearly indicates otherwise, the following terms have the meanings set forth in this section. All words used in the present tense include the future and past tense; all words used in the plural number include the singular number, and all words in the singular number include the plural number. The word "shall" is mandatory and not merely a word of direction.

A. "Handbill" is any printed or written matter excluding newspapers; which advertises for sale any commodity or thing, or which directs attention to any business or other activity or event of any kind.

B. "Litter" means all solid wastes including but not limited to containers, packages, wrapping, printed matter or other material thrown or deposited as prohibited in this chapter, but not including the wastes of the primary processes of mining, logging, milling, farming or manufacturing.

C. "Litter bag" means a bag, sack, or other container made of any material which is large enough to serve as a receptacle for litter inside the vehicle or watercraft con trolled by any person.

D. "Litter receptacle" means those containers meeting minimum requirements of state regulations of the State Department of Ecology.

E. "Newspaper" is any newspaper of general circulation as defined by law.

F. "Park" is a park, reservation, playground, beach, recreation center or any other area in the city, devoted to active or passive outdoor recreation.

G. "Person" is any individual, industry, public or private corporation, copartnership, association, firm or other entity.

H. "Private property" means any property not publicly owned or held out for use by the public.

I. "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests.

J. "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes including garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities.

K. "State regulations" means the regulations duly promulgated and adopted by the State Department of Ecology pursuant to Chapter 34.04 RCW and codified or prepared for codification as part of the Washington Administrative Code.

L. "Street" for the purposes of this chapter is synonymous with and includes highway, road and alley.

M. "City" means the city of Sultan, Washington.

N. "Vehicle" includes every device capable of being moved upon a public street and in, upon, or by which any person or property is or may be transported or drawn upon a public street, excepting devices moved by human or animal power or used exclusively upon stationary rail or tracks.

O. "Watercraft" means any boat, ship, vessel, barge or other floating craft. (Ord. 340 § 1, 1975)

9.16.030 Prohibited acts – Generally – Penalty.

A. No person shall throw, drop, deposit, discard or otherwise dispose of litter upon any public place in the city or upon any private property whether or not owned by him, or in any waters within the jurisdiction of the city, whether from a vehicle or otherwise, except:

1. When such property is designated by the state or by any of its agencies or the city for disposal of garbage and refuse, and such person is authorized by the proper public authority to so use such property; or

2. Into a litter receptacle or other container in such manner that the litter will be prevented from being carried away or deposited by the elements upon any part of said public place or any private property; or

3. When such person is the owner or does have control or custody of the property, or has prior consent of the owner or tenant in lawful possession of such property, or unless the act is done under the personal direction of said owner or tenant and provided said litter will not cause a public nuisance or be in violation of any other state or local laws, rules or regulations.

B. Any person violating the provisions of this section shall be guilty of a misdemeanor and in addition to or in lieu of any other penalty, such person may in the sound discretion of the

court be directed, by the court, to pick up and remove from any public place or any private property, with permission of the owner, or the person in possession of the property, upon which it is established that such person had deposited litter, any and all litter deposited thereon by anyone prior to the date of the execution of the sentence. (Ord. 358 § 1, 1977; Ord. 340 § 2, 1975)

9.16.040 Receptacles – Placement in public places.
A. Litter receptacles shall be placed in all parks, trailer parks in respect to the service of transient habitation, gasoline service stations, tavern parking lots, shopping centers, grocery store parking lots, marinas, boat launching areas, beaches, bathing areas and other such public places in numbers appropriate to need as specified by state regulation.

B. It shall be the responsibility of any person owning or operating any establishment or public place in which litter receptacles are required by this section, to procure and place and maintain such litter receptacles at their own expense on the premises in accord with such state regulations. (Ord. 340 § 3, 1975)

9.16.050 Receptacles – Use.
Litter receptacles placed on sidewalks and other public places shall be used only for such litter material as persons may have for disposal while passing along the street or other public places and in no event shall be used for the disposal of other solid waste accumulated in residences or places of business. (Ord. 340 § 4, 1975)

9.16.060 Receptacles – Damaging unlawful.
It is unlawful for any person to willfully damage or deface any litter receptacle. (Ord. 340 § 5, 1975)

9.16.070 Responsibility for litter removal.
It shall be the responsibility of the local city, other agency or person owning or maintaining the same for the removal of litter from litter receptacles placed in parks, beaches, campgrounds and other public places. (Ord. 340 § 6, 1975)

9.16.080 Mandatory litter bags.
The owner or person in possession of all vehicles or watercraft shall keep a litter bag in said vehicle or watercraft at all times. (Ord. 340 § 7, 1975)

9.16.090 Sweeping into gutters prohibited – Maintenance of abutting sidewalks.
A. No person shall sweep into or deposit in any gutter, street, alley or other public place, the accumulation of litter from any building, lot, or from any public or private sidewalk or driveway.

B. Persons owning or occupying property shall keep the sidewalks in front of their premises free of litter. (Ord. 340 § 8, 1975)

9.16.100 Handbills – Throwing in public places prohibited.
No person shall throw or deposit any handbill upon any public place within the city; provided, however, that it shall not be unlawful for any person to hand out, without charge to the receiver thereof, any handbill to any occupant of a vehicle, or to any other person who is willing to accept it. (Ord. 340 § 9, 1975)

9.16.110 Handbills – Depositing on uninhabited or vacant property prohibited – Mail or

newspapers exempt.
A. No person shall throw or deposit any handbill in or upon any uninhabited or vacant private property.

B. The provisions of this section shall not apply to the distribution of mail by the United States nor to newspapers (as defined in SMC 9.16.020(E)) except that newspapers shall be placed on private residences or other private property in such a manner as to prevent their being carried or deposited by the elements upon any public place or upon private property. (Ord. 340 § 10, 1975)

9.16.120 Throwing by persons in vehicles prohibited.
No person, while a driver or passenger in a vehicle, shall throw or otherwise deposit litter upon any public place or upon any private property. (Ord. 340 § 11, 1975)

9.16.130 Vehicle loading as to prevent leakage – Responsibility for removal of fallen objects.
A. No vehicle shall be driven or moved on any public street unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, shifting, leaking or otherwise escaping therefrom, except that sand or gravel may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway surface in the cleaning or maintaining of such roadway by public authority having jurisdiction for the same or by persons under contract or other authorization by such public authority.

B. Any person owning or operating a vehicle from which any glass or other objects of its load have fallen or escaped, which would constitute an obstruction or injure a vehicle or otherwise endanger travel upon such public street shall immediately cause such public street to be cleaned of all such glass or other objects and shall pay any cost therefor. (Ord. 340 § 12, 1975)

9.16.140 Enforcement – Officers and procedures.
A. This chapter may be enforced by any member of the department of the city marshal.

B. All such members of the department of the city marshal are empowered to issue citations to and/or arrest without warrant, persons violating the provisions of this chapter, when such violation is committed in the presence of the arresting officer.

C. Said enforcement officers may serve and execute all warrants, citations and other process, issued by the courts.

D. In addition, mailing by registered mail of such warrant, citation or other process to the last-known place of residence of the offender shall be deemed as personal service upon the person charged. (Ord. 340 § 13, 1975)

9.16.150 Provisions of chapter nonexclusive.
In the event any other city ordinance, whether or not codified, is in conflict with any of the terms of the ordinance codified in this chapter, the more stringent shall be construed as applicable. (Ord. 340 § 16, 1975)

9.16.160 Violation – Penalty.
Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor, and shall be punished by a sentence of not more than 90 days in the county

jail or a fine of not more than $250.00 or both. (Ord. 340 § 17, 1975)

Chapter 9.17
JUVENILE USE AND POSSESSION OF TOBACCO

Sections:

9.17.010 Tobacco use by minors.
9.17.020 Parental responsibility.
9.17.030 Violation – Penalty.

9.17.010 Tobacco use by minors.
No person under the age of 18 years shall use or possess tobacco materials. (Ord. 880-05; Ord. 837-04)

9.17.020 Parental responsibility.
It shall be unlawful for the parent, guardian or other adult person having custody or control of a minor under the age of 18 years to permit or by inefficient control to allow a violation of this chapter by a minor in his or her custody or control. (Ord. 880-05; Ord. 837-04)

9.17.030 Violation – Penalty.
A. Any person committing a violation of any provision of this chapter shall be guilty of committing a civil infraction.

B. A person found to have committed a violation shall be assessed a monetary penalty according to the following scale:

1. First offense, $50.00;

2. Second offense in any one year, $150.00;

3. Third and subsequent offenses in any one year, $250.00.

C. In lieu of payment of the monetary penalty relating to the civil infraction citation herein, any person receiving a civil infraction citation may elect to perform community service at a rate of one hour for each $5.00 of assessed penalty. Community service shall consist of those projects implemented and supervised by the director of public works or their designee. In such case, the payment of the penalty shall be deferred pending completion of the community service. (Ord. 880-05; Ord. 837-04)

Chapter 9.20
DISORDERLY CONDUCT

Sections:

9.20.010 Purpose.
9.20.020 Disorderly conduct.
9.20.030 Violation – Penalty.

9.20.010 Purpose.
This chapter is deemed an exercise of the police power of the city of Sultan for the protection of the health, welfare, safety and peace of the people of the city; its provisions shall be liberally construed for the accomplishment of that purpose. (Ord. 1169-13 § 1)

9.20.020 Disorderly conduct.
A person is guilty of disorderly conduct if he or she:

A. Uses abusive, vulgar, profane, obscene or indecent language, or conducts themselves in an indecent manner, when such language or conduct intentionally creates a risk of assault; or

B. Intentionally disrupts any lawful assembly or meeting of persons without lawful authority; or

C. Intentionally obstructs vehicular or pedestrian traffic on streets or sidewalks without lawful authority; or

D. Fights or quarrels in a public place; or

E. Urinates or defecates in any public place other than a wash room toilet; or

F. Suffers or permits in any building or place owned by themselves or under their control riotous or disorderly conduct or drunkenness or fighting to the annoyance of the public; or

G. Hitches or ties any animal or thing to, or obstructs, injures, connects with or opens, any fire hydrant in the city without a permit from the chief of the fire department or other municipal officer; or

H. Drives or rides a horse or horses or other livestock in the city in such a manner as to endanger or to be likely to endanger any person or property, or drives or rides a horse or horses or other livestock upon any sidewalk in the city, except across a sidewalk on a street; or

I. Removes, destroys, tears down, or defaces, either in whole or in part, or marks or writes upon, changes, obliterates or mars, or in any manner alters or changes the writing, printing or signature, or any part of the writing, printing, or signature, upon any bulletin, legal notice, signage or advertisement, poster or paper writing of the city lawfully posted or placed in the city, unless such person be an officer or employee of the city and is duly authorized to perform such acts. (Ord. 1169-13 § 1)

9.20.030 Violation – Penalty.
Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor, and shall be punished by a sentence of not more than 30 days in the county jail or a fine of not more than $250.00 or both. (Ord. 1169-13 § 1)

Chapter 9.22
CURFEW

(Repealed by Ord. 828-03)

Chapter 9.28
LIQUOR PROHIBITIONS FOR PERSONS UNDER 21

Sections:

9.28.010 Interpretation.

9.28.020 Liquor defined.
9.28.030 Consumption, possession or provision to unlawful.
9.28.040 Violation – Penalty.

9.28.010 Interpretation.
Wherever the singular is used in this chapter it shall be deemed to include the plural, and wherever the masculine is used it shall be deemed to include the feminine. (Ord. 289 § 3, 1967; Ord. 223 § 3, 1954)

9.28.020 Liquor defined.
The terms liquor or intoxicating liquor, as used in this chapter are defined to mean alcohol, spirits, wine and beer, and all fermented, spirituous, vinous or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, spirituous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. (Ord. 289 § 2, 1967; Ord. 223 § 2, 1954)

9.28.030 Consumption, possession or provision to unlawful.
It is unlawful for any person under the age of 21 years to purchase, drink, consume, or possess intoxicating liquor or liquors within the corporate limits of the city of Sultan, Snohomish County, state of Washington; provided further, that is unlawful for any persons over the age of 21 years to give, make available or sell to persons under the age of 21 years intoxicating liquor or liquors, or to join any person under the age of 21 years in the consumption thereof, or to aid, assist, or abet persons under the age of 21 years to consume such intoxicating liquor or liquors, or to put intoxicating liquors in the possession of persons under the age of 21 years, under any conditions whatsoever, within the corporate limits of the city of Sultan. (Ord. 289 § 1, 1967; Ord. 223 § 1, 1954)

9.28.040 Violation – Penalty.
Any person, upon conviction of the violation of this chapter, or any provision or provisions thereof, shall be deemed guilty of a misdemeanor, and shall be punished by a fine or imprisonment, or both, within the statutory limitations of the jurisdiction of the police judge of the city. (Ord. 289 § 4, 1967; Ord. 223 § 4, 1954)

Chapter 9.30
MALT LIQUOR BY THE KEG

Sections:

9.30.010 Seller's duties.
9.30.020 Purchaser's duty.
9.30.030 Declaration and receipt.
9.30.040 Penalty.
9.30.060 General duty.

9.30.010 Seller's duties.
Any person who sells or offers for sale the contents of kegs or other containers containing six gallons or more of malt liquor, or leases kegs or other containers which will hold six gallons of malt liquor, to consumers who are not licensed under Chapter 66.24 RCW shall

do the following for any transaction involving said container:

A. Require the purchaser of the malt liquor to sign a declaration and receipt for the keg or other container and/or beverage in substantially the form provided in this chapter;

B. Require the purchaser to provide two pieces of identification, one of which is a motor vehicle operator's license, Washington State identification card, or military identification card;

C. Require the purchaser to sign a sworn statement, under penalty of perjury, that:

1. The purchaser is of legal age to purchase, possess or use malt liquor,

2. The purchaser will not allow any person under the age of 21 to consume the beverage except as provided by RCW 66.44.270,

3. The purchaser will not remove, obliterate or allow to be removed or obliterated, the identification number affixed to the container;

D. Require the purchaser to state the particular address where the malt liquor will be consumed, or the particular address where the keg or other container will be physically located;

E. Affix to each keg or container a numbered label, hereafter referred to as the identification number;

F. Record the identification number and any other number appearing on the keg or container, on any declaration or receipt of purchase;

G. Retain the original copy of the declaration and receipt for a period of one year for inspection by any law enforcement agency. Such inspection shall be allowed upon request of a law enforcement officer having a reasonable belief that a violation of this chapter or related alcohol enforcement laws has or will occur;

H. Provide a copy of the declaration and receipt to the purchaser;

I. Require the purchaser to maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without physical barrier from such keg, during the time that the keg or other container is in the purchaser's possession and/or control. (Ord. 480, 1986)

9.30.020 Purchaser's duty.
Any person who purchases the contents of kegs or other containers containing six gallons or more of malt liquor, or purchases or leases the container shall:

A. Be of legal age to purchase, possess or use malt liquor;

B. Not allow any person under the age of 21 to consume the beverage except as provided by RCW 66.44.270;

C. Not remove, obliterate or allow to be removed or obliterated, the numbered label affixed to the container;

D. Not move, keep or store the keg or its contents, except for transporting to and from distributor, at any place other than that particular address declared on the receipt and declaration;

E. Maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without physical barrier from such keg, during the time that the keg or other container is in the purchaser's possession and/or control. (Ord. 480, 1986)

9.30.030 Declaration and receipt.
The form of the declaration and receipt required herein shall be substantially in the following form and shall require the information contained in the following form:

RECEIPT FOR SALE OF MALT LIQUOR IN KEGS
OR CONTAINERS
TO UNLICENSED PERSONS

Date of Sale _____ Invoice No. _____
Keg Identification Number(s) _____
Brand _____ Keg Capacity _____
No. of Kegs _____ Total Gallons _____
Name of Purchaser _____
Address _____
Address or location where keg will be located _____
Motor Vehicle Operator's License Number _____
Washington State Identification Card _____
Other Identification _____

I declare under penalty of perjury the information provided in this receipt is true and correct and that I am over the legal age to purchase, possess or use malt liquor, that I will not allow the malt liquor purchased and identified by this receipt to be consumed by any person who is under the age of 21 except as provided by RCW 66.44.270, and that I will not remove or obliterate the numbered identification label affixed to the container.

Signature of Purchaser _____

Identity of Seller _____
Address of Licensed Premises

NOTICE

It is unlawful for any person under the age of 21 years to acquire in any manner, consume or have in his or her possession, any intoxicating liquor; provided, that the foregoing shall not apply in the case of liquor given or permitted to be given to such person under the age of 21 years by his parent or guardian for beverage or medicinal purposes in the home or administered to him by his physician or dentist for medicinal purposes. A person who signs this receipt with knowledge that any information in the receipt is false commits perjury. Violations of any of the provisions of the City of Sultan Ordinance which requires this statement and these terms is a misdemeanor punishable by a fine of not more than $1,000.00, or by imprisonment not to exceed 90 days, or by both such fine and imprisonment.

(Ord. 480, 1986)

9.30.040 Penalty.
The violation of any provisions of this chapter shall be a misdemeanor. (Ord. 480, 1986)

9.30.060 General duty.
Nothing in this chapter is intended to create a cause of action or claim against the city or its officials or employees running to specific individuals. Any duty created in this chapter is intended to be a general duty running in favor of the public citizenry. (Ord. 480, 1986)

Chapter 9.32
WEAPONS ON PREMISES WHERE LIQUOR IS DISPENSED

Sections:

9.32.010 Restricted.
9.32.020 Deadly weapon defined.
9.32.030 Exemptions.
9.32.040 Violation a misdemeanor.

9.32.010 Restricted.
It shall upon complaint of the owners or proprietor of the premises or his or her employee or agents, be unlawful for any person to carry a deadly weapon into or upon any premises within the city limits of the city of Sultan licensed by the Washington State Liquor Control Board to dispense liquor for consumption on the premises; it shall be immaterial whether said person has upon his person a license to carry a concealed weapon. (Ord. 422 § 1, 1981)

9.32.020 Deadly weapon defined.
A deadly weapon shall be defined as follows: To include but not be limited to any instrument known as a blackjack, slingshot, billy, sand club, sand bag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearms loaded or unloaded, any knife having a blade longer than the length of four or more inches, any razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club, and any explosive, which under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing serious injury. (Ord. 422 § 2, 1981)

9.32.030 Exemptions.
This chapter shall not apply to or affect the following persons:

A. The proprietor of the premises, or his or her employee while on duty;

B. Any peace officer with jurisdiction within the incorporated area of the city of Sultan while carrying out his duties;

C. Any person making or assisting in making a lawful arrest for the commission of a felony at the time of carrying said deadly weapon;

D. Any person within the restaurant area of a licensed premises where the consumption of liquor is incidental to the consumption of complete meals by the public;

E. Any person within the lobby, recreational or residence areas of hotels and motels. (Ord. 422 § 3, 1981)

9.32.040 Violation a misdemeanor.
Any person violating any provision of this chapter shall be guilty of a misdemeanor. (Ord. 422 § 4, 1981)

Chapter 9.34
DISCHARGE OF FIREARMS AND USE OF OTHER WEAPONS

Sections:

9.34.010 Discharge of firearms prohibited.
9.34.020 Unlawful use of air gun, bow and arrow and cross bow.
9.34.030 Violation – Penalty.

9.34.010 Discharge of firearms prohibited.
It is unlawful for any person to aim or discharge any firearm, whether loaded or not at any person or property of another in the city of Sultan; provided, that this prohibition does not apply to the discharge of firearms by law enforcement officers engaged in the performance of their official powers or duties.

A firearm shall include a gun, pistol, revolver or other firearm. This section shall not abridge the right of the individual guaranteed by Article I, section 24 of the State Constitution to bear arms in defense of self or others or the rights guaranteed under RCW. (Ord. 588 § 1, 1993)

9.34.020 Unlawful use of air gun, bow and arrow and cross bow.
A. It is unlawful for any person to point or shoot an air gun, bow and arrow, cross bow or slingshot at any person or at the property of another, or to aim or discharge such weapon in the direction of the person or property of another.

B. As used in this section, the words "air gun" mean and include the following: air gun, air pistol, air rifle, BB gun and toy or other guns of any kind or nature when designed, contrived, modified or used to propel, by compressed air or spring-loaded plunger, any pellet, dart, dart-tipped arrow, bean, pea, BB, rock or other hard substance. (Ord. 588 § 1, 1993)

9.34.030 Violation – Penalty.
Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and the weapon used in the violation may be confiscated and shall only be returned by order of the court of jurisdiction.

Any person convicted for violating any provisions of this chapter shall be punished by a fine of $500.00 for the first offense; $1,000 for the second offense; and $2,000 for each offense thereafter. (Ord. 588 § 1, 1993)

SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

ITEM NO: Retreat 4

DATE: March 14, 2015

SUBJECT: Purchasing Policies

CONTACT PERSON: Laura Koenig, Clerk/Finance Director

ISSUE:
The issue before the council is to discuss the current purchasing policies and procedures.

SUMMARY:
The City amended the purchasing policy in August 2011.

The city council has the authority, consistent with state law, to set purchasing policies. The council adopted Resolution 07-27 in November 2007 setting purchasing policies for materials, supplies, public works projects, and consultant and professional services and amended the policy under Resolution 11-12 in August 2011.

The current policy needs to be updated to be consistent with changes in the state bid laws, eliminate conflicting sections and provide clarification to city staff.

The policy also lacks policy and procedures and has conflicts for items such as:

1. Purchase amounts for supplies and equipment
2. Vendor Rosters
3. Contract placement on the agenda (Consent vs Action)
4. Interlocal service agreements
5. Appeal process for bids
6. Vendor relations

Under the city's purchasing policies, the city council has complete authority to approve service contract regardless of dollar amount. Any changes to the scope of work, term, payment or other parameters of the contract must be approved by the city council in advance of the change taking place and the work performed.

While this approach ensures fiscal control it can also increase the amount of time it takes to respond to changing conditions and new information. The purchasing policies do not provide the mayor, city administrator and department directors with any flexibility in administering the city's business.

ATTACHMENTS:

A. Resolution 11-12 and Purchase Policy
B. Purchase and Bidding Chart for Washington State
C. Articles from MRSC
D. Sample Policy from City of Everett

Attachment A

CITY OF SULTAN
WASHINGTON

RESOLUTION NO. 11-12

A RESOLUTION OF THE CITY OF SULTAN REPEALING RESOLUTION 07-27 ESTABLISHING PURCHASING POLICIES AND PROCEDURES; ADOPTING A NEW RESOLUTION 11-12 ESTABLISHING PURCHASE POLICIES AND PROCEDURES.

WHEREAS, the City Council of the City of Sultan has determined that it is in the best interests of the City of Sultan to provide guidelines and procedures for purchases made by the City; and

WHEREAS, the City Council has determined that the procedures should provide a consistent process for the purchase of supplies, equipment and services by all City departments;

WHEREAS, the City Council adopted purchasing policies on November 15, 2007 by Resolution 07-27; and

WHEREAS, the City Council seeks to amend the purchasing policies to establish service contract authorization and limits; and

WHEREAS, the Washington State legislature has adopted new limits for purchasing office supplies, operating supplies and equipment and new limits for public works contracts involving a single trade or multiple trades;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sultan that Exhibit A entitled "City of Sultan Purchasing Policies and Procedures" are hereby adopted.

PASSED AND ADOPTED this 11th day of August 2011.

CITY OF SULTAN

_____
Carolyn Eslick, Mayor

ATTEST/AUTHENTICATED:

_____
Laura Koenig, City Clerk

Approved as to form:

_____
Margaret J. King, City Attorney

Passed by the City Council:
Resolution No.:
Date Posted:

Exhibit A

I. PURPOSE:

This policy is established in order to reduce costs, increase efficiencies, ensure compliance with policies, laws and regulations, and establish/improve internal controls.

II. SCOPE:

This policy applies to all contracting, purchases and services provided to the City including, but not limited to materials, equipment, professional services, maintenance work, and public works.

III. RESPONSIBILITIES:

1.1 Procedures. The Finance Department will develop procedures to be followed for all purchases.

1.2 Inventory. The Finance Department will maintain an inventory of commonly used office and operating supplies to facilitate quantity buying and reduce stockpiling of supplies at a department level.

1.3 The Finance Department is to notify requisitioning departments whenever the quantity or specifications of materials ordered are inconsistent with sound purchasing practices and of alternative solutions and products.

1.4 The Finance department will coordinate the establishment of standard products which are used by multiple departments which will enable the City to combine purchases to take advantage of quantity discounts, etc.

1.5 The Finance Department will review all formal bids, and coordinate participation in the Municipal Research Small Works Roster. It is the responsibility of the requisitioning department to prepare technical specifications for formal bids.

1.6 Each Department Head has the responsibility for their department for the procurement of all goods and services; and to either provide the services for such procurement and processing or give functional directions to others delegated the authority to perform such services.

1.7 Specifications. All specifications must be written in a manner so as not to preclude products or services of an equal nature to participate and compete.

1.8 Department Head approval. All purchase orders will be reviewed and approved by the Department Head.

1.9 Final determination. The Department Head has the responsibility for making the final determination of a source of supply, quantities purchased, delivery schedule and price negotiations, except where others are so authorized. These decisions will be made in compliance with the budget and all applicable procedures, policies, laws, and regulations.

1.10 Professional relationships. The Department Head or their designee is responsible for initiating and maintaining effective and professional relationships with suppliers, actual and potential.

1.11 Quotes. If the purchasing department contacts the required number of firms, but receives less than the required number of responsive quotes, the department may award to the contractor/firm with the lowest responsible quote.

1.12 Award. The Department Head or their designee will seek to obtain and purchase all goods at the lowest possible total end-use cost from a responsible bidder, while considering the vendor's ability to meet the City's timeliness and costs associated with opportunity loss.

1.13 Verifying shipments. The Department Head or their designee is responsible for verifying all shipments received for accuracy to the packing/shipping lists and ensuring that they are received in good condition. All shipments will be shipped to the appropriate department unless it is not feasible due to size, weight, hazardous materials, etc. If a shipment is received at a different location, the responsibility for verification of contents and condition falls on the employee who receives it.

1.14 Discrepancies. It is the responsibility of the department who requisitioned the goods to verify that they are correct and to notify all discrepancies to the finance department immediately.

1.15 Returns. Purchasing personnel will coordinate and negotiate the return of rejected equipment or supplies to suppliers.

1.16 Compliance with the budget is the responsibility of the Department Head of the requisitioning department. All purchases not appropriated in the budget must be approved by the City Council.

1.17 Conflict of interest. No employee will participate directly or indirectly in a procurement when they know there is a conflict of interest. Any potential conflicts should be reported to the City Administrator for his/her decision as to whether a conflict does exist.

1.18 Solicitation of donations. The City will not accept donations of materials or services in return for a commitment to continue or initiate a purchasing relationship.

1.19 Gifts and gratuities. No employee will accept gifts or gratuities from existing or potential vendors.

IV. DEFINITIONS:

4.1 Consultant. Any individual, organization, firm, group, association, corporation, partnership, joint venture or combination thereof that provides professional services including, but not limited to, architects, engineers, planners, appraisers, surveyors, attorneys and accountants.

4.2 Lowest Responsible Bidder. In determining the "lowest responsible bidder", in addition to price, the following elements will be given consideration:

- The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- Whether the bidder can perform the contract within the time specified;
- The quality of performance of previous contracts or services;
- The previous and existing compliance by the bidder with laws relating to the contract or service;
- Any preferences allowed by law; and
- Such other information as may be secured having a bearing on the decision to award the contract, including, but not limited to, life cycle cost, (i.e., the total cost of an item over its useful life) where warranted.

V. PURCHASING PROCEDURES:

The following procedures will apply to the purchase of materials, supplies, equipment and services.

5.1 Purchase Orders: All purchases of supplies and equipment require a purchase order.

- Purchases made due to an emergency must be confirmed with a purchase order as soon as it is feasible.
- Purchases made without a purchase order may be determined as unauthorized and become the responsibility of the employee initiating the purchase.

5.2 Reoccurring Purchases: Do not require a purchase order. The following types of services are examples of reoccurring purchases:

- Phone
- PUD Power
- PSE Gas service
- SNOPAC monthly fees
- Court fees – requires Department Head approval
- Jail bills – requires Department Head approval
- Lease payments on vehicles
- Vehicle gas purchases – requires Department Head approval
- Other monthly recurring services as determined by Department Head

5.3 Consultant/Contract Services. The following types of professional services performed under contract do not require a purchase order. The city council must approve all consultant and contracts for services:

- Public Defender – requires Department Head approval
- Public Prosecutor – requires Department Head approval
- Hearing Examiner – requires Department Head approval
- Plat/Land Use Review – requires Department Head approval
- Comp Plans/Rate Studies – requires Department Head approval
- Capital Projects – requires Department Head approval. Requires a purchase order if connected to a grant or loan funded project.

5.4 Purchase Order Forms:

- The Finance Department will issues batches of pre-numbered purchase orders to each Department
- A list of the purchase order numbers will be provided with each batch of assigned purchase orders
- Departments will fill in the vendor information on the purchase order list as they issue purchase orders
- When all the purchase orders in a batch have been used, the Department Head will submit the list to the Finance Department. No additional purchase order batches will be assigned without the prior list being submitted.
- The Finance Department will audit the lists submitted to ensure that the purchase orders match up to the accounts payable.

VI. PURCHASING PARAMETERS:

6.1 Office Supplies, Operating Supplies and Equipment

6.1.1 Purchases of office supplies, operating supplies and equipment may be made within the following limits and approval:

- $500 or less - Department Head
- $501 to $4999 – Department Head and City Administrator
- $1000 or less – Department Head
- $1001 to $4999 – Department Head and City Administrator

6.1.2 Purchases costing more than $5,000 and less than $7,500 require **at least written quotations** from **a minimum of two vendors**, unless the item(s) are from a sole source vendor. Purchases in this price range require the requesting department head or designee pre-approval and completion of the vendor quote form.

6.1.3 Purchases costing more than $7,500 and less than $15,000 **require written quotations** from **a minimum of three vendors if the vendor list is used**, unless the item(s) are from a sole source vendor.

In addition, the Mayor or City Administrator and requesting Department Head must approve purchase orders in this range prior to the purchase transaction. At the time of solicitation, the City will not inform a vendor of other vendor's quotes.

6.1.4

6.1.5 Purchase in excess of **$15,000 must be bid competitively**.

6.1.6 A sole source vendor is characterized as the one and only source for the product or service in accordance with state law. The vendor shall certify that the city is getting the lowest price it offers anyone. Sole source purchases as defined by state statute must be approved as follows:

- $5,000 to $15,000 Mayor or City Administrator
- More than $15,000 City Council resolution

6.1.7 Vendor list. At least twice per year, the City will publish in a newspaper of general circulation within the City a notice of the existence of vendor lists and will solicit the names of vendors for the lists in accordance with RCW 39.04.190.

6.2 Service Contracts:

6.2.1 A service contract is a business agreement between the city and a vendor or consultant (other than architects or engineers) including but not limited to the following:

- Repair services, small equipment rental, laboratory testing services, computer and phone support services, janitorial services, and maintenance and servicing of equipment over a specified period.
- Consulting services such as accounting, inspection, plan review, finance, planning, legal or technical support.

6.2.2 Consultants and service providers, other than architects and engineers will be recommended by the department and approved by the City Council. The documentation for an award decision for service contracts will include:

- Council project authorization (may be in budget)
- Type of services needed and method of solicitation (i.e., newspaper, direct contact, etc.)
- Approximate value of contract.
- Term of contract
- Basis of selection and method of evaluation

6.2.3 Quotations will be used to ensure that a competitive price is established and the purchase contract will be awarded to the lowest responsible bidder as defined in this policy.

6.2.4 Service Contract Approvals

- All contracts and contract amendments for services require the approval of the city council regardless of dollar amount.
- Contracts for services and contract amendments where the total contract value is less than $5,000 may be placed on the consent agenda for council approval.
- Contracts for services and contract amendments where the total contract value is $5,000 or more must be approved by the city council as an affirmative action (i.e. placed on the agenda as an "action" item).

6.2.5 Purchases of services may be made within the following limits and approval:

1. Purchases less than $5,000 require at least two documented telephone or electronic quotes and must be approved by the Department Head and by action of the City Council. Criteria for approval include, but are not limited to:
   - cost
   - quantity
   - type of item
   - past purchasing history and length of time since the quotation process was performed
   - purchasing intervals,
   - availability
   - previous vendor performance
   - familiarity with available vendors
   - requisitioning departments
   - time line, etc.

2. Purchases between $5,000 and $15,000 require **written quotations** from **a minimum of two vendors**.

3. Purchases between 15,001 and 49,999 will require **three written quotes**.

4. Purchases of $50,000 or above - a request for proposal process is required.
   - Advertisement. The purchasing department shall advertise in appropriate publications and/or use the professional services listings, as available, during the solicitation process.
   - Fourteen-Day Notice. Notice inviting RFPs should be advertised at least fourteen calendar days before the due date of submission of the RFP.
   - Notice Contents. The notice shall, at a minimum, describe the general type of service needed, how the RFP minimum scope of work can be obtained, the requirement of a written sealed proposal, and state the closing date, place, and time for submission of the RFP.
   - Solicitation Procedure. Sealed request for proposals should be submitted to the city clerk or department head. RFP's need not be opened publicly. All proposals shall be analyzed by the mayor or city administrator and the requesting department for compliance with RFP requirements, value of total scope of services and a recommendation made to city council for

selection, or for follow up interviews of those submitting a proposal.

5. Purchasing departments may choose to use an RFP process 6.2.5(4) in lieu of the purchasing procedures for service contracts less than $50,000.

6.3 Public Works Projects:

6.3.1 Public works projects are governed by RCW 35.23.352 and RCW 39.04.155, as well as Resolution 9-12 for establishing a small works roster process. All public works contracts must be approved by the city council regardless of dollar amount.

- All public works contracts and contract amendments for services require the approval of the city council regardless of dollar amount.
- All public works contracts and contract amendments where the total contract value is less than $5,000 may be placed on the consent agenda for council approval.
- All public works contracts and contract amendments where the total contract value is $5,000 or more must be approved by the city council as an affirmative action (i.e. placed on the agenda as an "action" item).

6.3.2 The city is required to pay prevailing wage on all public works contracts and maintenance contracts of any nature and for any amount (RCW 39.12).

6.3.3 The city must withhold retainage and must also have a contractor's performance and payments bonds on file before awarding a contract unless the Limited Public Works process is used in accordance with RCW 36.04.155.

6.3.3 Small works roster. The small works roster may be used in lieu of competitive bidding for public works projects valued below $300,000 in accordance with Resolution 09-12.

6.3.4. Limited Public Works. The Limited Public Works process may be used for public works projects estimated to cost less than $35,000.

- Electronic or written quotes from a minimum of three contractors off the small works roster are required. The contract must be awarded to the lowest responsible bidder.

- The city may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW.

6.3.5 Projects for which the small works roster is not used will be handled as follows:

Less than $5,000	Purchases less than $5,000 require at least two documented telephone or electronic quotes and must be approved by the Department Head and by action of the City Council.
$5,000 - $15,000	Three written quotes are required.
One craft or trade $15,000 - $40,000	Three **written** quotes are required.
Multiple craft or trade $15,000 - $65,000	Three **written** quotes are required.
>$40,000 single craft or trade	Formal bidding is required.
>$65,000 multiple craft or trade	Formal bidding is required.

6,4 Professional Services:

6.4.1 Contracts for professional architectural, landscape architecture, surveying and engineering services require an advertising and negotiation process (Request for Qualifications) in accordance with RCW 39.80.

- Advertisement. The purchasing department shall advertise in appropriate publications and/or use the professional services listings, as available, during the solicitation process.
- Fourteen-Day Notice. Notice inviting RFQ should be advertised at least fourteen calendar days before the due date of submission of the RFQ.
- Notice Contents. The notice shall, at a minimum, describe the general type of service needed, how the RFQ minimum scope of work can be obtained, the requirement of a written sealed proposal, and state the closing date, place, and time for submission of the RFQ.
- Solicitation Procedure. Sealed request for proposals should be submitted to the city clerk or department head. RFQ need not be opened publicly. All proposals shall be analyzed by the mayor or city administrator and the requesting department for compliance with RFQ

requirements, value of total scope of services and a recommendation made to city council for selection, or for follow up interviews of those submitting a proposal.

6.4.2 Professional Service Contract Approvals

- All professional services contracts must be approved by the city council regardless of dollar amount.
- All professional services contracts and contract amendments for services require the approval of the city council regardless of dollar amount.
- All professional service contracts and contract amendments where the total contract value is less than $5,000 may be placed on the consent agenda for council approval.
- All professional service contracts and contract amendments where the total contract value is $5,000 or more must be approved by the city council as an affirmative action (i.e. placed on the agenda as an "action" item).

B-1

Purchasing and Bidding Chart for Local Agencies in Washington State

Revised June 10, 2009 * Effectve 7/26/09

What you need to know before using this chart:

My agency is a _____?
If my agency is a city or county, the population is _____?
If my agency is a city, we are a: (First Class City), (Code City), (2nd Class City) (Town)?
If my agency is a school district, we have _____ number of students district-wide?
If my agency is a county, we (have) (do not have) a central purchasing department?

Our purchase/project is: [Note - "Tabs" are hyperlinked in the electronic version.]

Tab A:	Purchase of equipment, supplies or materials unrelated to a public works project?
Tab B:	Purchase of architectural, engineering, surveying or landscape architectural services?
Tab C:	Purchase of other consulting services?
Tab D:	Purchase of other services? Janitorial services? Official Newspaper?
Tab E:	Purchase of solid waste collection and disposal services?
Tab F:	Purchase of electronic data processing and telecommunications systems?
Tab G:	Purchase or construction of pollution control equipment?
Tab H:	Lease of equipment without option to purchase?
Tab I:	Possible emergency, sole source purchase or special facility or market condition?
Tab J:	Purchase at auction?
Tab K:	Participation in - or lease of - a privately constructed project?
Tab L:	Public works project:
Tab L1:	Project (including sales tax) is estimated to cost more than $200,000?
Tab L2:	Project (including sales tax) is estimated to cost less than $200,000?
Tab L3:	Project may be below bid limits? Single craft? Multiple crafts?
Tab M:	Purchase under another agency's contract (piggybacking) under Ch. 39.34 RCW?
Tab N:	Purchase of energy?

Tab A Purchase of equipment, supplies, services, or materials unrelated to a public works project?

	Quotes Allowed	Vendor List Allowed (Note A)	Competitive Bids Req'd
Cities and Towns			
First Class City Over 150,000	Purchasing policies are set by City Council.		
First Class City Under 150,000	Purchasing policies are set by City Council.		
Code City Over 20,000	Purchasing policies are set by City Council.		
Code City Under 20,000	< $7,500	< $15,000	> $15,000
2nd Class City & Towns	< $7,500	< $15,000	> $15,000
Counties			
Over 400 K w/ Purchasing Department	< $5,000	< $25,000	> $25,000
Under 400 Kw/ Purchasing Department	< $5,000	< $25,000	> $25,000
Under 400 K w/o Purchasing Departmer	< $5,000	< $25,000	> $25,000
Water & Sewer Districts (Title 57 RCW)	< $10,000	< $50,000	> $50,000
Fire Districts (Title 52 RCW)	< $10,000	< $50,000	> $50,000
Port Districts (Title 53 RCW)	No bid limits.		
Public Utility Districts (Title 54 RCW)	See RCW 54.04.070 & 54.04.082		
Public Hospital Districts (Ch. 70.44 RCW)	N/A	< $15,000	> $15,000
Housing Authorities (Ch. 35.82 RCW)	??	??	??
School Districts (Title 28A.335.190 RCW)	< $40,000	< $75,000	> $75,000
	Except for book purchases.		
Metropolitan Park Districts [Ch. 35.61 RCW]	??	??	??

Note A: See RCW 39.04.190.

Tab B Purchase of architectural, engineering, surveying or landscape architectural services?

Contracts for professional architectural, landscape architecture, surveying and engineering services require quality based selection (QBS) and an advertising and negotiation process in accordance with Ch. 39.80 RCW. Look at: http://www.mrsc.org/pubworks/construct/conman2.htm

Tab C Purchase of other consulting services?

Contracts for other professional services (defined as activities such as consulting that have a primarily intellectual final product) may or may not require an advertising and negotiation process, depending on individual agency policies and/or grant funding agency policies.

Tab D Purchase of other services? Janitorial services? Official Newspaper?

Services are activities or projects for which an agency contracts and which are not considered a public work. Washington cities or towns are not required to seek competitive bids for services, except towns, second class cities and code cities with a population under 20,000 who must call annually for bids to select a city's official newspaper. Counties are not required to seek bids for any services, except annually for bids to select a county's official newspaper. Other agencies are generally not required to seek bids for services. However, the agency's attorney should be consulted if there is a question about bidding for specific services. Prevailing wages are required on public building service (janitorial) contracts (RCW 39.12.020). While RCWs generally do not require that services be put out for competitive bid, more restrictive policies may be/may have been adopted by an entity's governing body.

Purchasing and Bidding Chart for Local Agencies in Washington State

Revised June 10, 2009 * Effectve 7/26/09

Tab E Purchase of solid waste collection and disposal services?

Solid waste collection and disposal contracts do not have to be bid. An RFQ/RFP process as noted in RCW 35.21.156 is allowed (and recommended).

Tab F Purchase of electronic data processing and telecommunications systems?

RCW 39.04.270 authorizes municipalities to use a "competitive negotiation" process as an alternative to the competitive bid process when purchasing telecommunications and data processing (computer) equipment or software. This alternative process requires publishing a request for proposals (RFP) that identifies significant evaluation factors, including price, and their relative importance and provides reasonable procedures for technical evaluation of the proposals, identification of qualified sources, and the selection process for awarding the contract.

Tab G Purchase or construction of pollution control equipment?

Note the following excerpt from the MRSC Bidding Book, pages 28 & 29:

> Chapter 70.95A RCW, relating to pollution control facilities and enacted in 1973, may offer an important exception to bidding requirements. Although the primary emphasis of the chapter relates to financing pollution control facilities, one section may exempt certain projects from bidding requirements that might otherwise apply. RCW 70.95A.090 states in part: The [pollution control] facilities shall be constructed, reconstructed, and improved . . . in the manner determined by the governing body in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for the award of contracts for such purpose . . . is not applicable to any action taken under authority of this chapter.
>
> The term "facility" is defined to mean "any land, building, structure, machinery, system, fixture, appurtenance, equipment or any combination thereof . . . which is used or to be used . . . in furtherance of the purpose of abating, controlling, or preventing pollution. "Pollution" is defined broadly to include water pollution, land pollution, solid waste disposal, thermal pollution, radiation contamination, or noise pollution.
>
> Although there have not been any relevant appellate court decisions or attorney general opinions on the statute, it would appear that its terms could be used to forgo bidding whenever a city or town constructs or reconstructs a building or structure or acquires fixtures or equipment which will be used for pollution control. Given the broad scope of the statute, this exception to the bid laws could be far-reaching. Cities may be able to build a sewage lagoon, aerate a lake, or purchase a landfill scale, all without going out for bids.
>
> However, in view of the lack of appellate or other authority regarding the chapter's use, cities should use caution in deciding to make use of its provisions. Asking the Department of Ecology to certify that the project is designed to abate, control, and/or prevent pollution would be a judicious step to take before ignoring the bid laws.

Almost all local government agencies can make use of this statute.

Tab H Lease of equipment without option to purchase?

In cities, leases without an option to purchase are not subject to bid limits and do not need to be competitively bid. Debt limits may apply, however. In counties, all leases must be competitively bid. All other agencies must follow their enabling statutues or board/commission policies.

Tab I Possible emergency, sole source purchase or special facility or market condition?

Competitive bidding requirements may be waived by the governing body of the municipality as noted in RCW 39.04.280 for:

(a) Purchases that are clearly and legitimately limited to a single source of supply;
(b) Purchases involving special facilities or market conditions;
(c) Purchases in the event of an emergency;
(d) Purchases of insurance or bonds; and
(e) Public works in the event of an emergency.

(2)(a) The waiver of competitive bidding requirements under subsection (1) of this section may be by resolution or by the terms of written policies adopted by the municipality, at the option of the governing body of the municipality. If the governing body elects to waive competitive bidding requirements by the terms of written policies adopted adopted by the municipality, immediately after the award of any contract, the contract and the factual basis for the exception must be recorded and open to public inspection.

If a resolution is adopted by a governing body to waive competitive bidding requirements under (b) of this subsection, the resolution must recite the factual basis for the exception. This subsection (2)(a) does not apply in the event of an emergency.

(b) If an emergency exists, the person or persons designated by the governing body of the municipality to act in the event of an emergency may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract.

(3) For purposes of this section "emergency" means unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate a ction is not taken.

Tab J Purchase at auction?

All agencies can purchase at auctions (RCW 39.30.045)

Tab K Participation in - or lease of - a privately constructed project?

RCW 39.04.260 states that "Any work, construction, alteration, repair, or improvement, other than ordinary maintenance, that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities shall comply with chapter 39.12 RCW (prevailing wage laws).

Purchasing and Bidding Chart for Local Agencies in Washington State

Revised June 10, 2009 * Effectve 7/26/09

Tab L Public works project:

See Tab L3 to see if the estimated project cost is below bid limits for your agency.

If the cost of a public works project exceeds applicable bid limits, a local government **must** use a competitive bid process, small works roster process or limited public works process for public works projects. RCW 39.04.010 defines the term "public work" as follows:

"The term public work shall include all work, construction, alteration, repair or improvement **other than ordinary maintenance**, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. (Emphasis added.)" Note that this definition of public work includes construction and repair but excludes ordinary maintenance. But what is "ordinary maintenance"? The statutes provide no definition. However, WAC 296-127-010(7)(b)(iii), which defines "ordinary maintenance" in the context of prevailing wages, can be used to craft a definition that distinguishes ordinary maintenance from a public work for bidding purposes:

> [Ordinary maintenance is] defined as work *not performed by contract* and that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually, but not less frequently than once per year), to service, check, or replace items that are not broken; or work not performed by contract that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary. (Emphasis supplied.)

To correctly apply bid limit dollar amounts to determine if a public works project must be competitively bid, the total cost of each project or purchase must be estimated. The total construction cost - estimated as if the project were to be bid –is used to make that determination. To be included are materials, supplies, equipment, and labor on the construction of that project **AND** applicable sales and use taxes. However, the value of volunteer labor, material, or equipment need not be included in the cost estimate for a public works project, as these are not a cost to the agency.

Tab L1: Project (including sales tax) is estimated to cost more than $300,000?

Projects over $200,000 must be competitively bid except for agencies who are authorized to use the alternate public work contracting procedures of chapter 39.10 RCW or if the project is for pollution control project which may qualify under chapter 70.95A RCW.

Tab L2: Project (including sales tax) is estimated to cost less than $300,000?

If the estimated project cost is less than $300,000, the agency may use the small works roster process of RCW 39.04.155.

$150,000 - $300,000

If the estimated cost of the work is $150,000 to $300,000, a local government, other than a port district, that solicits bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors that quotations on the work are being sought. The local government has the sole option of determining whether this notice to the remaining contractors is made by publishing notice in a legal newspaper in general circulation in the area where the work is to be done; mailing a notice; or sending a notice by facsimile or other electronic means.

<150,000

Quotations may be invited from all appropriate contractors on the appropriate small works roster for all projects less than $300,000. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster.

< $35,000

RCW 39.04.155(3) allows authorized local governments to solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and to award the contract to the lowest responsible bidder as defined under RCW 43.19.1911 for contracts of less than $35,000. For these 'limited public works projects,' a local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project. However the local government has the right of recovery against the contractor for any payments made on the contractor's behalf.
SHB 1328 (Chapter 210, 2007 Laws) allows use of the combined intent and affadavit process of RCW 39.12.040(2) for projects using this limited public works process.

SHB 1328 (Chapter 210, 2007 Laws) Added RCW 39.04.155 (5):
(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.
(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

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Purchasing and Bidding Chart for Local Agencies in Washington State

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< $35,000

RCW 39.08.010 states that on contracts of thiry-five thousand dollars or less - at the option of the contractor - the agency may, in lieu of a performance and payment bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later.

< $2,500

Intent to pay prevailing wages for any size project must be approved by Department of Labor and Industries before payment is made under contract. Affidavit that prevailing wages have been paid is always required following completion of contract. For contracts under $2,500, the Intent and Affidavit may be combined and sent to Department of Labor and Industries after contract completion.

Small Works Roster Setup - The municipality must first pass a resolution or ordinance authorizing use of the SWR process and establishing procedures for the award of public works contracts using the SWR process for contracts up to200,000 and limited public work process up to $35,000. An agency may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. Small works roster(s) shall consist of all responsible contractors who have requested to be on the roster(s), and - where required by law - are properly licensed or registered to perform such work in this state. Contractors desiring to be placed on a roster or rosters must keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the agency as a condition of being placed on a roster or rosters. At least once a year, the municipality shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to an appropriate roster or rosters at any time that they submit a written request and necessary records. The agency may require master contracts to be signed that become effective when a specific award is made using a small works roster. Several agencies may agree to use the same small works roster. However, an interlocal contract or agreement among local governments establishing a small works roster or rosters must clearly identify the lead entity that is responsible for implementing the small works roster provisions.

Tab L3: Project may be below bid limits? Single craft? Multiple crafts?

	Bid Limits	
Cities and Towns	Single Craft	Multiple Crafts
First Class City	$45,000 (1)	$90,000 (1)
Code City	$40,000	$65,000
2nd Class City & Towns	$40,000	$65,000
Counties		
Over 400 K w/ Purchasing Department	$45,000 (2) (3)	$90,000 (2) (3)
Over 400 K w/o Purchasing Department	$40,000(3)(4)	$40,000(3)(4)
Under 400 K w/ Purchasing Department	$40,000(3)(4)	$40,000(3)(4)
Under 400 K w/o Purchasing Departmer	$40,000(3)(4)	$40,000(3)(4)
Water & Sewer Districts (Title 57 RCW)	$20,000	$20,000
Fire Districts (Title 52 RCW)	$20,000	$20,000
Port Districts (Title 53 RCW)	$300,000, except note RCW 53.08.135	
Public Utility Districts (Title 54 RCW)	See RCW 54.04.070 & 54.04.082	
Public Hospital Districts (Ch. 70.44 RCW)	$75,000	$75,000
Housing Authorities (Ch. 35.82 RCW)	??	??
School Districts (RCW 28A.335.190)	$40,000	$40,000
Higher Education (RCW 28B.10.350)	$45,000	$90,000
Metropolitan Park Districts [Ch. 35.61 RCW]	$20,000	$20,000

Notes:

1) RCW 35.22.620(2) further limits the dollar value of public works performed by city employees or day labor to ten (10) percent of the total public works construction budget in a given budget period. Work performed within a city by county employees under an interlocal agreement is to be included in this limit.
2) Also subject to annual limit of 10% of public works construction budget (RCW 36.32.235).
3) Also subject to county road force limitations for road funds under RCW 36.77.065
4) Not a bid limit, per se, but is a limit below which informal contracting procedures may be used.

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Purchasing and Bidding Chart for Local Agencies in Washington State

Revised June 10, 2009 * Effectve 7/26/09

Tab M Purchase under another agency's contract (piggybacking) under Ch. 39.34 RCW?

Chapter 39.34 RCW allows cooperative purchasing between public agencies (political subdivisions). For the purposes of this chapter, the term "public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state. Public agencies which have filed an Intergovernmental Cooperative Purchasing Agreement (ICPA) with the each other may make purchases from each others contract awards, if the Vendor has agreed to such participation. The awarding agency does not accept any responsibility for orders placed by other public agencies. A public agency purchasing under another agency's contract accepts responsibility for compliance with statutes (including bid limits) governing purchase by or on behalf of itself.

Each participating agency must have the power to do individually what it agrees to do jointly. Public agencies may purchase from contracts entered by other public agencies if

– The contract is determined to have been awarded in compliance with bidding requirements of the agency seeking to purchase, except note HB 2615 (2004).

– There is no statutory provision prohibiting such a purchase.

HB 2615 (2004) added this language to RCW 39.34.030:

– With respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal, or contract awarded by another public agency or by a group of public agencies, any statutory obligation to provide notice for bids or proposals that applies to the public agencies involved is satisfied if the public agency or group of public agencies that awarded the bid, proposal, or contract complied with its own statutory requirements and either

– (i) posted the bid or solicitation notice on a web site established and maintained by a public agency, purchasing cooperative, or similar service provider, for purposes of posting public notice of bid or proposal solicitations,

– or ii) provided an access link on the state's web portal to the notice.

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Tab N Purchase of energy?

RCW 39.35A states that a municipality may, after a competitive selection process, negotiate a performance-based energy contract with a firm that offers the best proposal. If a municipality chooses, by resolution or other appropriate mechanism, to negotiate a performance-based contract under RCW 39.35A, no otherwise applicable statutory procurement requirement applies. A performance based energy contract is defined as: "... one or more contracts for energy equipment and services between a municipality and any other persons or entities, if the payment obligation for each year under the contract, including the year of installation, is either: (a) Set as a percentage of the annual energy cost savings attributable under the contract to the energy equipment and services; or (b) guaranteed by the other persons or entities to be less than the annual energy cost savings attributable under the contract to the energy equipment and services. Such guarantee shall be, at the option of the municipality, a bond or insurance policy, or some other guarantee determined sufficient by the municipality to provide a level of assurance similar to the level provided by a bond or insurance policy."

The Washington State Department of General Administration is to maintain a registry of energy service contractors and provide assistance to municipalities in identifying available performance-based contracting services.

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MRSC
Local Government Success

Purchasing and Bidding: Services, Equipment, Materials and Supplies

Services

Washington cities or towns are not required to seek competitive bids for services, except towns, second class cities and code cities with a population under 20,000 who must call annually for bids to select a city's official newspaper. Counties are not required to seek bids for any services, except annually for bids to select a county's official newspaper. Other agencies are generally not required to seek bids for services. However, the agency's attorney should be consulted if there is a question about the need for bidding specific services.

Services are non-public works activities requiring labor, equipment, supplies and materials for which an agency contracts, on a periodic and/or routine basis.

Examples include:

- customized accounting software and ongoing support services, as opposed to purchase of an "off-the-shelf" program with minimal support
- cemetery, landscaping, building and grounds maintenance contracts (Note: Prevailing wages are required on public building service (janitorial) contracts (RCW 39.12.020 (http://apps.leg.wa.gov/rcw/default.aspx?cite=39.12.020)).)
- utility billing services
- yearly contracts for snow and ice removal
- garbage collection and disposal (Note: Solid waste collection and disposal contracts do not have to be bid. An RFQ/RFP process as noted in RCW 35.21.156 (http://apps.leg.wa.gov/rcw/default.aspx?cite=35.21.156) can be used and is recommended.)
- maintenance contracts for office equipment, including computers
- official newspaper
- contracts for professional architectural, landscape architecture, surveying and engineering services

Contracts for professional architectural and engineering services require an advertising and negotiation process in accordance with Ch. 39.80 RCW (http://apps.leg.wa.gov/rcw/default.aspx?cite=39.80). Contracts for other professional services (defined as activities such as consulting that have a primarily intellectual final product) may or may not require an advertising and negotiation process, depending on individual agency policies.

Equipment, Materials and Supplies

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Many purchases made by agencies are not connected to a public works project. Items in this category include supplies, materials and equipment that are for general government purposes or will not be used to accomplish a specific public works project. Office supplies and equipment are obvious examples as are vehicle and specialty equipment purchases by agency departments. Other, not so obvious examples are:

- Acquisition of a telephone system that requires installation of cable, conduits, and other devices may fall within the definition of a public work. If, however, the acquisition were merely of hardware, such as telephones, it would probably be considered an equipment purchase.
- Purchase of a number of parking meter heads, which will be stockpiled in a warehouse and used over a period of time to replace defective heads, would be an equipment purchase. However, if the heads are being purchased in connection with a specific project and will be installed within a short period of time, it probably is a public work. Similarly, stockpiling traffic signal heads, poles, wire, etc., for routine maintenance and repair would be an equipment purchase.

As the Purchasing and Bidding Chart for Local Agencies in Washington State (/Corporate/media/MediaLibrary/SampleDocuments/GovDocs/PurchasingChartA.pdf) illustrates, all local governments can use the 'vendor list' procedure set out in RCW 39.04.190 (http://apps.leg.wa.gov/rcw/default.aspx?cite=39.04.190) for purchases of equipment, materials and supplies that are not to be used in connection with any public work or improvement. Second class cities, towns, and code cities with a population under 20,000 and all counties must call for bids costing more than $7,500 (cities) or $2,500 (counties). However, advertisement and formal sealed bidding may be dispensed with for purchases between $7,500 and $15,000 (cities) or between $2,500 and $25,000 (counties), if the governing body authorizes, by resolution, use of this vendor list procedure. Similar limits for other municipalities are shown in the chart (/Corporate/media/MediaLibrary/SampleDocuments/GovDocs/PurchasingChartA.pdf). Cost estimates must include applicable sales and use taxes. Many agencies include vendor list and small works roster procedures in the same resolution or ordinance.

A vendor list may be used to secure telephone or written quotations under certain conditions, as follows:

- The agency must advertise at least twice a year in a newspaper of general circulation that a vendor list (or lists, if they want to keep different vendor lists for different products) exists and it must solicit names for the list.
- If possible, at least three quotations should be secured to ensure a competitive process, with the contract being awarded to the lowest responsible bidder.
- Immediately after the award, all bid quotations that the agency obtained must be recorded and made open to public inspection. This information must also be available to those who inquire by telephone.
- At least every two months, an agency using vendor lists must post a list of contracts awarded. The list must contain the name of the vendor, the amount of the contract, a brief description of items purchased, and the date of the award.

RCW 39.04.270 (http://apps.leg.wa.gov/rcw/default.aspx?cite=39.04.270) authorizes local governments to use a "competitive negotiation" process as an alternative to the competitive bid process when purchasing telecommunications and data processing (computer) equipment or software. This alternative process requires, at a minimum, the following steps:

- A request for proposals (RFP) must be published in a newspaper of general circulation at least 13 days before the last date on which the proposals will be received.

e.3

- The RFP must be submitted to an adequate number of qualified sources, as determined by the agency in its discretion, to permit reasonable competition consistent with the requirements of the procurement.
- The RFP must identify significant evaluation factors, including price, and their relative importance.
- The agency must provide reasonable procedures for technical evaluation of the proposals, identification of qualified sources, and the selection process for awarding the contract. The award must be made to the qualified bidder whose proposal is "most advantageous" to the agency and the agency may reject all proposals for good cause and request new proposals.

Return to Purchasing and Bidding Contents (/Home/Explore-Topics/Public-Works/Purchasing-and-Bidding/Purchasing-and-Bidding-for-Washington-State-Local.aspx)

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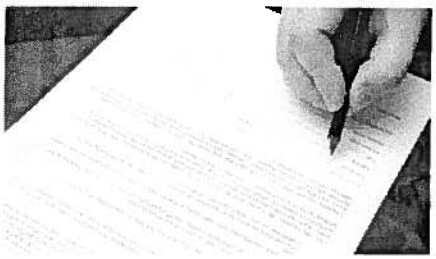
Important Tips for Writing Your Agency's Procurement Policies

January 29, 2015 by John W. Carpita, PE (/Home/Stay-Informed/MRSC-Insight.aspx?aid=107)
Category: Purchasing and Bidding (/Home/Stay-Informed/MRSC-Insight.aspx?catID=138&cat=Purchasing and Bidding)



No doubt most public servants take great care to spend public funds carefully, with propriety, and, most importantly, legally. That said, when it comes to purchasing and bidding, clearly adhering to a systematic process can sometimes be difficult. Irregularities in purchasing and bidding fall within the top five most common SAO audit findings. These missteps - especially when magnified by media reporting - erode public trust in an agency's management skills.

One way to combat these issues and maintain public trust is through strict adherence to an agency-wide procurement policy/procedure manual. If your agency doesn't yet have a procurement manual, or if you're looking to give yours a refresher, I've put together a few tips in checklist form to help you get started.

All Procurements

- Reference any RCW sections that contain purchasing and contracting guidance (bid limits, etc.) specific to your agency. If there are no such limits stated, then your entity can and should establish reasonable thresholds and processes for purchases, services, and public works contracts.
- State a code of ethics to guide the personal and professional conduct of agency personnel who manage or participate in procurement activities.
- For each type of procurement (purchases, services, and public works contracts) acknowledge general principles of:
  - minimal competition for small purchases/contracts
  - informal competition for larger purchases/contracts
  - formal competition for purchases/contracts

Purchases

- For purchases below the agency's bid limits, identify reasonable procedures for obtaining quotes from vendors (number of quotes, process, and documentation).
- For purchases, most agencies can take advantage of the "vendor list" process of RCW 39.04.190 (http://apps.leg.wa.gov/rcw/default.aspx?cite=39.04.190) for purchases above the agency's minimal competition bid limits. The agency's process/policy should restate the statutory guidance and add any nuances due to its internal procedures.
- For purchases above the bid limits and/or vendor list limit, identify competitive parameters for bid advertisements (official newspaper and/or web site postings), sealed bids, public bid openings, protests, etc.

- Set forth procedures and practices for use of DES master contracts, federal contracts, and intergovernmental purchases. CS

Public Works Contracts

- For public works contracts of any size, note that prevailing wages must be paid and that contracts can only be awarded to properly licensed contractors in accordance with RCW 39.04.350 (http://app.leg.wa.gov/rcw/default.aspx?cite=39.04.350).
- Recognize sales tax, retainage and bonding requirements that may apply.
- For public works contracts below the agency's bid limits, identify reasonable procedures for obtaining quotes from contractors (number of quotes, process, and documentation).
- For public works contracts less than $300,000, most agencies can take advantage of the small public works roster process in RCW 39.04.155 (http://apps.leg.wa.gov/rcw/default.aspx?cite=39.04.155) for contracts above (and below) the agency's minimal competition bid limits. The agency's process/policy should restate the statutory guidance and add any nuances due to its internal procedures or use of a rosters service provider.
- For public works contracts above bid limits and/or $300,000, identify competitive parameters for bid advertisements (official newspaper and/or website postings), sealed bids, public bid openings, protests, etc.
- Note need for certificates of insurance.

Professional A/E Services

- Note that a qualifications-based selection (QBS) procedure is required. Under that process, an agency assesses the expertise of competing firms and selects the most highly-qualified firm, then negotiates the final project scope and associated fee. If the agency and most highly-qualified firm cannot reach an agreement on project scope, schedule, and budget, the agency then negotiates with the next most highly-qualified firm.
- Advance notification of need for A/E services must be provided via a legal advertisement for a given need or solicitation for a consultant roster.

Personal Services Contracts

- Except for port districts under chapter 53.19 RCW (http://app.leg.wa.gov/rcw/default.aspx?cite=53.19) and public facility districts under chapter 36.100 RCW (http://app.leg.wa.gov/rcw/default.aspx?cite=36.100), local agencies in Washington State have no statutory restrictions on contracting for personal services and so have great latitude in setting their own policies and procedures.
- An agency should include policies and procedures that recommend differing levels of effort and procedure in selecting a service provider based on the estimated contract price and the complexity and type of project or work to be accomplished.
- Levels of competition for the purposes of this blog are minimal, informal, and formal.

Purchased Services Contracts

- Local agencies in Washington State have no statutory restrictions on contracting for purchased services and so have great latitude in setting their own policies and procedures.
- An agency should include policies and procedures that recommend differing levels of effort and procedure in selecting a service provider based on the estimated contract price and the complexity and type of project or work to be accomplished.

- Levels of competition for the purposes of this blog are minimal, informal, and formal.

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Exemptions to Competitive Processes

RCW 39.04.280 (http://app.leg.wa.gov/rcw/default.aspx?cite=39.04.280) provides uniform exemptions to municipal competitive bidding requirements when awarding contracts for equipment, supplies, and material purchases and for public works projects

Under this statute, competitive bidding procedures may be waived by resolution of the governing body of the municipality for:

- Purchases that are clearly and legitimately limited to a single (sole) source of supply
- Purchases involving special facilities or market conditions
- Purchases in the event of emergency
- Purchases of insurance or bonds
- Public works contracts in the event of an emergency.

Auctions

RCW 39.30.045 (http://app.leg.wa.gov/rcw/default.aspx?cite=39.30.045) allows any municipality, as defined in RCW 39.04.010 (http://app.leg.wa.gov/rcw/default.aspx?cite=39.04.010), to purchase any supplies, equipment, or materials at auctions conducted by the federal government, any state agency, any municipality or other government agency, or any private party without being subject to public bidding requirements, if the items can be obtained at a competitive price. MRSC recommends preapproval by the manager/council/commission of an upper bidding limit for the person doing the bidding.

For further insights and sample procurement policies from a number of agencies on this issue, check out our Purchasing, Bidding, and Contract Management Sourcebook (http://www.mrsc.org/getdoc/f4c11347-6d12-47a9-b63b-ae076177147f/Purchasing,-Bidding,-and-Contract-Management-Sourc.aspx), which contains sample documents, presentations by various individuals, and training resources that I've collected over my many years in the industry.

About John W. Carpita, PE

Public Works Consultant John is MRSC's resource for engineering design, purchasing and bidding issues, contract document preparation, construction contract issues, local improvement districts, sewer, water, storm drainage and solid waste issues, as well as resource conservation. He's a registered professional engineer and has had a widely varied 42-year career as a consultant, county engineer, city engineer and project manager.

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Comments

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EXHIBIT A

POLICY/PROCEDURE

TITLE **PURCHASING AND SURPLUS PROPERTY GUIDELINES**			NUMBER **400-92-01**
EFFECTIVE DATE JULY 15, 2000	SUPERCEDES #518.001 (dated 1/4/92)	PAGE NUMBER 1 OF 20	

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EXHIBIT A

SECTION 1.0 GENERAL

1.1 PURPOSE

This document establishes guidelines and clarifies the policies and procedures for purchasing supplies and materials, and contracting for services by the City of Everett.

This document does not create any enforceable rights or causes of actions in third parties. City staff risk disciplinary action for unauthorized departure from these guidelines.

1.2 GOALS

The City's contracting, purchasing, and property disposal goals include:

- Maintaining the quality and integrity of the City's purchasing system;
- Maximizing the purchasing value of City of Everett's funds;
- Providing a uniform citywide purchasing system to the extent practical and feasible;
- Assuring fair and equitable treatment of people who deal with the City's purchasing system; and
- Disposing surplus and scrap materials in accordance with state law and City Charter.

1.3 SCOPE

These guidelines apply to public works project contracts; the acquisition of supplies, equipment, and material; and the acquisition of services such as telecommunication services, data processing services, and professional services, including architectural and engineering design services.

These guidelines do not apply to the acquisition, sale, conveyance, or lease of real property.

If federal or state financial assistance, grants, or funding is involved in the proposed acquisition and/or contract, the program management requirements should be obtained from the appropriate agency. Such requirements are beyond the scope of these guidelines.

1.4 CONTROLLING LAWS

All purchases shall comply with the appropriate and relevant federal, state, and City laws and policies. If, and to the extent, the appropriate and relevant federal or state laws, regulations, grants, or other requirements then existing vary from these guidelines, such laws, regulations, grants, or other requirements should be followed. Contact the city attorney's office when questions regarding potential conflicts arise.

1.5 PROPER AUTHORIZATION

Only authorized individuals may obligate the City to acquire goods and services. Individuals purchasing goods on behalf of the City without proper authorization may be personally liable to the vendor and the City, and may be disciplined.

Purchase orders commit City funds for the acquisition of goods or services. In their capacity as the City's purchasing agents, the purchasing manager and buyers are authorized to issue purchase orders on behalf of the City in accordance with this guideline.

1.6 PURCHASE REQUISITION

The purchase requisition is the first step in the purchasing procedure. The requisition should be submitted to the Purchasing Division in a timely fashion to allow adequate time for review, price quotations, and the preparation of a purchase order. The length of time needed to obtain an item will depend upon the characteristics of the product or service sought, the number of alternative vendors or contractors, availability of the product, etc.

A purchase requisition is an internal instrument that communicates a department's needs to Purchasing. It is never to be conveyed directly to a vendor. Individuals must submit a computer access request form, signed by their department directors, to gain access to enter, edit, and approve purchase requisitions for a specific budget. *It is the department director's responsibility to insure that total annual expenditures do not exceed the authorized budget appropriation.*

If you have questions regarding how to complete the purchase requisition, please contact the Purchasing Division.

SECTION 2.0 POLICY GUIDANCE

SUBJECT MATTER	EXPECTED TOTAL COST (including sales tax, freight, etc.)	PAGE
Competitive bids for equipment, material, supplies, and services (other than professional services)	$75,000 or more $50,000 to $74,999 $10,000 to $49,999 Less than $10,000	7 7 8 8
Small Purchases	Less than $2,000	8
Competitive Negotiation		9
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EXHIBIT A

(1) When purchases and contracts are obtained by competitive bidding, such purchases and contracts shall be awarded to the lowest responsive and responsible bidder. When purchases and contracts are obtained through competitive negotiation, purchases and contracts shall be awarded to the bidder whose proposal is most advantageous to the City with price and other factors considered. When determining whether a bidder in a competitive bid is responsible, or when evaluating a bidder's proposal in competitive negotiation for purchases and contracts, the following factors will be considered, any one of which will suffice to determine a bidder is either not the lowest responsible bidder or the bidder's proposal is not the most advantageous to the City:

A. The ability, capacity and skill of the bidder to perform the contract or provide the service required.

B. The character, integrity, reputation, judgment, experience and efficiency of the bidder.

C. Whether the bidder can perform the contract within the time specified

D. The quality of performance of previous public and private contracts or services, including, but not limited to, the bidder's failure to perform satisfactorily or complete any written contract. The City's termination for default of a previous contract with a bidder shall be deemed to be such a failure.

E. The previous and existing compliance by the bidder with laws relating to the contract or services.

F. More than one proposal is submitted for the same project from a bidder under the same or different names.

G. Evidence of collusion with any other bidder, in which case colluding bidders will be restricted from submitting further bids on the subject project or future tenders.

H. The bidder is not qualified for the work or to the full extent of the bid.

I. There is uncompleted work with the City or others, or an outstanding dispute on a previous or current contract that might hinder, negatively affect or prevent the prompt completion of the work bid upon.

J. The bidder failed to settle bills for labor or materials on past or current public or private contracts.

K. The bidder has been convicted of a crime arising from a previous public contract, excepting convictions that have been pardoned, expunged, or annulled.

L. The bidder has been convicted of a crime of moral turpitude or any felony, excepting convictions that have been pardoned, expunged or annulled, whether in this state, in any other state, by the United States, or in a foreign country, province or municipality. Bidders shall affirmatively disclose to the City all such convictions, especially of management personnel or the bidder as an entity, prior to notice of award or execution of a contract, whichever comes first. Failure to make such affirmative disclosure shall be grounds, in the City's sole option and discretion, for termination for default subsequent to award or execution of the contract.

M. More likely than not, the bidder will be unable, financially or otherwise, to perform the work.

N. At the time of bid opening, the bidder is not authorized to do business in Washington, is not registered as a contractor in Washington, or otherwise lacks a necessary license, registration or permit.

O. Such other information as may be secured having a bearing on the decision to award the contract.

P. Any other reason deemed proper by the City.

(2) As used in this policy, "bidder" means any vendor, supplier, contractor, person, or entity that seeks to enter into a commercial relationship with the City, including, but not limited to, those who respond to requests for bids and proposals. Bidder, includes, but is not limited to, one or more principals, owners, officers, directors, shareholders, partners, members, managers, or control persons of the person submitting the bid, and persons associated or affiliated with the person submitting a bid or proposal. "Person" as used herein includes both natural persons, corporations, partnerships, sole proprietorships, limited liability companies, and any other business entity, combination or association, whether for profit or non-profit.

Determining the Expected Total Cost of the Purchase

2.1 Anticipated Cost

The anticipated annual need for a particular good or service should be used to determine the appropriate threshold.

2.2 Avoiding Thresholds

Requirements must not be divided so as to constitute a lesser threshold under this section.

2.3 Annual Cost

Closely related goods will be considered as one purchase on an annual basis when determining which threshold applies.

2.4 Total Cost

The total cost of goods or services, including any applicable taxes, freight, set-up, or die charges, shall be considered when determining which threshold applies.

2.5 Total Quantity

Requirements for the total quantity of an item shall be considered together when determining which threshold applies.

Example
If one pump is to be purchased now at an estimated cost including sales tax and delivery of $8,959, but a total of three pumps are expected to be purchased during the year at an aggregate cost of $26,877 ($8,959.00 times three), then the procurement of the first pump falls within the $10,000 to $49,999 category

2.6 Items Used in Conjunction

If two or more items are designed or intended to be used in conjunction with each other, the total accumulated costs of all such items shall be considered together to determine which threshold applies, unless these components are not available from a single supplier.

Example
Water meter covers and lids are usually used in conjunction with each other.
Estimated requirements for the calendar year are:

Quantity expected to be acquired over the year	Description	Unit Price	Total
250	Standard water meter covers with small insert lids	$50.00	$12,500.00
250	Heavy duty water meter covers with small insert lids	$39.46	$9,865.00
250	Small insert lids for standard and heavy duty meter covers	$3.75	$937.50
	Tax		$1,840.90
Total			$25,143.40

The total accumulated cost of these items used in conjunction with each other should be handled as a purchase costing between $10,000 and $49,999, even if a smaller quantity is later purchased.

2.7 Multiphase Programs

If the total, overall objective of any specific program over a calendar year's time is to be completed in phases, the total accumulated cost for all phases will be considered when determining which threshold applies.

Example
A golf course is fertilized three times a year, and the material cost for each fertilization is $9,000 (including tax and freight). The three-phase program then has a total material cost of $27,000, and should be handled as a purchase costing between $10,000 and $49,999. Delivery times may be established for each phase.

2.8 Multi-Department Requirements

To the extent practical, the requirements of separate departments and divisions for the same goods or services will be considered together when determining which threshold applies.

Example
All City departments require miscellaneous paper products such as toilet paper, hand towels, garbage can liners, etc. Each department should provide an estimate of its needs to the Purchasing Division so it can aggregate the requirements to obtain the best price/delivery from vendors.

2.9 Trade-Ins

The value of a trade-in will not be included when determining which threshold applies. However, the trade-in price will be considered when determining the lowest responsive and responsible bid.

SECTION 3.0 COMPETITIVE BIDS FOR EQUPMENT, MATERIAL, SUPPLIES, AND SERVICES (OTHER THAN PROFESSIONAL SERVICES)

The competitive bidding method is the preferred method to acquire equipment, material, supplies, and services (other than professional services).

Bid specifications should incorporate a clear and accurate description of the technical requirements for the material, product, or service to be purchased. Such descriptions should not contain features that unduly restrict competition. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used. The responsibility of demonstrating to the City's satisfaction that a product is "equal" to that specified shall be on the vendor proposing the substitution. Requests for approval of substitutions must be made with sufficient time to allow the City to adequate review the proposal, including time for vendors to respond to questions and requests for additional information or clarification. The City has no obligation to accept proposed substitutions or engage outside consultants or experts to evaluate proposed substitutions. Acceptance of a substitute product proposed as an "equal" to that specified will be made in writing and, if made prior to bid, other bidders will be notified if practical and convenient.

EXHIBIT A

3.1 Award

The contract will be awarded to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids. If there are questions or concerns regarding whether a bidder is responsible, refer to Section 2.0 of this Policy and the City Attorney:

Any recommendation that uses life cycle costing to determine the lowest responsive and responsible bidder must be approved by the finance director. Local taxes generated by the purchase may be considered when determining the lowest responsive and responsible bid as permitted by RCW. 39.030.040. When a trade-in option is in the City's best interests, the price offered on the trade will be considered when determining the lowest responsive and responsible bid.

3.2 Cancellation

An invitation for bids may be cancelled; or the City, at its sole discretion, may reject any or all bids in whole or in part.

3.3 Competitive Bidding - $75,000 or more

City Council approval of a call for bids will be sought in response to a properly authorized purchase requisition submitted to the Purchasing Division that includes clear, concise written specifications. Such requisitions will include approval by the Mayor/designee or the appropriate department director/designee. Once approved, the Purchasing Division will solicit sealed bids.

Original specifications and the original bid responses will be retained for review and audit as required in the city clerk's vault.

At least one notice of the call for bids will be published in the City's official newspaper at a minimum of thirteen (13) days prior to bid opening.[1] Other methods may be used to attract potential bidders in addition to, but not in place of, publication in the City official newspaper. For example, notices may be placed on the City's Internet web site, or advertised in trade papers or magazines.

Sealed bids will be submitted to the city clerk at the location specified in the invitation or call for bids. At the appointed time, all bids will be opened and read aloud in the presence of the bidders or their representatives. Bid openings are usually scheduled for 2:00 p.m., Tuesdays. Contract forms must be reviewed and approved by the Legal Department.

City Council will make all bid awards. Once an award is made, Purchasing will issue a purchase order to the successful bidder. Such purchase orders will be signed by the purchasing manager and reference City Council's award.

3.4 Competitive Bidding - $50,000 to $74,999

Purchasing will obtain sealed bids in response to the receipt of a properly authorized purchase requisition that includes clear, concise written specifications. Council approval of bid calls in this dollar range is not required. Such requisitions will include approval by the Mayor/designee or the appropriate department director/designee.

Both the original specifications and the bid responses will be retained for review and audit as required in the city clerk's vault.

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[1] Charter § 4.13

At least one notice of the call for bids will be published in the City official newspaper at a minimum of thirteen (13) days prior to bid opening.[2] Other methods may be used to attract potential bidders in addition to, but not in place of, publication in the City official newspaper. For example, notices may be placed on the City's Internet web site, or advertised in trade papers or magazines.

Sealed bids will be submitted to the city clerk at the location specified in the invitation or call for bids. At the appointed time, all bids will be opened and read aloud in the presence of the bidders or their representatives. Bid openings are usually scheduled for 2:00 p.m., Tuesdays.

Contract forms must be reviewed and approved by the Legal Department.

The Purchasing Division will make the award and issue a purchase order, signed by the purchasing manager, to the successful bidder.

3.5 Competitive Bidding - $10,000 to $49,999

Buyers will solicit written bids in response to receipt of a properly authorized purchase requisition that includes clear, concise written specifications. Council approval of bid calls in this dollar range is not required. Such requisitions will include approval by the Mayor/designee or the appropriate department director/designee.

Both the specifications and the quotes will be retained for review and audit as required in the procurement file.

Advertising in the City official newspaper is not required; however, it may be used. Other methods may also be used to attract potential bidders. For example, notices may be posted on the City's Internet web site, or advertised in trade papers or magazines.

Quotes do not need to be sealed, but should be in writing. They may be delivered by fax, mail, hand delivery, or e-mail.

Standard contract forms must be reviewed and approved periodically by the Legal Department.

The Purchasing Division will make the award and issue a purchase order, signed by the purchasing manager or buyers, to the successful bidder.

3.6 Competitive Bidding – Less than $10,000

In response to receipt of a properly authorized purchase requisition that includes clear, concise written specifications, buyers will use their knowledge of supplies, vendors, costs, and the market to issue purchase orders as appropriate. The buyer will see that goods and services are obtained as economically as possible, even if the procurement is small. When the order is over $5,000, an effort will be made to solicit three (3) quotes from suppliers. The quotes will be comparable from vendor to vendor (e.g., all quotes shall include shipping, installation, tax, and delivery time).

Standard contract forms must be reviewed and approved periodically by the Legal Department.

3.7 Small Purchases

3.71 Open Supply Purchase Orders

The open supply purchase order system was established to facilitate small purchases from local suppliers. Open supply purchase orders are meant to provide small, varied and unpredictable items needed for the day-to-day operations of City work crews. Purchases above $2000 should not appear on open supply purchase orders. An open supply purchase order should not be used to

[2] Charter § 4.13

acquire items that should otherwise be put out for bid or competitive pricing. Inappropriate purchases appearing on open supply purchase orders will be referred to the department director for review and appropriate action.

3.72 Establishing an Open Supply Purchase Order

Open supply purchase orders may be established when there are a sufficient number of small purchases from a local supplier. City employees should contact the Purchasing Division to inquire about establishing open purchase orders.

3.73 Procedures

Only permanent employees or 9-month seasonal laborers may use the open supply purchase orders. When using open supply purchase orders, the City employee must show employee identification to the supplier, and sign and print his/her name on the packing list. The City employee's supervisor must also sign and write the account code on the packing list. Prior to payment, the packing lists will be matched to the supplier's invoices.

3.74 Returns and Back Orders

Returns and back orders are not allowed on open supply purchase orders. Returns must be reported to the Purchasing Division for processing.

3.75 Credit Cards

Some open purchase order suppliers accommodate the City by providing the use of a supplier-specific credit card. All such credit cards are held in Purchasing. Before an eligible employee, as defined above can use a credit card, the employee is required to obtain a signed form from his or her supervisor authorizing the use of the card. The form details what will be bought and sets a dollar limit. Purchasing cannot release a credit card without this pre-authorization. Supervisors will be notified if there are any discrepancies between the pre-authorization and the store receipt.

3.76 Petty Cash

The purchase of small incidental items (under two hundred dollars ($200)) may be made using petty cash in accordance with Petty Cash Policy 400-96-02 or as may be amended. http://www1.ci.everett.wa.us/citypolicy/petycash.htm

3.77 Procurement Card

The Purchasing Division holds a procurement card that can be used to acquire small, low-cost items for which a purchase order is either impractical or not available. Before an eligible employee, as defined above, can use a procurement card, the employee is required to obtain a signed form from his or her supervisor authorizing the use of the card. The form details what will be bought and sets a dollar limit. Purchasing cannot release a procurement card without this pre-authorization. Supervisors will be notified if there are any discrepancies between the pre-authorization and the store receipt.

SECTION 4.0 COMPETITIVE NEGOTIATION

Competitive negotiation can be used as an alternative to the competitive bidding procedures outlined under Equipment, Materials, Supplies, and Services (other than professional services) for the acquisition of electronic data processing and telecommunications systems; energy saving or energy related equipment or services; or when it is determined in writing that the use of competitive bidding is neither practicable nor advantageous to the City of Everett.

Transit buses and paratransit vehicles for which at least fifty percent (50%) of the funds used in the purchase price are administered through the Federal Transit Administration (FTA) or its successor

agency are exempt from the formal bidding process, provided that the procurement complies with all acquisition regulations of the FTA or its successor agency.

"Electronic data processing" includes, but is not limited to, systems which comprise a combination of equipment or units to provide input of source data, and storage and processing of data and output in predetermined form, including a central processing unit (CPU) or main frame.[3] In other words, hardware, software, firmware, "smart cards" or any combination thereof.

Eligible purchases[4] are those for "equipment, materials, or supplies that are expected, upon installation, to reduce the energy use or energy cost of an existing building or facility, and the services associated with the equipment, materials, or supplies, including but not limited to design, engineering, financing, installation, project management, guarantees, operations, and maintenance."[5] The procurement may be structured on a performance basis, rather than a design specification, such that the City may specify a result, rather than the type or model of equipment.[6]

The approval requirements found under Equipment, Materials, Supplies, and Services (other than professional services) also apply to procurement by competitive negotiation. The approving officer (e.g., Mayor/designee, or department director/designee, depending upon the anticipated procurement cost) must determine in writing that competitive bidding is either not practical or advantageous to the City.

State law establishes competitive negotiation requirements for some purchases. The following are the minimum requirements for procurement by competitive negotiation as of the date these guidelines were adopted. Consult the Legal Department to determine if any changes in state law have occurred. [7]

A request for proposals should be prepared and submitted to an adequate number of qualified sources, as determined by the City at its discretion, to permit reasonable competition consistent with the requirements of the purchase. The request for proposal should identify significant evaluation factors, including price, and their relative importance.

The City will provide reasonable procedures for technical evaluation of the proposals received, identification of qualified sources, and selection criteria for awarding the contract.

4.1 Award

The City may select the qualified vendor whose proposal is most advantageous to the City, with price and other factors considered. If the City is unable to negotiate a contract successfully, the City may terminate negotiations and proceed to negotiate with the second most advantageous proposer, and so on.

4.2 Cancellation

A request for proposals may be cancelled at the City's sole discretion and option. The City may reject individual proposals in whole or in part for cause.

4.3 Competitive Proposals - $75,000 or more

City Council approval of a call for proposals will be sought in response to the submittal of a properly authorized purchase requisition that includes a description of the requirements and identifies significant evaluation factors and their relative importance. Once approved, the Purchasing

[3] RCW 36.92.020 (1967)
[4] RCW 39.35A.030 (1985)
[5] RCW 39.35A.020(1) (1985)
[6] RCW 39.35A.020(3) (1985).
[7] RCW 39.04.270

Division will solicit sealed proposals. Such requisitions will include approval by the Mayor/designee or the appropriate department director/designee.

At least one notice of the request for proposals must be published in the City official newspaper at a minimum of thirteen (13) days prior to proposal deadline.[8] Other methods may be used to attract potential proposers in addition to, but not in place of, publication in the City official newspaper. For example, notices may be placed on the City's Internet web site, or advertised in trade papers or magazines.

Sealed proposal responses will be submitted to the city clerk. At the appointed time, a register of proposals shall be prepared containing the name of each proposer and a description identifying the item offered. Proposal deadlines are generally scheduled for 2:00 p.m., Tuesdays.

City Council will make awards pursuant to a request for proposals in this dollar range. When an award is made, either a contract or a purchase order will be issued to the successful proposer. In general, contracts are issued when services are predominant and purchase orders are issued when goods are predominant. Such purchase orders will be signed by the purchasing manager and reference City Council's award.

The original request for proposal and the responses will be retained for review and audit as required in the city clerk's vault. A monthly report of these purchases will be submitted to the Mayor, City Council, and finance director.

4.4 Competitive Proposals - $50,000 to $74,999

Purchasing will obtain sealed proposals in response to the receipt of a properly authorized purchase requisition that includes a description of the requirements and identifies significant evaluation factors and their relative importance. Council approval is not required for a request for proposal in this dollar range. Such requisitions will include approval by the Mayor/designee or the appropriate department director/designee.

At least one notice of the request for proposals should be published in the City official newspaper.[9] Advertisement shall occur a minimum of thirteen (13) days prior to proposal deadline. Other methods may be used to attract potential proposers in addition to, but not in place of, publication in the City official newspaper. For example, notices may be placed on the City's Internet web site, or advertised in trade papers or magazines.

Sealed proposal responses will be submitted to the city clerk. At the appointed time, a register of proposals shall be prepared containing the name of each proposer and a description sufficient to identify the item offered. Proposal deadlines are generally scheduled for 2:00 p.m., Tuesdays.

The Purchasing Division will make the award and issue either a contract or purchase order to the successful proposer. In general, contracts are used when services are predominant and a purchase order is issued when goods are predominant. Purchase orders will be signed by the purchasing manager.

The original request for proposal and responses will be retained for review and audit as required in the city clerk's vault. A monthly report of these purchases will be submitted to the Mayor, City Council, and finance director.

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[8] Charter § 4.13
[9] Charter § 4.13

4.5 Competitive Proposals – to $49,999

Buyers will make an effort to obtain three (3) written proposals in response to the receipt of a properly authorized purchase requisition that includes a description of the requirement and identifies significant evaluation factors and their relative importance. Council approval is not required for requests for proposals in this dollar range.

Advertising in the City's official newspaper is not required; however, it may be used. Other methods may also be used to attract potential bidders. For example, notices may be posted on the City's Internet web site, or advertised in trade papers or magazines. The responses do not need to be sealed, but should be in writing. Delivery may be by fax, mail, hand delivery, or e-mail.

The Purchasing Division will award the bid and issue either a contract or a purchase order to the successful proposer. In general, a contract will be used when services are predominant and a purchase order will be issued when goods are predominant. Such purchase orders will be signed by the purchasing manager or buyer.

SECTION 5.0 EMERGENCIES

Competitive bidding is not required when an emergency exists; however, in making emergency purchases, an effort will be made to include the level of competition that is practical under the circumstances.

An "emergency" means unforeseen circumstances beyond the control of the municipality that either: (a) present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

If an emergency exists, the Mayor and his/her designee are authorized to act and will seek a resolution from Council that will: (a) declare an emergency situation exists; (b) waive competitive requirements; and (c) award, on behalf of the City, contracts necessary to address the emergency situation (including, but not limited to, architectural and engineering services.

5.1 Emergency Procurements of $75,000 and Over

City Council will, at its earliest opportunity, adopt a resolution declaring an emergency to exist. Such resolution shall declare the emergency, recite the facts constituting the emergency, enumerate the purchases and their costs, and waive the competitive bid requirements.

5.2 Emergency Procurements of Less than $75,000

The department director will submit a memo to Administration, reciting the facts that constitute the emergency, enumerating the purchases and their costs, and requesting that competitive bid requirements be waived. Such justification is subject to the approval of the Mayor/designee and the city attorney.

SECTION 6.0 SOLE SOURCE OR PROPRIETARY PROCUREMENTS

Occasions may arise when competition among potential vendors is not possible for a particular procurement. These situations may occur: (a) when there is clearly and legitimately[10] only one source capable of supplying the subject matter in a timely fashion; (b) when there are special facilities or market conditions that result in only one source, (c) in the event of emergencies; and (d)

[10] RCW 39.04.280(1)(1)(1998)

when there is only one source capable of supplying the subject matter in a timely fashion such that seeking competitive prices would be impractical.

Purchases may be made directly from a sole source vendor without soliciting other bids or quotes.

In the event the material, equipment, supplies, or services are available from only one supplier, written documentation demonstrating the appropriateness of sole source procurement should be submitted to and approved by the purchasing manager. When the total expected cost exceeds fifty thousand ($50,000), the city attorney will also approve sole source justifications. Except in the event of an emergency, the contract and the basis for the exception from competitive procurement must be recorded and open to public inspection immediately after its award.[11]

When the purchase exceeds seventy five thousand ($75,000), the City Council may determine by resolution that there is only one source and authorize the purchasing manager to conduct negotiations as appropriate as to price, delivery, and terms. The resolution will recite the factual basis for the exception from competitive procurement. Such justification is subject to the approval of the Mayor/designee and the city attorney.

SECTION 7.0 PUBLIC WORKS

Public works (sometimes called "public improvements") are defined by state law and City ordinance. Public works include, but are not necessarily limited to, all work, construction, alteration, repair, or improvement (other than ordinary maintenance, engineering analysis, and design and other professional services), executed at the City's cost.

7.1 Small Works Roster

The City maintains a small works roster as permitted by RCW 35.22.620(7) and described in Small Works Roster Policy 400-00-02. Using the small works roster provides a streamlined method for soliciting competitive bids for public works projects that are anticipated to cost less than $200,000. http://www1.ci.everett.wa.us/citypolicy/swrpolcy.htm

7.2 Public Works – (when the Small Works Roster is not used)

Public Works of more than twenty thousand dollars ($20,000) for one craft or trade or thirty-five thousand dollars ($35,000) for more than one craft or trade or as may be amended by the Washington State legislature will be awarded by competitive sealed bidding unless a small works roster is used.

City Council must approve the call for bids. Once approved, departments will obtain sealed bids in response to written plans and specifications. Specifications should not contain features that unduly restrict competition. Purchases in this dollar range are usually handled by the competitive sealed bidding method. Exceptions require Council action and must be pursuant to law. (e.g., EMC 3.44.080)

At least one notice of the call for bids must be published in the City official newspaper.[12] Advertisement will occur a minimum of thirteen (13) days prior to bid opening. Other methods may be used to attract potential bidders in addition to, but not in place of, publication in the City official newspaper. For example, notices may be placed on the City's Internet web site, or advertised in trade papers or magazines.

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[11] RCW 39.04.280 (1998).
[12] Charter § 4.13

Sealed bids will be submitted to the city clerk. At the appointed time, all bids will be opened and read aloud in the presence of the bidders or their representatives. Bid openings are usually scheduled for 2:00 p.m., Tuesdays.

The Legal Department reviews the contract and general and special conditions form. Contracts are signed by the Mayor/designee.

7.3 Award

The contract shall be awarded by City Council to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids. If there are questions or concerns regarding whether a bidder is responsible, refer to Section 2.0 of this document and the Legal Department for guidance.

7.4 Cancellation

The City may cancel an invitation for bids, or reject any and all bids in whole or in part, at its sole discretion and option.

SECTION 8.0 PROFESSIONAL AND PERSONAL SERVICES

Professional or personal services are those services involving specialized skill, education, and special knowledge. These services include, but are not limited to, architectural, engineering, design services, accounting, art, bond brokerage, insurance brokerage, legal, real estate appraisal, relocation assistance, title abstracts, surveying, soils analysis, and core testing.

A competitive process is not required for professional or personal services, other than professional engineering or architectural services for the design of City improvements.

Procurement and administration of such contracts are usually the responsibility of the Mayor or the department director. The Mayor/designee may sign professional or personal service contracts where sufficient funding exists in the annual budget or plans and systems ordinance. The Legal Department should be consulted to determine whether a particular contract requires Council approval.

8.1 Architectural, Engineering and Design Services

Professional engineering or architectural services should be selected either from a pre-qualified list or by advertising a request for qualifications for the specific project. The pre-qualified list is maintained by one or more designated departments.

8.2 Advertisement

Professional engineering or architectural services requirements should be published in advance in the official City newspaper and in any other media reasonably likely to attract sufficient numbers of potential service providers. The announcement should state concisely the general scope and nature of the project or work for which the services are required and the address of a City representative who can provide further details.

Announcements should occur either by: (a) advertising an announcement for a specific project on each occasion when professional engineering or architectural services are required; or (b) advertising a general announcement for the City's projected requirements for any category or type of engineering or architectural services. [13]

[13] RCW 39.80.030 (1981)

The City encourages architectural and engineering firms to submit a statement of qualifications and performance data annually. When services are needed, the City will evaluate current statements of qualifications and performance data on file with the City, together with those that may be submitted by other firms regarding the proposed project.

8.3 Contract Negotiations

Discussions will be conducted with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. Using criteria established by the City for the project, category, or type of services needed, a professional/personal services contractor will be selected that is deemed to be the most highly qualified to provide the services required for the proposed project.

The City will negotiate a contract with the most qualified firm at a price that the City determines is fair and reasonable. In making its determination, the City will take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature of the services to be provided. If the City is unable to negotiate a satisfactory contract with the firm selected at a price that is determined to be fair and reasonable, negotiations with that firm will be terminated in writing. Another firm will then be selected and the process continued until an agreement is reached or the process is terminated.[14]

The professional services agreement must be approved by the City Council, signed by the Mayor, attested by the city clerk, and approved as to form by the city attorney.[15]

SECTION 9.0 PROCUREMENT OF INSURANCE OR BONDS

Procurement of insurance and bonds occurs through the use of an insurance or bond broker.

SECTION 10.0 INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT ("INTERLOCAL")

Pursuant to RCW Chap. 39.34, the City may join with the state or political subdivisions of the State of Washington for the purchase of material, equipment, supplies, or services by entering into a written Intergovernmental Cooperative Purchasing Agreement that requires compliance with the state's or the political subdivision's applicable procurement law. In addition, the City may make a bid call with another government entity as a joint purchase complying with the bid requirements of the participating jurisdictions.

Such purchases may be made without advertising in the City official newspaper.

Approval and authority for entering into an Interlocal Cooperative Purchasing Agreement will be determined by the anticipated cost of the procurement, (see Equipment, Material, Supplies, and Services (other than professional services)). Blanket Interlocal Cooperative Purchasing agreements where the costs of the potential purchases are not known will be treated as purchases over $75,000.

When practical, the City should include language in its solicitations that allows other public agencies to purchase from Everett's bids or quotations, provided that the other agencies allow similar rights and reciprocal privileges to the City of Everett.

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[14] RCW 39.80.050 (1981)
[15] EMC 2.04.030 (1985)

EXHIBIT A

SECTION 11.0 PROCUREMENT REPORTING

A summary of quotes and bids received for all procurements over $5,000 will be recorded electronically with the purchase order. Additionally, a monthly report of all procurements over $5,000 will be submitted to the Mayor, City Council, and finance director.

Authorization of Special Categories

11.1 Electronic Data Processing Systems

The computer services manager shall approve requisitions for electronic data processing systems.

11.2 Telecommunication Systems

The telecommunication manager will approve requisitions for telecommunication systems.

11.3 Vehicles

The motor vehicle superintendent will approve requisitions for vehicles.

11.4 Purchases over $10,000

The Mayor/designee or appropriate department director/designee will approve requisitions expected to cost over $10,000.

SECTION 12.0 VENDOR RELATIONS

City employees should direct all vendors and suppliers to the Purchasing Division for information concerning the possible sale of goods and services to the City. Purchasing may direct a vendor to call on an employee who has requested information about a particular product.

Section 4.12 of the Everett City Charter says:

> No officer or employee of the City shall solicit or receive any pay, commission, money or thing of value, or derive any benefit, profit or advantage, directly or indirectly, from or by reason of any improvement, alteration or repair required by authority of the City, or any contract to which the City shall be a party, except his lawful compensation or salary as such officer or employee. No officer or employee of the City except as otherwise provided in this charter, shall solicit, accept or receive, directly or indirectly, from any public service corporation, or the owner of any public utility franchise in this City, any pass, frank, free ticket, or any other service upon terms more favorable than those granted to the public generally.

Any employee who is offered or receives a payment or gift of more than a nominal value should refuse it or return it to the giver in a tactful and dignified manner, advising the giver of the City's policy prohibiting its acceptance.

If, for any reason, one supplier is permitted to requote, his competitors will be given the same opportunity. Bidders are expected to offer their best bid first and offering an opportunity to requote should be done only when absolutely necessary.

12.1 Samples

When vendors offer samples for evaluation, they will be accepted only under the following conditions:

EXHIBIT A

1. The sample is accepted as property of the City.
2. The product is one which is of a type presently in use or is of potential use to the City. Samples of goods not likely to be purchased are not to be accepted.
3. The quantity or size of the sample is relatively small and of low value.
4. Any chemicals offered as vendor samples shall not be accepted unless accompanied by an OSHA Product Safety Data Sheet.
5. If vendor samples are accepted, they must be sent to the appropriate shop or department for testing.
6. Samples that are requested for evaluation must be purchased.

SECTION 13.0 CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.

The City shall neither discriminate against, nor give preferential treatment to, minority and women-owned businesses.

SECTION 14.0 LOCAL BUSINESS ENCOURAGEMENT

The City of Everett will take affirmative steps to ensure that businesses situated within the city limits of Everett are encouraged to participate in its procurement process to the extent permitted by federal law, state law, city laws, regulations, grants, contracts, and this guideline.

SECTION 15.0 APPEALS TO THE CITY OF EVERETT

Vendors may appeal or protest a proposal solicitation or award of contract issued by the City of Everett, provided that the vendor strictly follows the procedures described below.

Prior to the deadline for submitting bids or proposals, vendors may appeal or protest specifications, terms, or requirements. After the deadline for submission of bids or proposals, vendors may appeal or protest the award or pending award to the apparent low bidder or the selection of the apparently most advantageous proposal.

15.1 Procedures for Initial Appeal or Protest

The appeal or protest must:

1. Be written;
2. Explicitly identify itself as an appeal or protest,
3. Explicitly identify the bid/project/request from which the appeal is taken or protest is made;
4. Explicitly state all reasons and bases in law and fact supporting the appeal or protest, including, but not limited to, identification of any and all specifications, terms, requirements, or conditions to which the vendor objects;
5. Include any and all supporting documents; and
6. Be filed with the city clerk.

15.2 Deadline for Filing Initial Appeal or Protest

If a vendor appeals or protests a purchase specification, term, condition, or requirement, then any and all appeals and protests must be filed with the city clerk no later than seven (7) calendar days prior to the deadline for submission of bids or proposals. If the vendor appeals or protests an award or pending award, the appeal or protest must be filed with the city clerk no later than five (5) calendar days after the bidder is awarded the contract or a vendor's proposal is selected as most advantageous to the City. In no event will appeals or protests be heard or considered if these deadlines are not met. The City reserves the right to proceed with the purchase without notice to the appellant or protestor, including execution of contracts, notwithstanding the pendency of any appeal or protest.

15.3 Consideration of Initial Appeal or Protest

A vendor's initial appeal or protest will be reviewed by the purchasing manager, the city attorney, the head of the procuring department, and the finance director, or their designees. The initial appeal or protest will be decided based upon the written appeal or protest, supporting documents, and other information obtained by those reviewing the appeal or protest. A meeting or conference with the appellant or protestor will occur only if the finance director, at his or her sole discretion, determines that a meeting or conference with the appellant or protestor would materially assist the City in making its decision. Only those issues raised by the appellant or protestor in its initial written appeal or protest filed with the city clerk will be considered. The finance director or his or her designee will issue a written decision no later than ten calendar days after the filing of the initial appeal or protest with the city clerk. The finance director may exercise discretion to extend the time for decision if more time is needed.

15.4 Appeal from Denial of Initial Appeal or Protest

An appellant or protestor may only appeal the finance director's decision by following the procedures described in this section. The appeal will be decided by the City Council. The appellant or protestor must file its appeal in writing with the city clerk no later than seven calendar days after the date of the finance director's written decision. The appeal must state the basis in law and fact for the appeal, include a copy of the initial appeal or protest and the decision from which the appellant or protestor appeals, and state whether the appellant requests time to appear before Council to present its appeal. Council will not consider any issues not raised in the initial appeal or protest. At its sole discretion, Council may decide to allow the appellant to make any presentation other than its written submission if Council finds that such presentation would materially aid its decision. Council may form a committee of less than the entire Council to consider the appeal and recommend a decision to the entire Council. The Council's decision shall be final and binding.

15.5 Appeals and Protests on Projects Aided by the Federal Transit Administration

When the contract to be awarded or selected as most advantageous is funded in part by Federal Transit Administration (FTA)[16] funds, the vendor may appeal to the FTA pursuant to FTA regulations. The FTA will only review protests that allege the City failed to follow its protest procedures. Any such appeal to the FTA must be in writing and received by the FTA no later than five (5) business days following a final decision rendered by the City of Everett. A copy of any such appeal to the FTA must be promptly filed with the city clerk.

SECTION 16.0 SALE OF PERSONAL PROPERTY (City Charter 15.8b)

The City Council may authorize the sale of personal property belonging to the City if it determines, by a majority plus one vote of the Council, that the property is not and will not be needed for City purposes and gives notice of intention to sell as provided in this section. All sales shall be public,

[16] Or its successor.

except for scrap or sales to other government entities which may be by private sales. Sales to other government entities shall be at fair market value unless otherwise declared by Council to be in the best interests of the public. Scrap may be sold by private sale at prices established by current market conditions. Scrap is any equipment or material which cannot serve its original purpose. Trade-ins of old equipment to upgrade equipment of the same or reasonably related kind are permitted when it is in the best interests of the City. The purchasing manager shall be responsible for the sale, trade, or other disposition of surplus personal property and scrap belonging to the City of Everett.

16.1 Public Notice

The notice of intent to sell surplus or scrap at a public sale shall be published once a week for two (2) consecutive weeks in the City official newspaper immediately prior to the sale. The notice shall state the time and place at which the property will be sold.

16.2 Inventoried Items

Any inventoried item that is going to be scrapped, surplused, or traded in will be signed off by the employee responsible and approved by his/her supervisor.

16.3 Conflict of Interest

The City may periodically conduct an auction of surplus items. Because City employees have more information than the general public does about City property to be auctioned and an appearance of fairness is necessary to maintain public trust, employees, their spouses, and their agents are not permitted to bid on property auctioned by the City.

SECTION 17.0 MONITORING AND COMPLIANCE

The Purchasing Division will be responsible for monitoring and evaluating compliance with these guidelines. The purchasing manager will first attempt to resolve departures from the guidelines with the department director. In the event an initial attempt to resolve the problem is unsuccessful, it will be referred to the finance director for further action.

A violation of any of the provisions of Section 4.12 of the Everett City Charter will result in discipline to the individual involved where, in the opinion of the Mayor in the case of employees, or in the opinion of a majority of the Council in the case of an elected official, such discipline is necessary in the interest of the public and good government. Such discipline may include suspension or forfeiture of employment or office.[17]

Officers and employees should be aware of possible personal penalties, termination, and financial liability for intentional and willful violation of competitive bidding laws. RCW 39.30.020 provides:

> In addition to any other remedies or penalties contained in any law, municipal charter, ordinance, resolution, or other enactment, any municipal officer by or through whom or under whose supervision, in whole or in part, any contract is made in willful and intentional violation of any law, municipal charter, ordinance, resolution or other enactment requiring competitive bidding upon such contract shall be held liable to a civil penalty of not less than three hundred dollars and may be held liable, jointly and severally, with any other such municipal officer for all consequential damages to the municipal corporation. If, as a result of a criminal action, the violation is found to have been intentional, the municipal officer shall

[17] Everett Charter §4.12 (Amended 11-7-78)

immediately forfeit his office. For purposes of this section "municipal officer" shall mean an "officer" or "municipal officer" as those terms are defined in RCW 42.23.020 (2). [Emphasis added.]

SECTION 18.0 REVISIONS

The Mayor or his or her Chief Administrative Assistant may approve revisions, additions, or deletions to these guidelines.

Issued By: _____
Nancy Woods, Purchasing Manager

Approved By: _____
Debra Bryant, Finance Director

Approved By: _____
Jim Langus, Chief Administrative Assistant

Approved By: _____
Edward Hansen, Mayor

PURCHASING POLICY