

DOCUMENT REVIEWED BY:

City Clerk _____ cvw _____

City Attorney _____

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

**AN ORDINANCE AMENDING CHAPTER
3.20 (PURCHASING, PROCUREMENT,
AND LEASING) OF THE FORT BRAGG
MUNICIPAL CODE**

ORDINANCE NO. _____2015

WHEREAS, the City of Fort Bragg ("City") has determined that Chapters 2.16.21 (City Manager-Contracts and Purchasing) and 3.20 (Purchasing, Procurement, and Leasing) of the Fort Bragg Municipal Code ("Code"), as currently written, is difficult to understand and administer; and

WHEREAS, amending Chapters 2.16.21 and 3.20 will assist in administering the City's purchasing policy and procedures and achieve internal consistency and efficiency in interpreting and administering the Chapter; and

WHEREAS, the City Council has determined that the following changes should be made to the Chapter for consistency, accuracy and ease of use by the City's staff and citizens;

NOW, THEREFORE, the City Council ordains as follows:

Section 1. Legislative Findings. The City Council hereby finds as follows:

1. The City of Fort Bragg Municipal Code Chapters 2.16.21 and 3.20 have undergone a review by staff to identify inconsistencies and inaccuracies.
2. The Code should represent the current state of all legislative actions taken by the City Council.
3. Chapters 2.16.21 and 3.20 is used extensively by City staff in determining what actions are required for purchasing of goods and services.
4. The Code needs to reflect current legislative actions of the City Council and the means by which the City is being operated and must be accurate and consistent to aid staff, residents and various other persons in making determinations on Code related issues.
5. Certain provisions of the Code are not accurate reflections of its current legislative intent nor are they consistent with the City Council's intent as expressed elsewhere in the Code.
6. Amending Chapters 2.16.21 and 3.20 in the manner described in this ordinance is in the public interest for the aforementioned reasons.
7. There is no possibility that the adoption of this ordinance will have a significant impact on the environment, and therefore, the adoption of this ordinance is exempt from the California Environmental Quality Act ("CEQA"), pursuant to Section 15061(b)(3) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations).

Section 2.

TITLE 3 – REVENUE AND FINANCE

Chapter 2.16.21 entitled CITY MANGER, item 21 entitled **Contracts and purchasing** is hereby repealed in its entirety. Chapter 3.20 entitled **PURCHASING, PROCUREMENT, AND LEASING** is hereby repealed in its entirety and replaced with the following:

“CHAPTER 3.20: PURCHASING POLICIES AND PROCEDURES

Section

3.20.010	Purpose of purchasing policies and procedures
3.20.020	Definitions
3.20.030	Exceptions to this Chapter
3.20.040	Purchasing officer duties and authority
3.20.050	Procedures for purchases of less than or equal to \$45,000
3.20.060	Procedures for purchases of more than \$45,000
3.20.070	Purchasing award – Factors to be considered
3.20.090	Splitting orders prohibited
3.20.100	Prevailing wages
3.20.110	Recycled products
3.20.120	Inspection and testing of purchases
3.20.130	Local preference for discretionary purchases

Statutory references:

Provisions regarding the purchase of supplies and equipment by local agencies, see Cal. Government Code §§ 54201 et seq.

Provisions regarding contracting for specially trained and experienced persons, firm, or corporation for special services and advice in financial, economic, accounting, engineering, legal, or administrative matters, see Cal. Government Code §§ 37103 and 53060.

Provision regarding the City's authority to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws, see Cal. Const. Art. XI, § 7.

§ 3.20.010 PURPOSE OF PURCHASING POLICIES AND PROCEDURES.

The purpose of this chapter is to:

- A. Comply with the requirements of state law;
- B. Establish efficient and effective processes for the purchase or lease of services, supplies, materials, and equipment at the lowest feasible cost commensurate with the level of quality required;
- C. Exercise financial control and accountability over purchases; and
- D. Clearly define authority for the purchasing function.

In adopting the ordinance codified in this chapter, it is the intent of the City Council to responsibly manage public funds and provide responsibility for, and consistency in, implementing purchasing policies and procedures.

§ 3.20.020 DEFINITIONS.

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

GOODS OR SERVICES. Goods, services, supplies, materials and equipment that are the subject of this chapter.

LOCAL VENDOR. A bidder, vendor, or supplier of Goods or Services having an established place of business within the City and having had a current City business license continuously for at least 12 months prior to the date of the purchase or contact.

PURCHASING OFFICER. The City Manager or designee as provided for in 3.20.40 B.

§ 3.20.030 EXCEPTIONS TO THIS CHAPTER.

The procedures described in this Chapter shall govern the purchase of all Goods and Services except as follows:

A. The purchase of Goods and Services for any public project consisting of (1) construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility or (2) painting or repainting of any publicly owned, leased, or operated facility, shall be governed exclusively by the procedures described in Chapter 3.22.

B. Contracts for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms which shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

C. Contracts for furnishing special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services.

D. In case of an emergency, when public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property.

E. Situations where no quotes or bids have been received following requests for quotes or bid announcements or all quotes or bids received exceed budget appropriations or cost estimates.

F. Contracts for which other public agencies have gone through a competitive bidding process and are able to have the bid prices they received extended to the City. These "cooperative purchasing" or "piggyback purchasing" agreements (including, but not limited to, CCOP State Department of General Services, U.S. General Services Administration, any county, and state cooperative purchasing pools) in which the City is eligible to participate may be used in lieu of any bidding requirement under this chapter.

G. When by a four-fifths vote the City Council specifically waives the procedures described in this Chapter and authorizes staff to negotiate the purchase.

§ 3.20.040 PURCHASING OFFICER DUTIES AND AUTHORITY.

A. The City Manager is designated as Purchasing Officer for the City.

B. The City Manager may delegate all or a portion of the duties of Purchasing Officer to the Administrative Services Director and/or the Finance Director.

C. All purchases, leases and contracts are to be made or executed on behalf of the City.

D. Except in cases of emergency or in cases where specific authority has been first obtained from the City Manager, the Purchasing Officer shall not issue any purchase order or payment for Goods or Services unless there exists an unencumbered appropriation in the account against which said purchase is to be charged.

E. Purchases of Goods and Services in excess of \$5,000 shall be made only by purchase order. Except as otherwise provided herein, no purchase shall be issued unless the prior approval of the Purchasing Officer has been obtained. Departments shall submit requests to the Purchasing Agent for Goods and Services by standard requisition form, or by other means as maybe established by Administrative Regulation. The Purchasing Officer shall prepare a purchase order once an approved Requisition has been submitted.

F. The Purchasing Officer shall have the authority to:

1. Negotiate and recommend a contract for execution for the purchase or lease of Goods or Services required by the City in an amount equal to or less than \$45,000;
2. Execute contracts, leases or agreements for the purchase or lease of Goods or Services by the City in an amount equal to or less than \$25,000 if the adopted Budget has appropriated funds for the Goods or Services;
3. Execute all purchase orders in accordance with this Ordinance.
4. Act to procure for the City the necessary quality in Goods or Services;
5. Prepare and recommend to the City Council amendments to these purchasing rules;
6. Establish and maintain such forms as reasonably necessary to the purchasing function and maintain other records necessary for the efficient acquisition of Goods or Services;

7. Supervise the inspection of all Goods or Services purchased or leased by the City to ensure conformance with specifications; and
 8. Authorize for payment invoices for Goods or Services purchased or leased.
- G. Contracts or agreements for the purchase or lease of Goods or Services in excess of \$25,000 require City Council approval prior to execution by the City Manager.

§ 3.20.050 PROCEDURES FOR PURCHASES OF LESS THAN OR EQUAL TO \$45,000.

A. For purchases of Goods or Services less than or equal to \$45,000, the Purchasing Officer shall use the following procedures:

1. For purchases of Goods or Services having an estimated value of \$5,000 or less in a 12 month period, informal quotes may be obtained from vendors/suppliers but are not required. No purchase order is required.
2. For purchases of Goods or Services having an estimated value of more than \$5,000, but less than or equal to \$45,000, firm quotes from at least three vendors/suppliers, either received in writing or taken verbally but confirmed in writing, shall be obtained. At the discretion of the Purchasing Officer, the competitive bid process described in § 3.20.060 may be used for the acquisition of Goods or Services having an estimated value of more than \$5,000 but less than or equal to \$45,000. A purchase order is required.
3. Purchases made by credit card are limited to \$2,000.

B. Quotes should be solicited and obtained from responsible Local Vendors whenever feasible.

C. Contracts shall be awarded to the vendor/supplier that meets the City's requirements and is otherwise in the best interests of the City.

D. The City Manager may approve contract change orders not exceeding a total of 10% of the approved contract or up to the contingency amount whichever amount is less for any one purchase. Such change orders shall be made by standard requisition form, or by other means as may be established by Administrative Regulation and reported to the Finance and Administration Committee on a quarterly basis.

§ 3.20.060 PROCEDURES FOR PURCHASES OF MORE THAN \$45,000.

A. When the estimated amount of value involved in a purchase transaction exceeds \$45,000, the authorization to award a purchase contract shall be made by City Council resolution following a sealed competitive bid process as outlined below:

1. A notice inviting bids shall be prepared and shall include a general description of the Goods or Services to be purchased, where bid instructions and specifications may be obtained, the time and place for bid openings, and whether a bid deposit or bond, or other security, such as performance, payment or maintenance bonds, will be required.
2. A notice inviting bids shall be advertised at least once in a newspaper of general circulation in the City with the first publication being at least five (5) working days prior to the opening of bids.
3. The Purchasing Officer shall solicit sealed bids from known responsible Local Vendors whenever feasible.
4. The Purchasing Officer may advertise the notice inviting bids in applicable publications and websites accessible to the public.
5. When required by law or deemed appropriate by the Purchasing Officer, and if included in bid instructions, bidders may be required to submit a bid security in an amount determined by the Purchasing Officer. Bidders shall be entitled to return of bid security, except that a successful bidder (and a successful bidder's surety, if a bid bond is required) shall be liable for any damages suffered or incurred by the City upon refusal or failure to execute a contract within ten (10) days after the notice of award of contract has been mailed, unless the City is responsible for the delay.

6. When deemed appropriate by the Purchasing Officer, and if included in bid instructions, any person or entity entering into a contract with the City may be required to furnish a faithful performance deposit or bond in an amount determined by the Purchasing Officer.
7. Sealed bids shall be submitted to the Purchasing Officer and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than 30 calendar days after the bid opening.
8. The City Council shall award the contract to the lowest responsible bidder submitting a responsive bid. The City Council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder. If the City Council awards the contract to the next lowest bidder, and bidders were required to provide security, following a forfeit of the bid security by the lowest bidder the amount of the lowest bidder's bid security shall be applied by the City to the difference between the low bid and the second lowest bid; the surplus, if any, shall then be returned to the lowest bidder.
9. In its sole discretion, the City Council may reject all bids presented.
10. The City Manager may approve contract change orders not exceeding a total of 10% of the approved contract or up to the contingency amount whichever amount is less for any one project. Such change orders shall be reported to the Finance and Administration Committee on a quarterly basis.

§ 3.20.070 PURCHASING AWARD – FACTORS TO BE CONSIDERED.

A. In determining if a bid is responsive, the Purchasing Officer or City Council (depending on who will make an award) shall consider whether the bid documents are completed as required and the bid generally conforms to the bidding requirements. The Purchasing Officer or City Council may waive any bid nonconformities in accordance with applicable law. Any conditions or qualifications included by a bidder in a bid will be considered when determining whether a bid is responsive.

B. In determining if a bidder is responsible, the Purchasing Officer or City Council (depending on who will make an award) may use any of the following criteria in evaluating responsibility:

1. The ability, capacity and skill of the bidder to perform the contract or provide the service required.
2. The ability of the bidder to perform the contract or provide the service promptly or within the time specified, without delay or interference.
3. The reputation and experience of the bidder, including the City's previous experience with the bidder.
4. Prior and current compliance by the bidder with applicable law, including, without limitation, compliance with any applicable licensing requirements.
5. The sufficiency of the bidder's financial and staffing resources for performing the contract or providing the Goods or Services.
6. The quality, availability and adaptability of the supplies or contractual services to the particular use required.
7. The ability and availability of the bidder to provide future maintenance/service.
8. Any conditions or exceptions attached to the bid by the bidder.

§ 3.20.080 SPLITTING ORDERS PROHIBITED.

It is unlawful to split or separate into smaller orders the purchase of Goods or Services for the purpose of evading the competitive bidding provisions of this chapter.

§ 3.20.090 PREVAILING WAGES.

Potential bidders for Goods and Services that are subject to the requirements of the California Prevailing Wage Law (Cal. Labor Code §§ 1720, et seq.) shall be notified of the applicability of prevailing wage requirements and shall comply therewith.

§ 3.20.100 RECYCLED PRODUCTS.

Product purchases, whenever feasible, shall contain the highest amount of post-consumer and recovered materials practicable. In all cases, Goods or Services must meet reasonable performance standards, and be readily available at a competitive price.

§ 3.20.110 INSPECTION AND TESTING OF PURCHASES.

The Purchasing Officer is authorized to order the inspection of supplies and equipment delivered and services performed to determine their conformance with the specifications set forth in the order or contract. The Purchasing Officer shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications.

§ 3.20.120 LOCAL PREFERENCE FOR DISCRETIONARY PURCHASES.

To the extent permitted by applicable law, and subject to the provisions of this chapter, purchases that are exempt from competitive bidding law shall be made from Local Vendors, so long as the Purchasing Officer determines that the Local Vendor meets the City's requirements and that the purchase from a Local Vendor is otherwise in the best interests of the City.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Fort Bragg hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 4. Effective Date and Publication. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code §36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

The foregoing Ordinance was introduced by Councilmember _____ at a regular meeting of the City Council of the City of Fort Bragg held on _____, 2015, and adopted at a regular meeting of the City of Fort Bragg held on _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

**Dave Turner,
Mayor**

ATTEST:

Cynthia M. VanWormer, MMC
City Clerk

PUBLISH: _____, 2015 and _____, 2015 (by summary).
EFFECTIVE DATE: _____, 2015.

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