

Chapter 2 ADMINISTRATION

ARTICLE I. IN GENERAL

Section 2-1. Annual reports of boards, officers, etc.

All committees, boards, commissioners, trustees and officials having charge of city property, or of the expenditure of appropriations, shall report to the mayor and the city council annually within thirty (30) days immediately following the end of the city's fiscal year unless otherwise provided in these Revised Ordinances. The reports shall contain a statement of the receipts and expenditures for the year preceding. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 8; Ord. of 2-2-76)

Section 2-2. Appearance before city council required.

In accordance with section 42 of the Charter, every administrative board, through its chairman, every officer having charge of a department shall, at request, appear before either branch of the city council when the business calendar of either branch appears to contain any matter, act, or thing connected with the discharge of the duties of such board of office. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 8A)

Section 2-3. Reports to be filed with city clerk.

Every business firm, commission, board, trustees or committee, appointed or retained, paid or unpaid, who are required to file reports, both interim or final, file such reports, or a copy thereof, with the city clerk for public inspection, unless prohibited to do so under law. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 8B)

Section 2-4. Execution of deeds, leases, etc.

All deeds, conveyances, leases and other instruments given by the city which must be signed, sealed, and acknowledged; shall be signed, acknowledged and delivered on behalf of the city by the mayor, who shall cause the city seal to be affixed thereto. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 13)

Section 2-5. Discharge, etc., of mortgages.

Whenever a person having lawful authority to redeem any estate mortgaged to the city shall make application to the mayor for such purpose, the mayor shall have power, on payment to the treasurer of the city of the amount due on the mortgage, to discharge, to release or assign the same without liability or recourse to the city, the assent of the board of aldermen thereto being had and obtained, and to execute in behalf of the city any and all legal instruments that may be necessary for the purpose. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 14)

Section 2-6. Office hours.

- (a) Unless otherwise ordered by the mayor, all municipal offices shall be kept open to the public daily, except Saturdays, Sundays, legal holidays and June seventeenth, from 8:00 a.m. to 4:00 p.m., and on Monday evenings from 7:00 p.m. to 9:00 p.m., but when a legal holiday falls on Monday, all municipal offices shall be open on Tuesday evenings from 7:00 p.m. to 9:00 p.m. The provisions of General Laws, chapter 4, section 9, shall apply with reference to the closing of all municipal offices on Saturday.

- (b) When January 1, June 17, July 4, November 11, or December 25, fall on a Saturday all municipal employees, excepting uniformed personnel of the police and fire departments and employees of the school department, shall be granted compensatory time off on the Friday immediately preceding the holiday or, in the alternative, on the Monday immediately following the holiday.
(Rev. Ords. 1976, Pt. 2, Ch. 2, § 15; Ord. of 6-4-90)

Section 2-7. Personnel manager to establish rules for reporting accidents.

It shall be the responsibility of the personnel manager to establish rules and regulations for the reporting of any accident without delay. (Ord. of 6-3-85)

Section 2-8. Inventory of contents of city buildings required in certain situations.

All city buildings to be abandoned, transferred or demolished shall be inventoried as to the contents by the last occupants department; such inventory shall be given to mayor's office and city council. The mayor's office shall assign a department head to be responsible for the contents and who shall dispose of its contents to the best advantage of the city and a report shall be made to the mayor's office and city council as to the disposition of such contents.
(Ord. of 11-24-80) Cross reference(s)--Buildings and building regulations, Ch. 4.

Section 2-9. City-owned vehicles.

- (a) Identification generally. Every motor vehicle owned by the city shall have marked on a part of the vehicle not readily removable and in a conspicuous place, except automobiles of the police department, with the words "City of Everett"; also adding thereto the designation of the particular officer, department, board, commission or institution of the city operating any such vehicle.
- (b) Type of lettering. Except as herein provided, wherever practicable the lettering required by the preceding section shall be three-inch letters and same shall not be covered or the reading obstructed in any way. All fire apparatus, including the chief's car, deputy chief's and fire prevention bureau cars, shall be painted red; all other vehicles shall be painted colors agreeable to the mayor.
(Rev. Ords. 1976, Pt. 2, Ch. 1, §§ 14--17)

Section 2-10. Purchases of gas, oil and grease by city-owned vehicles.

All city-owned vehicles, except those vehicles using and necessitating premium and/or high-test gasoline, shall obtain their gas, oil, and grease from city-owned pumps.
(Rev. Ords. 1976, Pt. 2, Ch. 17, § 51)

Section 11-30. Reserved.

ARTICLE II. OFFICERS AND EMPLOYEES*

DIVISION 1. GENERALLY

Section 2-31. Appointment of officers, boards, etc.

- (a) Generally. The mayor shall appoint, subject to confirmation by the board of alderman, for the terms hereinafter specified, and unless sooner removed, until their respective successors are appointed and qualified, the following named officers:
- (1) For the term of three (3) years, beginning with the first Monday in February, in the year of appointment:
 - a. A member of the board of health.
 - b. Two (2) members, or three (3) members when required of the disability commission.
 - c. The Executive Director of City Services.
 - (2) For the term of two (2) years, beginning with the first Monday in March, in the year of appointment:
 - a. The city solicitor.
 - (3) For a term of three (3) years, beginning with the first Monday in March, in the year of appointment:
 - a. A member of the board of assessors.
 - b. A member of the fire commissioners.
 - c. The city auditor.
 - d. The city treasurer.
 - (4) For the term of five (5) years, beginning with the first Monday in March, in the year of appointment:
 - a. A member of the board of public works.
 - b. Two (2) members of the council of aging.
 - c. A member of the recreation commission.
 - (5) For the term of three (3) years, beginning with the first day of April, in the year of appointment:
 - a. One (1) member, or two (2) members, when required of the conservation commission.
 - b. One (1) member, or two (2) members or three (3) members, when required of the Youth Commission.
 - c. One (1) member, or two (2) members, or three (3) members when required of the Historical Commission.
 - (6) For the term of four (4) years, beginning with the first day of April, in the year of appointment:
 - a. A member of the board of registrar of voters.
 - (7) For the term of three (3) years, beginning with the first Monday in June, in the year of appointment:
 - a. Four (4) members, or five (5) members when required of the board of trustees of the Frederick E. Parlin Memorial Library.
- (b) The failure to properly take and file with the City Clerk an oath of office within 30 days after the commencement of the term of office to which the an individual is appointed under this section shall cause the office to become vacant and

said appointment to be void. (Rev. Ords. 1976, Pt. 2, Ch. 2, §§ 1--3; Ord. of 6-26-89(1); Ord. of 12-7-92; Ord. of 3-15-93(1))(Ord. of 8-24-98)(Ord of 03-08-2006)

Section 2-32. Appointment of other officers.

- (a) At the time fixed in section 35 of the Charter, unless the time of appointment is otherwise fixed, the mayor shall appoint annually, subject to confirmation by the board of aldermen, unless otherwise specially provided by law, all city and public officers other than those enumerated in section 2-31 which are required or permitted to be appointed in cities; and all such officers shall hold office, if not sooner removed, for one (1) year, or as is indicated in the law providing for their appointment.

- (b) The failure to properly take and file with the City Clerk an oath of office within 30 days after the commencement of the term of office to which the an individual is appointed under this section or Chapter 35 of the Charter of the City of Everett shall cause the office to become vacant and said appointment to be void. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 4) (Ord of 03-08-2006)

Section 2-33. Political preference of officers and employees.

No person shall be employed, or refused employment or be discharged from employment by reason of having voted for or against any particular candidate or political party or faction, nor shall any inquiry be made as to the political preference of any employee or applicant for employment. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 5)

Section 2-34. Officers to pay over money to treasurer.

All officers shall pay to the city treasurer forthwith all amounts received by them on behalf of the city, and make a true return to the auditor, stating the account upon which the same is received. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 6)

Section 2-35. Duty of officers to enforce the law.

All officers of the city shall enforce obedience to such laws of the commonwealth, ordinances of the city, and orders of the city council, as it may be the duty of such officers respectively to enforce, and shall notice all complaints, and institute such proceedings as may be necessary. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 7)

Section 2-36. Unused sick leave.

Persons regularly employed by the city shall accumulate unused sick leave in accordance with the applicable personnel policy. (Ord. of 6-4-90 (Ch. 2, § 75))

Section 2-37. Vacation time credit, elected services.

In computing years of service required for entitlement to a vacation by the statute, or by personnel policy, there shall be included any service rendered to the city in an elected office. (Ord. of 6-4-90 (Ch. 2, § 76))

Section 38-45 Reserved.

DIVISION 2. CITY SOLICITOR*

Section 2-46. Appointment; term.

As required by section 35 of the Charter, the mayor shall, biennially, on or before the first Monday in February in even-numbered years, appoint a city solicitor, subject to confirmation or rejection by the board of aldermen. He shall hold office for a term of two (2) years, from the first Monday in March in the year of his appointment. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 22)
State law reference(s)--Authority of city to appropriate money for employment of counsel, M.G.L. c. 40, § 5(16A).

Section 2-47. Qualifications.

The city solicitor shall be a member of the bar of the Commonwealth, in good standing, with residency in the City as a preferred qualification, but not a prerequisite for appointment. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 23; Ord. A0031-08)

Section 2-48. Powers and duties generally.

- (a) The city solicitor shall act as advisor to the city government and representative of the city in all matters of law, except as hereinafter provided.
- (b) The city solicitor shall examine all titles to property, draft all deeds, obligations, contracts, leases, conveyances, agreements and other legal instruments of whatever nature to which the city or its agents may be a party, as may be required by any ordinance or by any order of the mayor, the city council or by any committee of the city council, or either branch thereof, or by any administrative board, commission or officer, and which by law, usage or agreement the city is to furnish. He shall commence and prosecute all actions and other legal proceedings and suits begun by the city or by any officer thereof, and defend all actions and suits brought against the city in any court or other tribunal of the Commonwealth or of the United States.
- (c) He may commence and prosecute all actions and other legal proceedings as, in his judgment, the interests of the city require for the collection of all bills, accounts or other moneys due the city.
- (d) He shall defend any of the officers of the city in such suits or prosecutions as may be brought against them for any act or omission in the discharge of an official duty when any estate, right, privilege, ordinance, act or direction of the city government may be brought in question.
- (e) He shall appear as counsel in any action, suit or prosecution, or in any matter before the legislature of the Commonwealth, or any committee thereof, in which the interest and welfare of the city may be directly or indirectly affected.
- (f) When requested, he shall furnish the mayor, the city council, or either branch thereof, or any committee of the city council or either branch thereof, or any administrative board, commission or officer with his legal opinion upon any subject involving their respective offices.

- (1) Whenever the opinion is requested to be in writing, the question for his consideration shall be submitted in writing.
- (g) It shall be his duty to attend all regular meetings of the board of aldermen and the common council and upon request all such other meetings of the city council or committees thereof. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 24)

Section 2-49. Settlement of claims.

The city solicitor shall, subject to availability of funds, have authority, with the approval of the mayor, to settle and compromise any and all claims against the city.

(Rev. Ords. 1976, Pt. 2, Ch. 2, § 9; Ord. of 11-14-88)

Cross reference(s)--Bills, accounts and claims against the city generally, § 7-1.

Section 2-50. Additional counsel.

The mayor, with the approval of the city council, may authorize the city solicitor to secure the advice or services of additional or substitute counsel in any pending or contemplated legal matter. No money shall be paid from the city treasury for any additional or substitute legal advice or services, except as herein authorized. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 25)

Section 2-51. Travel expenses.

- (a) The city solicitor shall be allowed reasonable traveling and other expenses whenever it may be necessary for him to go out from the city to attend to matters in connection with the discharge of his official duties.
- (b) Any city solicitor who is budgeted for separate accounts of car hire and dues and meetings shall be reimbursed from the dues and meetings account for all mileage in excess of thirty (30) miles of total of departure and return from the city. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 26; Ord. of 11-5-86(2))

Section 52-60. Reserved.

DIVISION 3. CITY CLERK*

Section 2-61. Election and term of office, vacancy

Whenever a vacancy shall occur for the position of City Clerk, the City Council shall post, for a period of two weeks, notice of such vacancy in a local newspaper and on the local cable access channel seeking qualified residents of the City of Everett to fill such vacancy. The City Council's Joint Committee on Administrative Affairs shall interview each candidate and report back its recommendation to the City Council for filling such vacancy and as required by section 12 of the Charter, the city council shall by concurrent vote by ballot elect a city clerk, who shall also serve as clerk for the board of aldermen. His term of office shall be in accordance with the provisions of chapter 8 of the Acts of 1926. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 27; Ord. of 05-02-01)

Section 2-62. Bond.

The city clerk shall give bond in accordance with the provisions of General Laws, chapter 41, section 13A. The premium for such bond shall be paid by the city. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 28)

Section 2-63. Powers and duties generally.

In addition to the powers, duties and responsibilities imposed upon the city clerk by the Charter, General Laws and other provisions of general and special statutes, he shall have such additional powers, duties and responsibilities as are established by ordinance.

(Rev. Ords. 1976, Pt. 2, Ch. 2, § 29)

Section 2-64. Duty to notify officers, boards, etc., regarding expenditure, etc., of money.

(a) The city clerk shall notify the city auditor, the city treasurer and the board of assessors, in writing, of all orders authorizing assessments, apportionments, abatements or awards of damages, after such orders are approved.

(b) He shall also notify administrative boards, commissions and officers having charge of a department of any orders affecting appropriations under their control.

(Rev. Ords. 1976, Pt. 2, Ch. 2, § 30)

Section 2-65. Duty to notify mayor, auditor, etc., when other officers, etc., are sworn into office.

(a) The city clerk shall notify the mayor, the city auditor and the city treasurer when executive, legislative and administrative officials have been sworn into their respective offices.

(b) He shall also notify administrative boards and commissions when appointees to their respective boards and commissions have been sworn into their respective offices, and shall notify the mayor, the city auditor, the city treasurer and the chief of police when members of the police department are sworn into their respective positions.

(Rev. Ords. 1976, Pt. 2, Ch. 2, § 31)

Section 2-66. Fee schedule for services.

The fee schedule of the city clerk determined in accordance with chapter 262, section 34 of the General Laws is on file in the office of the city clerk. (Ord. of 11-14-88) (A0560-06)

Section 2-67. Monthly statement to treasurer and auditor.

The city clerk shall turn over to the city treasurer, at least monthly, all moneys and fees received by him in behalf of the city, unless otherwise provided by statute and, except witness fees to attend court, accompanied by a statement of the purposes for which they were received. A copy of this statement shall be filed with the city auditor.

(Rev. Ords. 1976, Pt. 2, Ch. 2, § 32)

Section 2-68. Assistant.

(a) Election, term of office. Whenever a vacancy shall occur for the position of Assistant City Clerk, the City Council shall post, for a period of two weeks, notice of such vacancy in a local newspaper and on the local cable access channel seeking qualified residents of the City of Everett to fill such vacancy. The City Council's Joint Committee on Administrative Affairs shall interview each candidate and report back its recommendation to the City Council for filling such vacancy and shall elect by

concurrent vote by ballot an assistant city clerk, who shall hold office in accordance with the provisions of chapter 8 of the Acts of 1926.

- (b) Bond. The assistant city clerk shall give bond to the city, with a surety company authorized to transact business in the Commonwealth, as surety, which shall be approved by the board of aldermen, conditioned faithfully to account for all moneys and fees received by him for which he is required by law to account and pay over to the city treasurer. The premium for such bond shall be paid by the city.
- (c) Duties. The assistant city clerk shall perform such duties as the city clerk may prescribe in the conduct of his office and shall discharge the duties of the city clerk when such officer is absent or when there is a vacancy in the office of the city clerk. He shall be sworn to the faithful discharge of his duties by the city clerk or a justice of the peace. (Rev. Ords. 1976, Pt. 2, Ch. 2, §§ 33—35; Ord. of 5-2-2001)

Section 2-69. City messenger.

- (a) Designation. The assistant city clerk shall act as city messenger.
- (b) Duties. The city messenger shall perform such services as are requested of him by the mayor, the board of aldermen, the common council, and committees of the city council.
- (c) Care and custody of city hall. The care, custody and management of the city hall shall be placed with the city messenger and the mayor. In such position he shall have all the powers as provided by sections 38 and 39 of the Charter. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 39) Charter reference(s)--Appointment of city messenger, § 12.

Section 70-80 Reserved.

DIVISION 4. CITY ENGINEER*

Section 2-81. Appointment; term of office.

The mayor shall appoint a city engineer. The term of office of such city engineer is subject to the civil service laws as provided for in chapter 136 of the Acts of 1927. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 40)

Section 2-82. Powers and duties generally.

- (a) The city engineer shall be the head of the department of city engineering and shall exercise a general supervision of all matters within such department.
- (b) He shall be consulted in relation to public improvements of every kind where his advice may be necessary or advisable.
- (c) He shall draw the specifications for all construction work make all surveys, measurements, levels, designs, estimates and plans pertaining to the streets, drains, sewers, waterworks, bridges and lands of the city, and shall supervise all construction in accordance with such plans or designs.

- (1) He shall furnish such specifications and make such surveys, measurements, designs, levels, estimates and plans when required so to do by the mayor, the city council, by any committee thereof, or by any administrative board or officer having the same in charge.
 - (2) All work done shall be in accordance with such plans and specifications and under the supervision of the city engineer.
- (d) He shall have charge, under the direction and control of the city council, of all plans of every kind not especially belonging to other departments, and shall keep the same properly classified and indexed, and he may make such rules and regulations concerning the taking of plans from his office as he may deem necessary to ensure their safety.
- (e) He shall furnish the city solicitor, at his request, with descriptions of lands, and with the details concerning any proposed taking of lands, or the location, widening alteration or discontinuance of streets.
- (f) When requested to do so by the mayor, the city council, any committee thereof, or any administrative board or officer of the city having the same in charge, he shall measure, or cause to be measured, all work done by contract for the city, and shall report thereon to the board or officer making such request.
- (g) He shall perform all other duties as are incident to this office.
(Rev. Ords. 1976, Pt. 2, Ch. 2, § 41)

Section 2-83. Applicants to be furnished lines and grades of streets.

The city engineer shall give to all applicants, so far as the files and records of his office will permit, any information they may desire as to lines and grades of streets on which their estates are situated, or upon which they intend to build; and all information of this character furnished to owners of estates or persons representing them or to those intending to build shall be without charge. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 42)

Section 2-84. Report on condition of bridges.

The city engineer shall examine carefully all the bridges within the city limits, annually, or oftener if required to do so by the mayor, and shall make a report to the mayor respecting their condition as to safety, need of renewal or repairs. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 43)

Section 2-85. Annual report.

The city engineer shall present to the mayor annually, if requested, a report in relation to his department, showing the number of persons employed, the detailed expenses of the department, the general nature of the work, the property under his charge, the condition of all structures under supervision that may be in process of construction, or that have been completed during the previous year, and such other general information in relation to the same as he may deem expedient. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 44)

Section 86-100. Reserved.

DIVISION 5. CLERK OF COMMITTEES

Section 2-101. Election, term of office, etc.

The city council shall elect biennially in January of the year following a municipal election, by concurrent vote, a clerk of committees, who shall hold office for two (2) years, from the first day of March in the year of his election, and until another shall be chosen and qualified, unless sooner removed. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 45)

Section 2-102. Compensation.

The clerk of committees shall receive such compensation as the city council may from time to time determine. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 46)

Section 2-103. Duties.

The clerk of committees shall keep full and accurate records of the doings of the several committees of the city council or of either branch thereof, and shall perform such other duties as may be required of clerk by such committees or the city council.
(Rev. Ords. 1976, Pt. 2, Ch. 2, § 47; Ord. of 5-10-93; Ord. of 7-26-93; Ord. of 8-16-93(1))

Section 104-115. Reserved.

DIVISION 6. INSPECTOR OF BUILDINGS*

Section 2-116. Appointment.

The mayor shall appoint an inspector of buildings in accordance with the provisions of General Laws, chapter 31. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 80)

Section 2-117. Duties.

The inspector of buildings shall perform all the duties incumbent upon him under the provisions of General Laws, chapter 143, and of all amendments and additions thereto, insofar as the same may be applicable to his department. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 81)

Section 118-125. Reserved.

DIVISION 7. INSPECTOR OF PLUMBING*

Section 2-126. Appointment.

The inspector of buildings shall appoint an inspector of plumbing in accordance with the provisions of General Laws, chapter 31. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 82)

Section 2-127. To act as inspector of gas fitting.

The inspector of plumbing shall be the inspector of gas fitting under the supervision of the inspector of buildings. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 83)

Section 128-150. Reserved.

ARTICLE III. BOARDS, COMMISSIONS AND COMMITTEES*

DIVISION 1. GENERALLY

Section 2-151. *Approved minutes and audio taped recordings to be filed with city clerk.*

Every board, commission and boards of trustees shall file with the city clerk approved minutes and audio taped recordings of their meetings within seven (7) days of the date of approval of the minutes of such meeting. (Ord. of 3-15-76) (Ord. of 10-09-01)

Section 152-160. Reserved.

DIVISION 2. EXECUTIVE DIRECTOR of CITY SERVICES

Section 2-161. *Executive Director of City Services.*

As required by Section 35 of the Charter, the Mayor shall appoint an Executive Director of City Services, subject to confirmation or rejection by the Board of Aldermen. He shall hold office for a period of three years from the first Monday in February in the year of his appointment.

Section 2-162. *Powers and duties generally.*

- (a) The executive director of city services shall, under the general supervisory control of the Mayor, plan and implement a comprehensive public services program involving streets, equipment services, sewer, water, drains, solid waste, engineering, surveying and building, parks and cemetery maintenance, snow and ice control and other related public works activities.
- (b) He shall prepare and monitor departmental budgets and expenditures.
- (c) He shall serve as street commissioner and surveyor of highways.
- (d) He shall exercise supervision and control of the streets, sidewalks, sanitary sewers, storm drains, refuse disposal and the water distribution system of the City of Everett.
- (e) The executive director of city services shall serve as a member of the Traffic, Safety and Parking Commission.

Section 2-163. *Disposition of Fees*

The executive director of city services shall cause all moneys and fees received by the Parks and Cemeteries Division to be turned over to the city treasurer at least weekly, accompanied by a statement of the purposes for which they were received. A copy of this statement shall be filed with the city auditor.

Chapter 115 of the Acts of 2001 (Ord. of 06-25-2001)

Sections 164-175 Reserved

DIVISION 3. BOARD OF PUBLIC WORKS

Section 2-176. Composition, appointment, term, etc.

The board of public works shall consist of seven (7) members, one of whom shall be appointed by the Mayor annually, subject to confirmation by the Board of Aldermen to hold office for five years from the first Monday in March of the year of appointment, unless sooner removed.

Section 2-177. Powers and duties.

The board of public works shall have and exercise all the powers of the board of sewer commissioners and board of water commissioners. The board shall have charge of all public reservations owned or controlled by the city, and which are or may be used or known as parks, playgrounds, cemeteries, commons and the Everett Memorial Stadium.

Section 2-178. Care and management of the cemetery.

The board of public works shall have the sole care and management of Glenwood Cemetery; may lay out any land acquired and set apart for such cemetery in lots or other suitable subdivisions, with proper paths and avenues; may plant, embellish, ornament and fence same; and erect therein such suitable edifices and conveniences and make such improvements as they deem necessary; and subject to the approval of the Mayor and City Council, may make such regulations, consistent with law, as they deem necessary relative to the cemetery.

Section 2-179. Deeds.

The board of public works may by deed, made and executed in such manner and form as they may prescribe, convey to any person the sole and exclusive right of burials in any lot of the cemetery, and of erecting tombs and other monuments or structures thereon, upon such terms and conditions as their regulations prescribe. Such deeds and all subsequent deeds of such lots made by the owners thereof shall be recorded by the board of public works in their records and in the office of the city clerk in books kept for that purpose, with filing fee as required by General Laws, Chapter 262, section 34, clause (78).

Section 2-180. Perpetual care fund.

The board of public works shall cause to be set aside from moneys obtained from the sale of lots in such cemetery an amount equal to seventy-five (75) percent thereof, which sum shall be known as the Glenwood Cemetery Perpetual Care Fund. The city treasurer shall invest such moneys in accordance with the provisions of the General Laws, chapter 44, section 54. The income of this fund shall be used for the perpetual care of the cemetery, under the direction of the board of public works. (Ord. of 5-23-88) (Ord. of 06-25-2001)

Section 181-190. Reserved.

DIVISION 4. PLANNING BOARD*

Section 2-191. Composition, appointment and terms of office.

There shall be a planning board consisting of five (5) members who shall be appointed by the mayor, subject to confirmation by the city council. The members first appointed to such board shall be appointed for terms of such length and so arranged that the term of one (1) member will expire each year, and their successors shall be appointed for terms of five (5) years each. After the original appointments, one (1) member shall be appointed annually on or before the first Monday in February and shall serve for five (5) years, beginning with the first Monday in March, unless sooner removed. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 56)

Section 2-192. Removal of members; filling vacancies.

Any member of the planning board may be removed for cause, after a public hearing, by the mayor, with the approval of the city council. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term in the same manner as in the case of an original appointment. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 57)

Section 2-193. Chairman, etc.; custodian of plans and records.

The planning board shall elect annually a chairman and a clerk from its own number, and may employ experts and clerical and other assistants. It may appoint a custodian of its plans and records, who may be the city engineer. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 58)

Section 2-194. Powers and duties.

The board shall have all the powers conferred and be subject to all duties imposed upon planning boards by the general laws, especially General Laws, chapter 41, sections 81A to 81J. The board shall not create or authorize any expenditure without a previous appropriation therefor by the city council. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 59)

Section 195-205. Reserved.

DIVISION 5. WHIDDEN MEMORIAL HOSPITAL COMMISSION

Section 2-206. Established; composition.

There shall be a Whidden Memorial Hospital Commission consisting of two (2) persons, the City Solicitor and the City Treasurer, ex-officio. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 63)

Section 2-207. Powers.

The Whidden Memorial Hospital Commission shall have charge and control of the Whidden Memorial Hospital and of all matters relating to the estate given to the city by Georgia M. Whidden, in accordance with the deed of gift of such estate and the laws of the Commonwealth. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 65)

Section 208-220. Reserved.

DIVISION 6. COUNCIL ON AGING*

Section 2-221. *Establishment, composition, membership.*

There shall be a council on aging, to consist of the director, or a representative, of the mayor's office of human services, ex-officio, and ten (10) members appointed for five (5) year terms, by the mayor, subject to the confirmation by the board of aldermen.
(Rev. Ords. 1976, Pt. 2, Ch. 2, § 84; Ord. of 11-5-86)

Section 2-222. *Chairman, terms of office.*

The chairman of the council on aging shall be designated by the mayor. All appointees shall hold office, until their respective successors are appointed and qualified, and shall serve without compensation. The council shall be under the administrative supervision of the mayor and may, with his approval, appoint such clerks and other employees as it may require and establish their salaries. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 85)

Section 2-223. *Powers and duties.*

It shall be the duty of the council to carry out programs designed to meet the problems of the aging in accordance with the provisions of Mass. General Laws Chapter 40 Section 8B or acts in amendment thereof or in addition thereto. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 86)

Section 224-250. Reserved.

DIVISION 7. CONSERVATION COMMISSION

Section 2-251. *Establishment, membership, terms of members, vacancies.*

There shall be a conservation commission of the city in compliance with General Laws, chapter 40, section 8C, consisting of five (5) citizens residing in the city, appointed by the mayor, and subject to confirmation by the Board of Aldermen. Two (2) members of the conservation commission shall be appointed for three (3) years, two (2) members for two (2) years, and one (1) member for one (1) year. After the original appointment, the term of each member shall expire on the last day in March of the term. And thereafter appointment shall be made for the term of three (3) years on or before the first day of April in the year of appointment. Any vacancy occurring shall be filled for the remainder of the term in the same manner as the original appointment. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 99; Ord. of 7-21-86)

Section 2-252. *Powers and duties.*

The conservation commission shall have and exercise all the rights, powers and authority given to such commission under General Laws, chapter 40, section 8C, and Chapter 131, section 40. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 100)

Section 253-260. Reserved.

DIVISION 8. RECREATION COMMISSION

Section 2-261. Composition, appointment, term of office.

The recreation commission shall consist of five (5) citizens of the city, appointed by the mayor, subject to confirmation by the Board of Aldermen. The commission shall elect annually a chairman from its own number. The members first appointed to such board shall be appointed for terms of such length and so arranged that the term of one (1) member will expire each year, and their successors shall be appointed for terms of five (5) years each. After the original appointments, one (1) member shall be appointed annually on or before the first Monday in February and shall serve for five (5) years, beginning with the first Monday in March, unless sooner removed. (Rev. Ords. 1976, Pt. 2, Ch. 2, § 101)

Section 2-262. Powers and duties.

- (a) The recreation commission shall have control of all recreational activities paid for, sponsored, or supervised by the city, excepting only such recreational activities as may be specifically under the control of the school department.
- (b) The commission's responsibilities shall include, but not be limited to, the planning, coordination and supervision of all the city's recreational activities and general supervision of the director of recreation, who shall be responsible for the administration of the ongoing activities of the commission.
- (c) The commission shall also be responsible for the preparation of a comprehensive annual budget for the activities of the commission and for a comprehensive annual report of its doings, including a detailed statement of receipts and expenditures of the preceding year, together with such other reports as the mayor may require; such budget and reports to be submitted to the mayor and city council, as requested.
(Rev. Ords. 1976, Pt. 2, Ch. 2, § 102) State law reference(s)--M.G.L. c. 45, § 14.

Section 263-270. Reserved.

DIVISION 9. DISABILITY COMMISSION*

Section 2-271. Composition, Appointment, Term of Office.

There shall be a disability commission consisting of seven (7) members, appointed by the mayor subject to confirmation by the Board of Aldermen. A majority of the members shall be persons with a handicap, as defined in section 2-273, and represent as many cross-disabilities from the handicapped community as possible. One (1) of these members may be a member of the immediate family of a disabled person. One (1) of the members shall be an elected or appointed official of the city.

The initial appointments shall be made as follows: three (3) members for three years, two (2) members for two years, and two (2) member for one year. Thereafter two (2) members shall be appointed annually on or before the first Monday in February for a term of three years.
(Ord. of 5-27-86, § 1)

Section 2-272. Function and purpose.

The commission shall:

- (a) Act as a centralizing force in the city and the community which will deal with all handicapped issues; providing information, referral, guidance, coordination, offering and providing technical assistance to other public agencies and private persons, organizations and institutions engaged in activities and programs intended to eliminate prejudice and discrimination against person(s) with handicap(s) because of their status as a person with a handicap.
- (b) Take such action as the commission considers appropriate to ensure that equal status of person(s) with a handicap(s) of every race, creed, color, natural origin, age and sexual preference.
- (c) Assure that no otherwise qualified individual with a handicap in the city shall, solely by reason of his or her handicap, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any program or activity within the city. (Ord. of 5-27-86, § 2)

Section 2-273. Definition of person with handicap.

For purpose of this division, a person with a handicap shall be defined as any person who:

- (a) Has a physical or mental impairment which substantially limits one (1) or more major life activities;
- (b) Has a record of such an impairment; or
- (c) Is regarded as having such impairments.
(Ord. of 5-27-86, § 3) Cross reference(s)--Definitions and rules of construction generally, § 1-3.

Section 2-274. Powers and duties.

The powers and duties of the commission shall include the following:

- (a) To ensure the equal status of a handicapped person in education, employment, economic, political, health, legal and social spheres;
- (b) To design programs that promote equality for all handicapped persons in the city;
- (c) To review recommendations and policies of all departments, divisions, and agencies of the city including, but not limited to, the mayor, the purchasing agent and the city council;
- (d) To initiate, coordinate and monitor the enactment of legislation which promotes equal status of the handicapped persons in the city, state, and federal levels, and to ensure that appropriate regulations are adopted and enforced pursuant to such legislation including, but not limited to, implementation of the 114th Amendment to the Massachusetts Constitution;

- (e) To participate in an advisory capacity in the hearing of complaints brought alleging discrimination against the handicapped person including, but not limited to, the office of the Massachusetts Commission Against Discrimination;
- (f) To obtain from city departments, divisions, and agencies any and all information necessary to carry out the functions, purposes, programs and activities of the commission that does not infringe upon the right of privacy of an individual;
- (g) To assist in public awareness of the handicapped through participation in public and media events sponsored by the administrative and/or legislative bodies of the city including, but not limited to city-sponsored recreational, educational, and development activities;
- (h) To be an active and participating member of appropriate organizations dealing with issues affecting the handicapped person;
- (i) To recruit and recommend prospective members to the commission prior to appointment by the mayor;
- (j) To serve on the commission without compensation, with a reasonable expense budget;
- (k) To acquire, analyze, use and store handicapped related statistics and related materials in conjunction with the Parlin Memorial Library and Shute Library for program planning and evaluation purposes;
- (l) To hold at least ten (10) regular meetings throughout the year and to conduct additional meetings as necessary;
- (m) Such other powers and duties as may be agreed on by the mayor and the commission.
- (n) To recommend or give an advisory opinion to the City Council on all matters referred to the commission by either branch of the city council
(Ord. of 5-27-86, § 4, Ord. of 6-3-91)

Section 275. Reserved.

DIVISION 10. BUILDING COMMISSION*

Section 2-276. *Appointment of building commission; responsibilities.*

- (a) Unless otherwise specified by statute, if in the judgment of the mayor, the construction, reconstruction, alteration or remodeling of a public building requires the appointment of a building commission, the mayor shall, by executive order, establish such commission to consist of three (3), five (5), or seven (7) persons, appointed by him subject to confirmation by the board of alderman. The mayor

shall designate the chairman of the commission.

- (b) The commission shall be responsible for all aspects of project administration including but not limited to design, preparation of plans and specifications, awarding of contracts for professional and construction services, the purchase of equipment and furnishings, and the general supervision of the project until such time that the mayor notifies the building commissioners in writing that the project has been accepted by the operating agency; and that the building commission is dissolved. (Ord. of 12-18-89 (Ch. 2, § 78))

Section 277-278. Reserved

DIVISION 11. YOUTH COMMISSION

Section 2-279. Composition, Appointment, Term of Office

There Shall be a Youth Commission consisting of not less than three (3), not more than seven (7) members, appointed by the Mayor subject to confirmation by the Board of Aldermen.

The initial appointments shall be for one (1), two (2) or three years and shall be so arranged that the terms of approximately one-third of the members will expire each year, and their successors shall be appointed for a term of three years each. Any vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term in the same manner as the original appointment.

Section 2-280. Function and Purpose

The Commission shall:

- (a) Encourage and support an atmosphere of artistic, intellectual and athletic activity to improve the quality for all children in the City;
- (b) Carry out programs which may be designed or established to meet the opportunities, challenges and problems of youth in the City and also in conjunction with any similar or related programs of any agency of the Commonwealth of Massachusetts or any agency of the Federal Government;
- (c) Keep accurate records of its meetings and actions and shall file an annual report with the City Clerk.

The Commission May:

- (a) Receive gifts of property, both real and personal, in the name of the City, subject to the approval of the City Council, such gifts to be managed and controlled by the Commission for the purpose of this section;
- (b) Develop programs and activities which will create an atmosphere of intellectual, athletic, and artistic activity for all children, and will meet the needs, challenges and problems of our children;

- (c) Appoint, subject to the approval of the Mayor, such clerks and other employees as it may from time to time require. (Ord. of 02-17-1998)

DIVISION 12. HISTORICAL COMMISSION

Section 2-281. Composition

There shall be a Historical Commission consisting of not less than three (3), not more than seven (7) members, appointed by the Mayor subject to confirmation by the Board of Aldermen.

The initial appointments shall be for one (1), two (2) or three years and shall be so arranged that the terms of approximately one-third of the members will expire each year, and their successors shall be appointed for a term of three years each. Any vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term in the same manner as the original appointment.

Section 2- 282 Function and Purpose

The Commission shall:

- (a) Provide for the preservation, protection and development of the historical or archeological assets of the City of Everett.
- (b) Conduct researches for places of historic or archeological value, shall cooperate with the state archeologist in conducting such researches or other surveys, and shall seek to coordinate the activities of unofficial bodies organized for similar purpose.
- (c) Report to the state archeologist the existence of any archeological, paleontological, or historical site or object discovered in accordance with the Massachusetts General Laws.
- (d) Keep accurate records of its meetings and actions and shall file an annual report with the City Clerk.

The Commission may:

- (a) Advertise, prepare, print and distribute books, maps, charts, plans and pamphlets that it deems necessary for its work.
- (b) For the purpose of protecting and preserving such places, make such recommendations, as it deems necessary, to the City Council, to the Massachusetts Historical Commission, that any such place be certified as a historical or archeological landmark.
- (c) Hold hearings, enter into contracts with individuals, organizations and institutions for services; enter into contracts with local or regional associations for cooperative endeavors; accept gifts, contributions and bequests of funds from individuals, foundations and from federal, state or other governmental bodies; make and sign any agreements; do and perform any and all acts which may be necessary or desirable in

furthering the objectives of the commission's program.

- (d) Appoint, subject to approval of the Mayor, such clerks and other employees as it may from time to time require.
- (e) Acquire in the name of the City by gift, purchase, grant, bequest, devise, lease or otherwise the fee or lesser interest in real or personal property of significant historical value and may manage the same. (Ord of 08-24-98)

Section 283-285. Reserved.

ARTICLE IV. PURCHASING*

Section 2-286. *Purchasing agent.*

- (a) The mayor shall appoint a purchasing agent subject to confirmation by the board of aldermen as provided in chapter 432 of the Acts of 1962. In the event an appointee is not confirmed by the board of aldermen, the appointee or other person named by the mayor shall not serve more than sixty (60) days as a temporary appointment. Nor shall the same temporary appointment serve more than one (1) sixty-day term.
- (b) The appointee confirmed shall serve a term of two (2) years coterminous with that of the term served by the mayor.
- (c) The Purchasing Agent shall be the Chief Procurement Officer of the City of Everett in accordance with the provisions of MGL, 30B and shall follow the requirements and procedures set forth in MGL, Chapter 30B and its updates. (A0257-06)
- (d) The purchasing agent shall have the power to transfer all supplies, materials, and equipment from one (1) department to another as may be deemed advisable. The purchasing agent shall have the power to sell, exchange or trade any supplies, material and equipment which have become unsuitable for public use if the item has a value less than five hundred dollars (\$500.00). If the item has a value greater than or equal to five hundred dollars (\$500.00) the sale, exchange or trade of the item shall be subject to the approval of the city council. The purchasing agent shall keep a public record of all sales, exchanges and trades.
- (e) The purchasing agent shall require that each using agency shall make an inventory during the month of May in each year of all personal property under its charge, and a copy of such inventory shall be forwarded to the purchasing agent.
- (f) The purchasing agent shall control and supervise any and all storerooms and warehouses and any which may be hereafter established. The city council, upon estimates prepared by the purchasing agent and submitted, from time to time, by the mayor, shall provide a revolving stores fund of sufficient amount to finance the purchase and storage of standard supplies, materials, and equipment for use by

all departments and agencies which equipment may be purchased and stored advantageously and such fund shall be under the control of the purchasing agent who shall also be responsible and accountable for all supplies, materials, and equipment under his control and shall maintain a perpetual inventory record thereof.

- (g) The purchasing agent may consult with the heads of the departments to determine their precise requirements and shall endeavor to prescribe those standards that best meet the needs of the majority of departments.
- (h) The purchasing agent may require any office or department head to furnish information essential to the operation of the purchasing department for the enforcement of this article or any regulations adopted hereunder.
(Ord. of 5-9-77, §§ 103, 103A, 104; Ord. of 2-6-89)

Section 2-287. Requisitions.

- (a) Requisitions for the purchase of supplies, materials, equipment or contractual services for a department, board or commission shall be received by the purchasing department prior to the issuance of a purchase order or contract and shall be signed by the head of the using department, or his authorized agent.
- (b) The purchasing agent shall examine each requisition and shall have the authority, only after consultation with the department head, to revise it as to quantity, quality or estimated cost. (Ord. of 5-9-77, § 105)

Section 2-288. Requisitions and purchase orders.

- (a) No requisition, order or contract shall be subdivided to avoid any of the requirements of this article.
- (b) The head of each using agency shall file with the purchasing agent the names of individuals authorized to originate requisitions.
- (c) All purchase orders shall be issued by the purchasing agent.
- (d) All requisitions shall be made on forms approved and furnished by the purchasing agent. (Ord. of 5-9-77, § 106)

Section 2-289. Procedure for contract purchases, limitation on amounts.

All purchases of, and contracts for supplies, materials, equipment and contractual services, and all sales of personal property which have become obsolete and unusable shall be governed by the procedures set forth in MGL, Chapter 30B and its updates.
(Ord. of 5-9-77, § 107; Ord. of 5-23-88; Ord. of 7-15-91; Ord. of 12-02-2003; A0256-06)

Section 2-290. Requisition Limitation.

No officer, department head, board or commission authorized to expend money shall make requisition on the purchasing agent for the purchase of equipment, supplies, materials, or contractual services until funds are available therefor.(Ord. of 5-9-77, § 111)

ARTICLE V DESIGNER SELECTION PROCEDURES

Section 2-291. Application of Procedures

These procedures are to apply to the selection of designers on building construction, renovation, alteration, remodeling, and repair projects undertaken by the City of Everett or any agency, board, commission or school department. These procedures do not apply to the selection of designers for modular buildings or projects of the Everett Housing Authority. See the definition of “building project” if there is a question whether a particular project is a building project subject to these guidelines. Projects that are funded in part by a State agency or by a Federal agency may be subject to additional programmatic requirements established by the funding agency.

Section 2-292 Defining Scope of work

- (a) The awarding authority that will award and administer the design contract will determine the nature and extend of the design services required for the project and will develop the project criteria required under Section 2-293 below.
- (b) Design services such as the preparation of programs and feasibility studies, construction management, and construction scheduling may be performed by any person or firm experienced in providing such services. Other design services generally require the participation of registered architects, landscape architects, or engineers. In such cases, if the designer is an individual, he or she must be registered in the appropriate discipline. If the designer is a partnership, a majority of the partners must be so registered. If the designer is a corporation, the chief executive officer (when stock ownership), the person in charge of the project, and either a majority of directors or a majority of the ownership interest must all be registered.
- (c) The awarding authority will decide whether to set a fee for the proposed design service, which will be binding on the applicants, or whether to negotiate the fee. If the fee is to be negotiated, the awarding authority must establish a “not-to-exceed” limit before the applications are received and evaluated.
- (d) Contracts for energy management services that may include improvements to a building are not subject to the designer selection law and may be procured using a request for proposals process in accordance with the provisions of M. G. L. c 25A & 11C. Information on energy management services contracting may be obtained from the State’s Division of Energy Resources.

Section 2-293. Advertising

- (a) A request for proposals (RFP) for each contract for designer services shall be published in the Central Register, established under M. G. L. c. 7, Section 38D at least two weeks before the deadline for filing applications. In addition design services

for projects whose estimated construction cost exceeds \$10,000 (or as might further be amended by the City Council) must also be publicly advertised in the local newspaper once a week for at least two consecutive weeks, the last publication to be at least one week before the time specified for the opening of said proposals. The RFP will provide the following detailed information:

- (1) A description of the project, the specific designer services sought, the estimated construction cost, and the time allotted for completion, if known. Requirements of the designer to attend local meetings or to be present at the construction site should also be included.
- (2) When and where the program prepared for the project will be available for inspection by applicants, or a statement that there is no program beyond the information in (1) above.
- (3) \The qualifications required of applicants for the project (State law requires a registered architect for the preparation of plans and specifications involving any building whose size exceeds 35,000 cubic feet’).
- (4) The categories of designers’ consultants, if any of which applicants must list consultants they intend to use.
- (5) Whether the fee has been set or will be negotiated. If the fee has been set, its amount must be stated in the RFP as a total dollar amount, not a percentage. If the fee is to be negotiated, the awarding authority shall establish a not-to-exceed amount prior to negotiations, but need not publish it in the RFP’s.
- (6) The deadline for submission of proposals.
- (7) The person and address to which proposals should be sent.
- (8) A statement that the City shall reserve the right to reject any or all of such proposals.
- (9) Any other pertinent information.

Section 2-294. Receiving Applications

(a) If fewer than three (3) applications are received, the Designer Selection Committee assigned by the Mayor for any particular project can decide to re-advertise. If again, fewer than three (3) responses are received, the responding firm or firms will be evaluated.

- (1) No proposals shall be accepted from or for any person who has broken a contract with the City during the three (3) years preceding. (Everett Charter)

Section 2-295. Evaluation Process

The selection of finalists will be based on the following criteria:

(a) Minimum Evaluation Criteria:

- (1) The Consultant/Firm must have and provide evidence of the following minimum qualifications and experience or other information requested in “Proposal Requirements” section of the RFP in the order to be eligible for consideration as a finalist:

- a. Description of Consultant/Firm
- b. Statement of Project understanding

- c. The Proposal
- d. Examples of Similar Work
- e. References
- f. Timetable
- g. Fee Schedule
- h. Other Information
- i. Certificate of Non-Collusion

(b) Comparative Evaluation Criteria:

Each Selection Committee member will independently evaluate the proposals based on the following criteria:

- (1) Professional Competence of Consultant Firm and Experience in Performing Similar Work.
 - a. Consideration will be given to the Consultant/Firm who demonstrates the technical capability of personnel in the required disciplines; ability to interface with City Staff and with the public in particular, property owners impacted by the projects(s); good writing and reporting skills; experience in similar types of work activities and products.
- (2) Technical Approach and Methodology Demonstrating Understanding of the Scope of Services
 - a. Consideration will be given to the Consultant/Firm who demonstrates with conciseness and clarity their understanding of the projects and their plan to complete the projects.
- (3) Capacity to Perform Work Within Schedule and Budget
 - a. Consideration will be given to the Consultant/Firm who demonstrates the ability to manage all aspects of the project(s) while meeting all time and cost expectations or requirements.

(c) Applicants may be required to:

- (1) Appear for an interview before the Designer Selection Committee (DSC)
- (2) Present a written proposal to the DSC or
- (3) Participate in a design competition held by the DSC.
 - a. No architect or design consultant shall be engaged by the City for any purpose unless the name of the firm or individual to be engaged, shall first be submitted to the DSC and approved by a majority vote of its members.

(d) The DSC will select at least three finalists from among all applicants and transmit the list to the awarding authority.

- (1) The list will rank the finalists in order of qualification, provide a record of the final vote of the DSC on the selection, and include a written statement explaining the committee's reasons for its choice and its ranking of the finalists.

- (2) The list will be a public record. No person or firm debarred pursuant to Chapter 149, section 44C or disqualified pursuant to Chapter 7, section 38F© or 38H(g) shall be so included as a finalist.
- (3) The DSC shall transmit to the awarding authority all material made or received relating to such recommendation.

Section 2-296. Selecting a firm for Final Negotiation

If the fee for design services has been set by the awarding authority prior to the selection process, the awarding authority will select the designer to be awarded the contract from the list submitted by the DSC. If a designer other than the one ranked first is selected, the awarding authority shall file a written justification with the DSC.

Section 2-297 Negotiate the Fee

- (a) If the fee is to be negotiated, the awarding authority shall review the list transmitted by the DSC, and may exclude any designer from the list with a written explanation of the exclusion.
- (b) The awarding authority shall then appoint a designer based on successful fee negotiation among the remaining finalists in order of rank.
 - (1) In no event may a fee be negotiated which is higher than a maximum fee set by the awarding authority prior to selection of finalists.
 - (2) Should the awarding authority be unable to negotiate a satisfactory fee with any designer initially selected as a finalist by the DSC, the DSC shall recommend additional finalists in accordance with the statutes.

Section 2-298. Negotiating and Awarding the Contract

- (a) All contracts made by any department, board or commission where the amount involved is \$5,000.00 dollars or more (or as might further be amended by City Council) shall be in writing.
- (b) The design contract shall state the fee as a total dollar amount. In no case may the designer's fee be determined as a percentage of construction cost.
- (c) No officer or board shall make any contract on behalf of the City, the execution of which will necessarily extend beyond three (3) years from the date thereof unless special permission to do has been given by vote of the City Council or by the statutes of the Commonwealth. (Everett Charter)
- (d) Officials and employees are prohibited from making or sharing in municipal contracts. (Everett Charter)
- (e) The name of the designer awarded the contract must be published in the Central Register.

- (f) The awarding authority may request a copy of the Division of Capital Asset Management (DCAM) or American Institute of Architects' standard design contracts to use as guidance. Every contract awarded for design services shall include:
- (1) Certification that the designer or construction manager has not given, offered, or agreed to give any gift, contribution or offer of employment as an inducement for, or in connection with, the award of a contract for design services.
 - (2) Certification that no consultant to, or subcontractor for the designer or construction manager has given, offered or agreed to give any gift, contribution or offer of employment to the designer or construction manager, or to any other person, corporation, or entity as an inducement for, or in connection with the award to the consultant or subcontractor of a contract by the designer or construction manager.
 - (3) Certification that no person, corporation or other entity, other than bona fide full-time employee of the designer or construction manager, has been retained or hired to solicit for or in any way assist the designer or construction manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of contract to the designer.
 - (4) Certification with respect to contracts which exceed ten thousand dollars or that are for the design of a building for which the budgeted or estimated construction costs exceed one hundred thousand dollars, that the designer has internal accounting controls as required by Chapter 30, section 39R, and that the designer will:
 - a. Maintain accurate and detailed accounts for a six year period after the final payment.
 - b. File regular statements of management concerning internal auditing controls.
 - c. File an annual audited financial statement, and
 - d. Submit a Statement from an independent certified public accountant that such CPA (or certified public accountant) has examined management's internal auditing controls and expresses an opinion as to their consistency with management's statements in (b) above and whether such statements are reasonable with respect to transactions and assets that are substantial in relation to designer's financial statements, Chapter 7, section 38H(e).
 - (5) A requirement that the designer at his/her own expense obtain and maintain a professional liability insurance policy covering negligent errors, omissions and acts of the designer or of any person or business entity for whose performance the designer is legally liable arising out of the performance of such contracts for design services.
 - a. The awarding authority may require a consultant employed by a designer subject to this subparagraph to obtain and maintain a similar liability insurance policy.

- b. The total amount of such insurance shall at a minimum equal the lesser of one million dollars or ten percent of the project’s estimated cost of construction, or such larger amounts as the public agency may require, and shall cover the applicable period of limitations.
 - c. A designer required by the public agency to obtain all or a portion of such insurance coverage at his own expense shall furnish a certificate or certificates of insurance coverage to the public agency prior to the award of the contract.
 - d. For the purpose of this paragraph only, “public agency” shall have the meaning set forth in section thirty-nine A.
 - e. Liability insurance is not required for the preparation of studies, surveys, soil testing, cost estimates, programs or for construction management or scheduling.
- (6) Contracts for design services shall include a provision that the designer or his consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been reasonably anticipated by the designer in the preparation of the bid documents, is reasonably determined by the executive head of the public agency responsible for administering the design contract.
- a. The contract shall specify who will bear the cost of redesigns if the plans are unsatisfactory or if the construction bids exceed the estimated cost or the, available appropriation. (G. L. C.7, s 38H(j)).
 - b. For the purpose of this paragraph, “public agency” shall have the meaning as set forth in section thirty-nine A.
- (7) Any person contracting with a municipality must certify in writing that he or she has complied with State tax laws, (G. L. c. 62C, s49A).
- (8) Contracts for design services may include a requirement that the designer be responsible for overseeing the construction phase of the project.
- (9) The contract shall specifically list the names and time commitments of the key personnel included in the designer’s proposal.
- (10) The contract shall require that the designer satisfy State law certifications and requirements relating to non-collusion in the submission of proposals and financial reports that the designer must file. (G. L. C.7 s38H(e))
- (11) The contract shall have a provision giving ownership of any completed or partially completed design documents to the awarding authority even if the contract is terminated.

Section 2-299. Emergency Situations

When an emergency situation exists, the City of Everett may utilize “Regulation 811 C2MR 3.00 Expedited Procedure for Selection of Designers When an Emergency Situation Exists”, as adapted to local requirements including the substitution of the terms “Designer Selection Board” and “Deputy Commissioner of “DCAM” with “Designer Selection Committee” and “Local Awarding Authority” respectively.

Section 2-300. Other

- (a) When the RFP has required that the applicants list consultants which they intend to use, any changes in, addition to, consultants named in the application must be approved by the awarding authority and reported to the DSC with a written statement by the designer or construction manager of the reasons for the change.
- (b) A designer or programmer appointed to do a feasibility study, master plan or program for a project shall be ineligible for appointment to perform the design services for that project. This paragraph shall not apply to designers performing studies for repair work provided, first, that such work is limited to identifying and correcting existing deficiencies in a portion of a building or its equipment and second, that the designer's fee for the combined study and design of repairs is not greater than twenty-five thousand dollars.
- (c) The awarding authority may allow a designer who conducted a feasibility study to continue with the design of a project, if the authority commissions an independent review, by a knowledgeable and competent individual or business doing such work, of the feasibility designer's work to insure its reasonableness and its adequacy prior to allowing the designer to continue on said project. The review of a State agency with oversight or approval of a project may be sufficient for purposes of this paragraph.
- (d) The cost of an independent review should first be estimated by consulting with knowledgeable staff or soliciting estimates from at least three potential reviewers. To consider using the independent review option, it must be stated in the initial advertisement for design services that the feasibility designer may, subject to an independent review, go on to perform the final design. Separate fees for the feasibility phase and the final design phase must be set.
- (e) In the selection of applicants to perform design services, the following records will be kept by the awarding authority:
 - (1) Copies of public notices, evaluations, rankings, and reasons for rankings;
 - (2) All information supplied by or obtained about each applicant;
 - (3) All actions taken by the DSC relating to any project and recorded votes of the DSC; and
 - (4) All actions taken by the awarding authority relating to any project.

These records will be available for inspection by the State Designer Selection Board and other authorized agencies.

- (f) All meetings of a government body shall be open to the public and any person shall be permitted to attend any meeting as otherwise provided by G. L. 30H, section 11A1/2/.
- (g) No member of the DSC shall participate in the selection of a designer for any project if the member of his or her immediate family:
 - (1) Has a direct or indirect financial interest in the award of the design contract to any applicant;
 - (2) Is currently employed by, or is a consultant to or under contract to any applicant;
 - (3) Is negotiating or has an arrangement concerning future employment or contracting with any applicant; or

- (4) Has ownership interest in, or is an officer or director of, any applicant.
- (h) Using full-time municipal employees to perform design services which fall within the scope of their normal duties is perfectly legal and appropriate, provided the employees are qualified. The review and evaluation of employee qualifications for a particular project should be completed using the same criteria as would be applied to outside firms. This review and evaluation shall be conducted by the person or persons so designated by the awarding authority. Where the employee is found to be qualified, an open competition need not be conducted.
- (i) These procedures have been adopted to satisfy the purpose and intent of M.G.L. Chapter 7, section 38 A to 38 O. Where interpretive questions or ambiguities arise, refer to the recommendations “Designing and Constructing Municipal Facilities, Legal Requirements, Recommended Practices, Sources of Assistance”, dated October 1989, issued by the Office of the Inspector General and Massachusetts General Laws c. 7 s38K with additional requirements set forth in s 38A1/2 through s38N. The Attorney General is the chief law officer and his opinion takes precedence over previous interpretations by State agencies.
(Ord. of 06-25-2001)