



Takoma Park City Council Meeting – November 14, 2018 Agenda Item 4

Voting Session

First Reading Ordinance Amending Takoma Park Code, Purchasing, Chapters 7.04, 7.08, and 7.12

Recommended Council Action

Approve ordinance

Context with Key Issues

All purchases of goods and services must be made in accordance with the chapters of the City's Code regarding purchasing. Other than some minor additions, these chapters have not been substantively updated since before 2000. Given increased costs for goods and services over time and the need for some general corrections and clarifications, staff provided several recommended amendments to the Code for Council consider.

The Council held two Work Sessions to discuss the proposed amendments on October 24 and November 7, 2018. The attached red-lined document reflects the amendments Council discussed.

Council Priority

Fiscally Sustainable Government

Environmental Considerations

The existing Code requires that certain environmental and energy considerations be taken into account when purchasing goods and services. The proposed amendments to the Code will include moving detailed requirements to administrative regulations to allow us to respond more quickly to changing technology, scientific understanding, and environmental certifications.

Fiscal Considerations

The proposed amendments to the Code may result in some cost savings, as they include new provisions that would allow the City to take advantage of unexpected, time-limited "sales."

Racial Equity Considerations

We are unable to determine whether any group would be disproportionately impacted in a positive or negative way by this action.

Attachments and Links

- Proposed Amendments to Takoma Park Code, Purchasing, Chapters 7.04, 7.08, and 7.12

1 Introduced by:
2
3 Drafted by:
4
5 Kenneth Sigman
6 City Attorney
7
8
9

First Reading:
Second Reading:
Effective Date:

10 **ORDINANCE NO. 2018-_____**
11

12 **Modernizing Title 7, Division 1, Purchasing and Disposition, of the Takoma Park Code**
13

14 **WHEREAS**, the Council has determined that the City’s policy regarding procurement of
15 goods and services should:

- 16 • Assure that modern, professional, and generally accepted purchasing policies are followed
17 by the City; and
- 18 • Provide for increased public confidence in the procedures followed in City procurements;
19 and
- 20 • Ensure the fair and equitable treatment of all persons who deal with the procurement system
21 of the City; and
- 22 • Provide increased economy in City procurement activities and maximize to the fullest
23 extent practicable the purchasing value of public monies of the City; and
- 24 • Provide safeguards for the maintenance of a procurement system of quality and integrity;
25 and
- 26 • Minimize adverse environmental impacts of City purchases; and
- 27 • Provide opportunities for local businesses; and
- 28 • Promote the payment of a living wage by vendors doing business with the City; and
- 29 • Obtain in a cost-effective and timely manner the materials, services and construction
30 required by the City to serve its residents and businesses.

31
32 **WHEREAS**, the threshold dollar amounts that trigger more stringent and time-consuming
33 source selection procedures were adopted many years ago and have not kept pace with inflation;
34 and

35 **WHEREAS**, City purchases increasingly involve contracts for software and electronic
36 services that are renewed for subsequent terms; and

37 **WHEREAS**, the Council has determined that modernization of the procurement provisions
38 of the Takoma Park Code is necessary to improve the efficiency of the City’s procurement of goods
39 and ensure that the renewal of software and electronic services contracts are in the City’s best
40 interest.
41

42 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
43 **TAKOMA PARK, MARYLAND,** that, effective immediately, Division 1, Purchasing and
44 Disposition, of Title 7 of the Takoma Park Code is hereby amended as follows:
45

46 **Title 7, PURCHASING AND TAXATION**

47 **Division 1. Purchasing and Disposition**

48 **Chapter 7.04. GENERAL PROVISIONS**

49 **Sec. 7.04.010. Purposes.**

50 The purposes of this division are to provide for an efficient, cost-effective and equitable system of
51 public purchasing by the City; to obtain the maximum purchasing value of public funds in
52 procurement; to provide for a procurement system of quality and integrity; to provide for selling
53 surplus goods in a manner which is efficient and equitable, and yields the highest sales price; and to
54 permit the continued development of procurement policies and practices.

55 **Sec. 7.04.030. Scope.**

56 A. Except as otherwise provided, this division applies to every disposition for value or
57 expenditure of public funds by the City for public purchasing.

58 B. When the procurement or disposition involves Federal, state, or county assistance or
59 contract funds or is subject to Federal, state, or county regulations, the procurement or disposition
60 shall be conducted in accordance with any applicable mandatory laws or regulations.

61 **Sec. 7.04.160. Definitions.**

62 The terms defined in this section shall have the meanings set forth below whenever they appear in
63 this division unless the context in which they are used clearly requires a different meaning or a
64 different definition is prescribed for a particular provision.

65 *Awarding authority means* the person or entity within the City authorized to award a contract.

66 *Bid* means an offer, in writing, to furnish goods, services, or construction in conformity with
67 the specifications, delivery terms and conditions or other requirements included in the invitation
68 for bids or an offer to purchase property.

69 *Brand name specification* means a specification by manufacturers' names or catalog serial or
70 other identification numbers.

71 *Brand name or equal specification* means a brand name specification to describe the standard
72 of quality, performance, and other characteristics needed to meet City requirements, and which
73 provides for the submission of equivalent products.

74 *Business* means any corporation, limited liability company, partnership, individual, sole
75 proprietorship, joint venture, association, or any other legal entity through which business is
76 conducted.

77 *Change order* means a written order signed and issued by the City Manager directing the
78 contractor to make changes which the contract authorizes the City to order without the consent of
79 the contractor.

80 *City Manager* means the City Manager or the City Manager's designee.

81 *Competitive sealed bid* means a method of procurement in which a supply, service or
82 construction item is defined in a list of specifications; the specifications are included in an
83 Invitation for Bids; the bids are received by a specified time in sealed envelopes or via authorized
84 electronic submission method; an award is made to the lowest responsible bidder meeting all
85 specifications, and cost is objectively measurable as defined in the specifications.

86 *Competitive sealed proposal* means a method of procurement in which goods, services, or
87 construction items are defined in a list of specifications; the specifications are included in a
88 Request for Proposals (RFP); proposals are received by a specified time in sealed envelopes or

89 via authorized electronic submission method; and an award is made to the proposer most closely
90 meeting specifications as determined by an evaluation that uses a set of evaluation criteria. Cost is
91 one criterion among others, all of which may be assigned specific weights.

92 *Construction* means the erection, alteration, repair, improvement, or demolition of any public
93 structure or building, or other improvements of any kind, including any draining, dredging,
94 excavation, grading or similar work upon real property.

95 *Contract* means any City agreement, regardless of form or title, whether formal or informal, for
96 the procurement or disposition of goods, services, or construction.

97 *Contract file* means a file, in electronic or paper format, maintained by the City Manager
98 containing all determinations and other written records pertaining to any solicitation, award, or
99 performance of a contract.

100 *Contract modification* means any written alteration in specifications, delivery, period of
101 performance, price, quantity, or other provision of an existing contract whether accomplished by
102 unilateral action in accordance with a contract provision or by mutual action of the parties to the
103 contract.

104 *Contractor* means any person having a contract with the City.

105 *Formal contract* means a contract for procurements exceeding \$30,000.00.

106 *Goods* means supplies, materials, equipment, and all tangible property, except real property.

107 *Indefinite quantities contract* means a contract whereby the City agrees to purchase, and the
108 contractor agrees to provide the goods or construction of a designated type or unit which the City
109 may require, without specifying in the contract the exact quantity.

110 *Informality* means a minor defect or variation of a bid or proposal from the requirements of the
111 Invitation to Bid, or the Request for Proposal, which does not materially affect the price, quality,

112 quantity or delivery schedule for the goods, services, or construction being procured.

113 *Kickback* means any money, fee, commission, credit, gift, or compensation of any kind which
114 is provided directly or indirectly to a contractor, a contractor employee, a subcontractor, a
115 subcontractor employee, a public employee, or other person for the purpose of obtaining or
116 rewarding favorable treatment in the award of a prime contract or a subcontract in connection with
117 a contract awarded by the City.

118 *Local business* means an independently owned and operated business located within 150 miles
119 of the City.

120 *Locally supplied* means products and goods made or supplied, or services provided, by a local
121 business. independently owned and operated individual, business, or organization located within
122 150 miles of the City.

123 *Person* means an individual, association, partnership, corporation, limited liability company,
124 government agency, or other entity, but does not include the City government.

125 *Procurement* means buying, purchasing, renting, leasing, or otherwise acquiring any goods,
126 services, or construction. It also includes all functions that pertain to the obtaining of any supply,
127 service, or construction, including the description of requirements, selection and solicitation of
128 sources, preparation and award of contract, and all phases of contract administration.

129 *Professional services* means services performed by a person whose specialized knowledge and
130 academic preparation have led the person to be a licensed or recognized professional within their
131 vocation. These services include, but are not limited to, accounting, architecture, land surveying,
132 law, actuarial services, professional engineering, and such other services that are customarily
133 negotiated because the individuality of those services do not lend themselves to a fixed price bid.

134 *Proposal* means an offer to supply goods or perform services, or to purchase goods to be

135 disposed, in response to a request for proposals by the City where competitive sealed proposals or
136 negotiations will be used rather than the competitive bid process.

137 *Public entity* means any Federal, State or local government, agency, committee, commission,
138 board, institution, or political subdivision created by Federal, State or local law to exercise some
139 sovereign power or to perform some governmental duty.

140 *Public notice* means notice of a procurement solicitation given in a manner reasonably
141 calculated to provide notice to persons interested in the solicitation. At a minimum, such notice
142 shall include posting notice of all pending procurements on the City's website. Such notice may,
143 but need not necessarily, include publication in a newspaper of general circulation, electronic
144 mailing lists, and web sites maintained for that purpose.

145 *Purchase order* means a type of contract issued by the City not requiring countersignature by
146 the contractor.

147 *Request for Proposals (RFP)* means all documents, whether attached or incorporated by
148 reference, used for soliciting proposals.

149 *Responsible bidder or offeror* means a person who has the capability to perform the contract
150 requirements, and the experience, capacity, facilities, equipment and credit to assure performance.

151 *Responsive bidder* means a bidder that has submitted a bid that conforms in all material
152 respects to the Invitation for Bids.

153 *Services* means the furnishing of labor, time, or effort by a contractor.

154 *Specification* means any description of the physical or functional characteristics, or of the
155 nature, of a good, service, or construction item. It may include a description of any requirement
156 for inspecting, testing, or preparing a supply, service, or construction item for delivery.

157 *Split purchasing* means when a recognized need for a certain volume of goods, services, or

158 construction is purposefully split into smaller increments in order to evade any requirement of
159 this division.

160 *Surplus goods* means all goods the City Manager has determined have become surplus,
161 obsolete or unusable.

162 *Tie bids* are responsive bids from responsible bidders that are substantially the same in price,
163 terms and conditions and that meet all the requirements and evaluation criteria set forth in the
164 invitation for bids.

165 *Using department* means any City department, office, or agency that utilizes any goods,
166 services, or construction procured under this division.

167 *Written or in writing* includes information that is electronically transmitted or stored.

168 **Sec. 7.04.22. Authority and duties of the City Manager.**

169 Except as otherwise provided in this division, the City Manager shall have the authority and
170 responsibility to:

- 171 A. Procure or supervise the procurement of all goods, services, and construction needed by the
172 City;
- 173 B. Sell, trade or otherwise dispose of surplus goods belonging to the City;
- 174 C. Exercise general supervision and control over all inventories of supplies belonging to the City;
- 175 D. Develop procedures, standards, and policies, and forms, including but not limited to a
176 Purchasing Manual, as may be necessary for the effective implementation of this division;
- 177 E. Conduct pre-bid or pre-proposal conferences where appropriate;
- 178 F. Make written recommendations for the award of formal contracts;
- 179 G. Keep informed of current developments in the field of purchasing, prices, market conditions,
180 and new products;

- 181 H. Assure that sufficient funds have been appropriated to cover the cost of all purchases or
182 contracts;
- 183 I. Establish and maintain programs for the inspection, testing, and acceptance of goods, services,
184 and construction;
- 185 J. Maintain contract files associated with procurements;
- 186 K. Change specifications and terminate solicitations;
- 187 L. Make determinations of bidder and offeror responsibility;
- 188 M. Require bonds, insurance, and other forms of protection for the City in connection with the
189 procurement process;
- 190 N. Ensure compliance with this division by reviewing and monitoring procurements conducted by
191 any designee, department, or employee delegated authority under Section 7.04.24;
- 192 O. Make all written determinations required by this division, except as may otherwise be provided
193 by this division; and
- 194 P. Perform other functions and duties as required by this division or as may be assigned.

195 **Sec. 7.04.23. City procurement records.**

196 All determinations and other written records pertaining to any formal solicitation, award, or
197 performance of a contract shall be maintained for the City in a contract file. All records shall be
198 maintained for such time as required by State law or regulation but in no event less than three (3)
199 years or according to retention schedules approved by the State.

200 **Sec. 7.04.24. Delegation of authority by City Manager.**

201 The City Manager may establish procedures and standards for delegating authority to purchase
202 certain goods, services, or construction items, and to make determinations required by this division
203 to other City employees or departments, if such delegation is deemed appropriate for the effective

204 procurement of those items.

205 **Sec. 7.04.36. Types of contracts.**

206 Subject to the requirements of this division, any type of contract that is appropriate to the
207 procurement and that will promote the best interests of the City may be used.

208 **Sec. 7.04.37. Documentation of purchases required.**

209 For all purchases of goods or services, the person responsible for making the purchase shall obtain
210 and retain documentation of the purchase that includes the goods or services purchased, the identity
211 of the vendor, the date of the purchase, and the method of payment.

212 **Sec. 7.04.38. Formal written contracts required.**

213 Except for the purchase of goods and equipment, formal written contracts signed by the City
214 Manager and the contractor shall be required for procurements exceeding \$30,000.00, including
215 indefinite quantities contracts estimated to exceed \$30,000.00 in any given fiscal year or contract
216 term.

217 **Sec. 7.04.39. Awarding authority.**

- 218 A. All contracts involving more than \$50,000.00 shall be awarded by the Council, except
- 219 1. when the contract involves more than \$50,000.00 because of a price preference for
220 environmentally preferable purchasing of no more than 15%; and
- 221 2. as may be specifically provided in this division.
- 222 B. Except for those contracts awarded by the Council and when emergency procurements are
223 necessary, all formal contracts shall be awarded by the City Manager.
- 224 C. All other contracts shall be awarded by the City Manager or Deputy City Manager,
225 personally (not their designees).

226 **Sec. 7.04.40. Contract modifications; change orders; price adjustments.**

227 The following contract changes (including contract modifications, change orders, and price
228 adjustment) must be approved by the Council:

229 A. Changes to any contract not originally awarded by the Council when the cumulative value
230 of the original contract and all changes to the contract exceed \$50,000.00;

231 B. Changes to any contract originally awarded, or any contract previously modified, by the
232 Council when the cumulative value of all changes exceed \$50,000.00 or 25% of the prior contract.

233 **Sec. 7.04.41. Multi-term contracts.**

234 A. A contract for goods or services may be entered into for any period of time deemed to be in
235 the best interest of the City provided the term of the contract and conditions of renewal or
236 extension, if any, are included in the solicitation and funds are available for the first fiscal period at
237 the time of contracting. When funds are not appropriated or otherwise made available to support
238 continuation of performance in a subsequent fiscal period, the contract shall be canceled with no
239 penalty to the City.

240 B. Before renewing a contract for an additional term, the City Manager shall make a written
241 determination that renewal is preferable to instituting a new procurement process, which shall be
242 included in the contract file. In making a renewal determination, the Procurement Agent shall
243 consider any pertinent information, including the following:

- 244 1. Changes in pricing of the same or similar goods and services;
- 245 2. Advances in relevant technology;
- 246 3. Performance of the contractor;
- 247 4. Changes in the City's needs;
- 248 5. The costs the City will incur as a result of changing to a new contractor, such as
249 required equipment purchases, interruptions to City operations, and retraining of staff.

250 C. Subscriptions and Software Licenses. For subscription and software license contracts that
251 include an evergreen renewal clause, the department head shall consider the factors in subsection
252 (B) and make a recommendation to the City Manager whether to renew or terminate the contract at
253 least once every five years.

254 **Sec. 7.04.42. Voidable contracts.**

255 If any employee or official of the City purchases or contracts for goods, services, or construction in
256 a manner contrary to the provisions of this division, such purchase or contract is voidable by the
257 City. However, when, in the opinion of the City Manager, the contracting violation occurred
258 through no fault of the contractor, the contractor may be reimbursed on a quantum merit basis for
259 goods, services, or insurance furnished or work performed in good faith, in such amount as may be
260 determined by the City Manager.

261 **7.04.43. Reports to the City Council.**

262 To facilitate the City Council's oversight of purchasing activity, the City Manager shall make the
263 following reports to the City Council:

264 A. Periodically, and at least annually, a report of all procurements of \$30,000.00 or more that
265 includes the cost, method of source selection, the identity of persons submitting competitive bids or
266 proposals and the cost of the competitive bids or proposals, and a brief explanation of the reason for
267 the choice of vendor;

268 B. Periodically, and at least annually, a report of all emergency purchases between \$10,000.00
269 and \$30,000 that includes the cost, the reason for the emergency, a brief explanation of the reason
270 for the choice of vendor; and any efforts taken following the emergency to prevent the need for
271 future emergency purchases; and

272 C. As soon as practicable, a report of each emergency procurement exceeding \$30,000 that

273 includes the cost, the reason for the emergency, a brief explanation of the reason for the choice of
274 vendor; and any efforts taken following the emergency to prevent the need for future emergency
275 purchases.

276

277

CHAPTER 7.08, SOURCE SELECTION

278

Article I. General Provisions

279 **Sec. 7.08.51. In general.**

280 Notwithstanding any provision of this division, the Council may approve any method of
281 procurement that it deems to be in the best interest of the City.

282

283

Article II. Competitive Procurement.

284 **Sec. 7.08.61. Formal solicitation—Competitive sealed bidding.**

285 A. *Conditions for use.* Formal contracts shall be awarded by competitive sealed bidding,
286 except as otherwise provided in this division.

287 B. *Invitation for bids.* An Invitation for Bids shall be issued and shall include specifications
288 and all contractual terms and conditions applicable to the procurement.

289 C. *Public notice.* Public notice of the Invitation for Bids shall be given at least fifteen (15) days
290 prior to the date set forth therein for the opening of bids, unless the City Manager determines, in
291 writing, that circumstances require a shorter notice period.

292 D. *Bid opening.* Bids shall be opened publicly in the presence of one (1) or more witnesses at
293 the time and place designated in the Invitation for Bids. The amount of each bid, and such other
294 relevant information as is deemed appropriate together with the name of each bidder shall be
295 recorded. The record and each bid shall be open to public inspection.

- 296 E. *Late bids.* Late bids will not be accepted.
- 297 F. *Bid acceptance and evaluation.* Except as authorized in this article, bids shall be accepted
298 without alteration or correction. Bids shall be evaluated based on the requirements set forth in the
299 Invitation for Bids, which may include criteria to determine acceptability such as inspection,
300 testing, quality, workmanship, delivery, and suitability for a particular purpose. The Invitation for
301 Bids shall set forth the evaluation criteria to be used. No criteria may be used in a bid evaluation that
302 are not set forth in the Invitation for Bids.
- 303 G. *Waiver of minor informality or immaterial bid defect.* The City Manager may waive a minor
304 informality or immaterial bid defect if such waiver is determined to be in the best interest of the
305 City. A minor informality means a bid requirement that is merely a matter of form or is an
306 immaterial provision in the solicitation. A bid defect is immaterial when the significance of the
307 defect is negligible when contrasted with the total cost or scope of the procurement. The decision of
308 the City Manager with respect to whether a requirement is a minor informality or whether a bid
309 defect is immaterial is final and may not be challenged by a bidder.
- 310 H. *Correction or withdrawal of bids; cancellation of awards.*
- 311 1. Where a mistake is discovered before bid opening, the bid may be modified or
312 withdrawn by written or electronic notice received by the City Manager prior to the time set
313 for bid opening.
- 314 2. Where a mistake is discovered after bid opening but prior to contract award, a bid:
- 315 a. May be corrected where the error made, and the intended bid price can be
316 determined solely from the bid documents submitted, and the City Manager
317 determines that the mistake was inadvertent and bona fide;
- 318 b. May be withdrawn where the bid was submitted in good faith and the bid

319 price is substantially lower than the other bids due solely to a clerical mistake therein
320 as opposed to a judgment mistake and the mistake was due to an unintentional
321 arithmetic error or an unintentional omission of a quantity of work, labor or material
322 made directly in the compilation of a bid, which unintentional arithmetic error or
323 unintentional omission can be clearly shown by objective evidence drawn from
324 inspection of original work papers, documents and materials used in the preparation
325 of the bid.

326 3. Where an error is discovered in the successful bid after the award of the contract and
327 the conditions of subsection (H)(2)(a). or (H)(2)(b) of this section are satisfied, the bid may
328 be corrected or withdrawn, respectively, and the contract amended or rescinded as
329 appropriate, provided that no bid correction or contract amendment shall be permitted that
330 would cause the contract price to exceed the next lowest bid unless the contractor has made
331 substantial progress in performing under the contract, the performance is acceptable, and
332 the Procurement Agent makes a written determination that it is in the best interest of the
333 City to do so.

334 4. No bid may be withdrawn or award canceled when the result would be prejudicial to
335 the interests of the City or fair competition.

336 5. No bidder who is permitted to withdraw a bid shall, for compensation, supply any
337 material or labor to or perform any subcontract or other work agreement for the person or
338 business to whom the contract is awarded, or otherwise benefit, directly or indirectly, from
339 the performance of the project for which the withdrawn bid was submitted.

340 6. If a bid is withdrawn or award canceled under the authority of this section, the
341 lowest remaining bid shall be deemed to be the low bid.

342 7. Nothing herein shall prevent the City from rejecting all bids if deemed to be in the
343 interest of the City or fair competition.

344 8. All decisions to permit the correction or withdrawal of bids or cancellation of an
345 award based upon bid mistakes, shall be supported by a written determination made by City
346 Manager.

347 I. *Contract award.* Subject to the provisions set forth herein, contracts shall be awarded to the
348 lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in
349 the Invitation for Bids.

350 1. When the terms and conditions of the Invitation for Bids provide that multiple
351 awards may be made, awards may be made to more than one bidder.

352 2. If the bid from the lowest responsible bidder exceeds available funds or is
353 deemed excessive, the City Manager may (a) negotiate with the lowest responsible
354 bidder to obtain an acceptable contract price, and if unsuccessful, may thereafter
355 enter into negotiations with the next lowest bidder; or (b) reject all bids and solicit
356 new bids, with or without revised specifications.

357 3. When the contract is not awarded to the lowest bidder, a written statement of
358 the reasons for awarding the contract to another bidder shall be prepared by the City
359 Manager and maintained in the contract file.

360 J. *Tie bids.* In the case of a tie bid between a local business and a non-local business award
361 shall be made to the local business. If tie bids are received from two or more local businesses or
362 from two (2) or more nonlocal businesses, a drawing shall be conducted. A witness shall be present
363 to verify the drawing and shall certify the results on the bid tabulation sheet. The City reserves the
364 right to reject all bids and rebid the contract.

365 K. *Multi-step seated bidding.* When it is considered impractical to initially prepare a purchase
366 description to support an award based on price, an Invitation for Bids may be issued requesting the
367 submission of unpriced offers to be followed by an Invitation for Bids limited to those bidders
368 whose offers have qualified under the criteria set forth in the first solicitation.

369 L. *Single bid.* Where only a single bid is received, and the price is not acceptable to the City,
370 the City may either negotiate with the bidder for a more acceptable price or reject the bid. If the bid
371 is rejected, the City may re-solicit for bids or may utilize any other procurement method reasonably
372 designed to obtain the best price.

373 M. *Contract award based on "best value."* Notwithstanding subsection 7.08.61(I), a contract
374 may be awarded on a best value analysis provided that the criteria for analysis was included in the
375 invitation for bids. The contract shall be awarded to the responsive, responsible bidder whose bid is
376 determined to be the best value to the City and that conforms in all material respects to requirements
377 and criteria set forth in the invitation for bids.

378 **Sec. 7.08.62. Formal solicitation—Competitive sealed proposals.**

379 A. *Conditions for use.* Formal contracts may be awarded by competitive sealed proposals
380 where the City Manager, in consultation with the using department, determines that competitive
381 sealed bidding is either not practicable or not advantageous to the City.

382 B. *Written justification.* A written justification for utilizing sealed proposals shall be submitted
383 to the Awarding Authority before any resulting contract is awarded, except that no written
384 justification is required for utilizing competitive sealed proposals to procure

385 1. Professional services.

386 2. Design-build projects.

387 C. *Request for Proposal (RFP); evaluating factors.* The City Manager shall issue a written

388 Request for Proposal (RFP) indicating in general terms that which is sought to be procured,
389 specifying the relative importance of price and other factors that shall be used in evaluating the
390 proposal, and applicable contractual terms and conditions, including any specific capabilities and
391 qualifications required of the contractor.

392 D. *Public notice.* Public notice of the RFP shall be given in the same manner as provided in
393 Section 7.08.61(C).

394 E. *Receipt and opening of proposals.* There shall be no public opening of proposals and no
395 proposal shall be otherwise handled so as to permit disclosure of the identity of any offeror or the
396 contents of any proposal to competing offerors during the evaluation process. The proposals, except
397 for information identified by the offeror as confidential or proprietary, shall be open for public
398 inspection after contract award.

399 F. *Late proposals.* Late proposals shall be accepted only when it is established to the
400 satisfaction of the City Manager that the lateness was due to unexpected weather or traffic
401 conditions, or other conditions beyond the control of the offeror. The City Manager may require
402 documentation and/or other proof of the condition resulting in the late proposal. No late proposal
403 shall be accepted when to do so would confer an advantage on the late offeror or otherwise
404 undermine fair competition. All decisions to accept late proposals shall be supported by a written
405 determination made by the City Manager.

406 G. *Discussion with Responsible Offerors and Revisions to Proposals.* If provided in the RFP,
407 the City Manager or the using department may conduct discussions with responsible offerors who
408 submit proposals determined to be reasonably susceptible of being selected for award for the
409 purpose of clarification to facilitate full understanding of, and responsiveness to, the solicitation
410 requirements. Offerors shall then be afforded an opportunity to revise their proposals prior to award

411 for the purpose of obtaining best and final proposals. In conducting discussions, there shall be no
412 disclosure of any information derived from proposals submitted by competing offerors.

413 H. *Ranking of proposals; negotiation; award.* The City Manager, in consultation with the
414 using department, shall evaluate the final proposals based on criteria contained in the RFP and rank
415 in order of preference the most qualified offerors. The City Manager shall negotiate a contract with
416 the top-ranked offeror. If the City Manager is unable to negotiate a satisfactory contract with the
417 top-ranked offeror, the City Manager may thereafter enter into negotiations with the next highest
418 ranked offeror and, if unsuccessful, with each successive next highest ranked offeror. The contract
419 shall be awarded to the highest ranked offeror with whom a satisfactory contract has been
420 negotiated. If a contract satisfactory to the City cannot be reached, the City may terminate
421 negotiations, restart the solicitation process, or terminate the solicitation. If, at any time during the
422 process, it is determined in writing that only one offeror is fully qualified, or that one offeror is
423 clearly more highly qualified than the others under consideration, a contract may be negotiated and
424 awarded to that offeror.

425 I. *Multiple awards.* Multiple awards may be made under a single RFP if the RFP provides for
426 multiple awards.

427 **Sec. 7.08.63. Informal solicitation.**

428 A. Any purchase not exceeding \$30,000.00 may be made in accordance with informal
429 procurement procedures established by the City Manager that provide for informal solicitation of
430 bids, quotations, proposals or offers.

431 B. The award shall be made to the lowest responsive and responsible person. The name of the
432 person submitting a bid, quotation, proposal, or offer and the date and amount of each bid,
433 quotation, or offer shall be recorded and maintained as part of the contract file.

434 **Sec. 7.08.64. Request for expressions of interest.**

435 A. *Conditions of use.* A request for expressions of interest may be used to:

436 1. Obtain information needed to prepare a subsequent procurement;

437 2. Develop a ready source of potential offerors who can respond to a subsequent
438 procurement; or

439 3. Resolve technological or programmatic questions relative to how the City
440 requirements can best be supplied.

441 B. *Public notice.* Public notice of a request for expressions of interest shall be given in the
442 same manner provided in Section 7.08.61(C).

443 C. *Evaluation.* A request for expressions of interest must contain evaluation factors and an
444 explanation of how the list of offerors eligible to receive a subsequent solicitation will be
445 determined.

446 D. *Selection Committee.* The Procurement Agent may form a selection committee to review
447 and evaluate the proposals and recommend a list of offerors who will be eligible to receive a
448 subsequent solicitation.

449 E. *Subsequent solicitation.* A request for expressions of interest does not directly lead to the
450 award of a contract. A subsequent solicitation may be accomplished through competitive sealed
451 bidding, competitive sealed proposals, or an informal solicitation. Proposals received under a
452 request for expressions of interest may form a basis for justifying a non-competitive contract award.

453 **Sec. 7.08.65. Unsolicited proposals.**

454 A. *Processing of Unsolicited Proposals.* If the City receives a proposal, other than one
455 submitted in response to a solicitation, the City Manager shall forward the proposal to the using
456 department.

- 457 B. *Conditions for Use.* To be considered for evaluation, an unsolicited proposal:
- 458 1. Shall be in writing;
- 459 Shall be sufficiently detailed to allow a judgment to be made concerning the
- 460 potential utility of the proposal to the City; and
- 461 2. Shall contain a novel or innovative concept, application, approach, or method
- 462 or which demonstrates a novel capability of the offeror of the proposal.
- 463 C. *Evaluation.* The City Manager shall determine whether the proposal meets the requirements
- 464 of Section 7.08.65(B). The City Manager shall make the determination within thirty (30) days after
- 465 receiving the unsolicited proposal. If the City Manager fails to make a determination within thirty
- 466 days, the unsolicited proposal shall be considered disapproved.
- 467 D. If the City Manager determines that the proposal does not meet the requirements of this
- 468 section, a contract award shall not be made based on the unsolicited proposal.
- 469 E. *Discussion with Responsible Offeror.* The City Manager and the using department may
- 470 conduct discussions with an offeror who submits an unsolicited proposal for the purpose of
- 471 clarification and to assure full understanding. An offeror may be afforded an opportunity to revise
- 472 their proposal prior to award.
- 473 F. *Public notice before award.* Not less than thirty (30) days before the award and execution of
- 474 a contract based on an unsolicited proposal, the City Manager shall publish a notice of intent to
- 475 award the contract on the City's website. If, during the 30-day period before contract award, a
- 476 person files a written petition with the City for reconsideration of an approval determination, the
- 477 awarding authority shall reconsider and make written findings affirming or reversing the approval.
- 478 G. *Contract Award.* Subject to the provisions set forth herein, award of an unsolicited proposal
- 479 shall be made in accordance with Section 7.04.39.

480 H. *Confidentiality.* The proposal, except for information properly identified by the offeror as
481 proprietary or confidential, shall be open for public inspection.

482 **Sec. 7.08.66. Right to cancel solicitations; right to reject bids, proposals and offers.**

483 A. The City Manager may, when in the best interest of the City, cancel an Invitation for Bids, a
484 Request for Proposals, or other solicitation. The reasons therefor shall be made a part of the contract
485 file.

486 B. Any or all bids, proposals, or offers may be rejected in whole or in part by the Awarding
487 Authority.

488 **Sec. 7.08.67. Responsibility of bidders and offerors.**

489 A. *Determination of responsibility.* A determination shall be made as to the capability of the
490 bidder or offeror to fully perform the contract requirements. Where competitive sealed bids or
491 competitive sealed proposals are used, any determination of nonresponsibility shall be made in
492 writing.

493 B. *Factors to consider.* The following factors shall be considered in determining whether a
494 bidder or offeror is "responsible:"

- 495 1. Price and other criteria set forth in the solicitation documents;
- 496 2. The ability, capacity, skill and financial resources of the bidder or offeror to perform
497 the contract or provide the service required within the time specified, without delay or
498 interference;
- 499 3. The character, integrity, reputation, judgment, experience, and efficiency of the
500 bidder or offeror;
- 501 4. References and the quality of performance of previous contracts or services;
- 502 5. The previous and existing compliance by the bidder or offeror with laws and

503 policies relating to a contract with the City;

504 6. The ability of the bidder or offeror to provide future maintenance and service for the
505 use of the subject of the contract;

506 7. Such other factors deemed relevant to the determination of nonresponsibility.

507 C. *Presumed nonresponsibility.* A bidder or offeror who has been disbarred or who is in default
508 on payment of taxes, licenses, fees, fines, or other monies due the City or other government entity,
509 for whatever reason, may be deemed to be nonresponsible.

510 D. *Failure to provide information.* The failure of a bidder or offeror to promptly supply
511 information or records in connection with an inquiry with respect to responsibility may be grounds
512 for a determination of nonresponsibility with respect to such bidder or offeror.

513 E. *Nondisclosure of information.*

514 1. Confidential information furnished by a bidder or offeror pursuant to this section
515 shall not be made public without the prior written consent of the bidder or offeror.

516 2. The City shall not be required to disclose specific information received from
517 references if such information was disclosed in confidence or if the disclosure of said
518 information could affect the ability of the City to obtain future references.

519 F. *Prequalification.* Where a competitive procurement process is used, the City Manager may
520 prequalify bidders or offerors to submit a bid or proposal based on the criteria for determining
521 "responsibility" as set forth in this section and in the solicitation documents. Prequalification of a
522 bidder or offeror shall not constitute a conclusive determination that a bidder or offeror is
523 responsible, and such bidder or offeror may be rejected as non-responsible at any time on the basis
524 of subsequently discovered information.

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Article III. Cooperative Procurement

Sec. 7.08.71. Cooperative procurement authorized.

A. The City may participate in, sponsor, conduct, or administer cooperative procurement agreements with one or more other public entities when the best interests of the City would be served thereby.

B. The City may contract with any contractor who offers goods, services, or construction on the same terms as provided other public entities that have arrived at those terms through a recent competitive procurement procedure similar to the procedure used by the City.

Sec. 7.08.72. Contracting with public entities.

A. The City may contract directly with other public entities for goods or services when such goods or services were obtained through competitive procurement procedures.

B. The City may contract with any public entity to provide or receive any work or services of the type the City or such other public entity performs for its jurisdiction.

Sec. 7.08.73. Joint use of facilities.

The City may enter into agreements or memoranda of understanding with other public entities for the common use or lease of facilities upon terms agreed upon between the parties.

Sec. 7.08.74. Supply of personnel, information, and technical services.

The City may enter into agreements or memoranda of understanding with other public entities for supplying or receiving personnel, information, or technical services.

Article IV. Non-Competitive Procurement Methods

Sec. 7.08.81. Small procurements.

A. For procurements of less than \$10,000.00, reasonable efforts shall be used to obtain goods

549 and services at the lowest cost.

550 B. For procurements from \$10,000.00 up to \$30,000.00, other than sole source and cooperative
551 purchasing, proposals for goods or services shall be solicited from at least three qualified sources.

552 **Sec. 7.08.82. Sole source procurement.**

553 A. A contract of any value may be awarded without competition when the Awarding Authority
554 determines, based on a good faith review of available sources, that

555 1. There is only one (1) source practicably available for the required supply, goods,
556 service, or construction item; or

557 2. The availability of used machinery or equipment is limited, such as to make
558 competitive procurement impractical, and a delay in procurement would be detrimental to
559 the City.

560 B. A record of sole source procurements shall be maintained that lists each contractor's name,
561 the amount and type of each contract, a listing of the items and services procured under each
562 contract, and the reasons justifying the sole source procurement.

563 **Sec. 7.08.83. Phased projects or services.**

564 When the appropriate Awarding Authority determines in writing that a project or a service of a
565 complex nature carried out in phases makes it not feasible to continue subsequent phases with other
566 than the first phase source, contracts for subsequent phases may be awarded to the first phase source
567 without competition.

568 **Sec. 7.08.84. Emergency procurements.**

569 A. The City Manager may authorize emergency procurements of goods, services, or
570 construction of any value without competition under any of the following circumstances:

571 1. Where there exists a threat to public health, welfare or safety;

- 572 2. Where delay would significantly injure the City financially or otherwise;
- 573 3. To prevent a breakdown in machinery and/or threatened termination of essential
574 services (including maintenance and repair of essential office equipment);
- 575 4. To prevent spoilage;
- 576 5. Any other circumstance in which goods, services, or construction are needed for
577 immediate use;
- 578 B. Emergency procurements shall be made with such competition as is practical under the
579 circumstances.
- 580 C. As soon as practicable, a record of each emergency procurement shall be made containing
581 the following:
- 582 1. A written explanation of the circumstances of the emergency;
- 583 2. A tabulation of bids or quotes received, if any;
- 584 3. The contractor's name, the amount and type of contract, a listing of the items
585 procured under the contract.
- 586 D. To the extent feasible under the circumstances, a person to whom purchasing authority has
587 been delegated shall obtain the approval of the City Manager for emergency procurement in excess
588 of \$10,000.00.

589 **Sec. 7.08.85. Related construction projects.**

590 Contracts may be awarded without competition for construction of City improvements if:

- 591 A. City improvements consist of a single structure, portion of a single structure or complex of
592 related structures containing both City and private improvements or improvements of another
593 government; and
- 594 B. The party with whom the City contracts for construction of the City improvements is also

595 constructing the private or other governmental improvements within the single structure or
596 complex of related structures; and

597 C. There is a written determination that this method of procurement is in the best interests of
598 the City.

599 **Sec. 7.08.86. Contract extensions.**

600 A. Unless otherwise provided in the solicitation documents, an extension of a contract may be
601 awarded without competition when a written finding is made that circumstances warrant the
602 extension of an existing contract, provided the extension is for not more than one year and the pro
603 rata cost of the extension does not exceed 110% of the original price.

604 B. Before extending a contract, the City Manager shall make a written determination that
605 extending the contract is preferable to instituting a new procurement process, which shall be
606 included in the contract file. In making an extension determination, the City Manager shall
607 consider any pertinent information, including the following:

- 608 1. Changes in pricing of the same or similar goods and services;
- 609 2. Advances in relevant technology;
- 610 3. Performance of the contractor;
- 611 4. Changes in the City's needs;
- 612 5. The costs the City will incur as a result of changing to a new contractor, such as
613 required equipment purchases, interruptions to City operations, and retraining of staff.

614 **Sec. 7.08.87. Exemptions.**

615 The following are exempt from competitive procurement but are subject to the requirements of
616 sections 7.04.37, 7.04.38 and 7.04.39:

617 A. Professional services and other services associated with actual or potential litigation,

- 618 administrative, or regulatory proceedings.
- 619 B. Professional services not exceeding \$50,000.00. No contractor or other person may be a
620 party to, or beneficiary of, more than one contract awarded pursuant to this provision within any
621 given fiscal year.
- 622 C. Purchases for water, sewer, electric, or other utility services.
- 623 D. Sale, rental, or purchases of land and improvements on the land, and rights-of-way.
- 624 E. Grants or contracts with other public bodies.
- 625 F. Goods purchased from a public auction sale, including an internet auction, provided that a
626 written determination is made in advance by the City Manager that such purchase is in the best
627 interest of the City.
- 628 G. Purchases for special police work when the Chief of Police certifies to the City Manager
629 that items are needed for undercover police operations.
- 630 H. Purchases of goods and personal services for direct use by individual recipients of services
631 under the public assistance programs administered by the City.
- 632 I. Purchases from nonprofit sheltered workshops serving the handicapped.
- 633 J. Expenditures for travel, subscription, courses, seminars, and conventions, membership dues
634 and subscription fees.
- 635 K. Advertising.
- 636 L. Procurement of temporary employment services.
- 637 M. Procurement of entertainment, instructional, facilitating, or educational services for City
638 officials, staff, or residents, or for social, cultural, or recreational programs or events offered or
639 sponsored by the City.
- 640 N. Acquisition of works of art for public display.

641 O. Employment contracts and employee relocation costs.

642 P. Sponsorship agreements.

643 Q. On-going proprietary software maintenance or support.

644 R. Employee benefits.

645 **Sec. 7.08.88. Special procurements.**

646 A. The Awarding Authority may authorize non-competitive procurement methods upon a
647 written determination that a unique or unusual circumstance exists that makes competitive
648 procurement contrary to the City's interest.

649 B. A non-competitive procurement method is permissible when all of the following conditions
650 are satisfied:

651 1. An offer of goods or services is available for a limited period that expires before the
652 competitive procurement process can be completed;

653 2. The City Manager determines that the cost of procuring similar goods or services is
654 reasonably likely to be greater if the City foregoes the offer;

655 3. The procurement of the goods or services is authorized in the City budget; and

656 4. The procurement does not exceed \$50,000.00.

657 C. A record of special procurements shall be maintained that lists the date of each contract, the
658 contractor's name, the amount and type of each contract, the goods or services procured, and a
659 summary of the reasons justifying the special procurement. A file shall be retained for at least five
660 years for each special procurement that includes a copy of the contract, the written determination
661 that competitive procurement was not in the City's best interest, and documentation supporting the
662 determination. Supporting documentation may include correspondence regarding the expiration
663 of the offer, historical pricing from the vendor, and contemporaneous pricing from competitive

664 vendors.

665 **Sec. 7.08.89. Environmentally preferable purchasing.**

666 A. General Preferences. Environmental and energy considerations shall become part of the
667 City's normal purchasing and procurement decisions, with the goals of justifying environmental
668 and energy costs of City decisions and choosing minimal-effect options, consistent with such
669 traditional factors as safety, price, performance, and availability. The City also prefers to do
670 business with vendors and contractors that are locally owned, use and sell environmentally
671 preferable products or services, produce minimal waste, and use recycled products and
672 environmentally preferable purchasing practices, as services provided by local suppliers reduce
673 environmental impact due to transportation and keep municipal funds in the community. To the
674 greatest extent practicable, the City shall purchase environmentally and energy preferable products
675 and services that:

- 676 1. Use recycled materials.
- 677 2. Generate minimal waste in manufacturing or use.
- 678 3. Are durable, longer lasting, reusable, refillable or compostable.
- 679 4. Use minimal energy and water.
- 680 5. Involve minimal use of toxic and hazardous materials.
- 681 6. Minimize production of greenhouse gases.
- 682 7. Minimize production of environmental pollutants including ozone precursors.
- 683 8. Are locally supplied or produced.

684 B. Price Preference. To the greatest extent practicable, the City shall purchase environmentally
685 preferable and locally supplied products and services and may provide for a price preference for
686 such products and services not to exceed 15%.

687 C. Locality Preference. The City may give preference in purchasing products and services to
688 locally supplied products, goods, and services, Montgomery County green certified businesses, and
689 State of Maryland certified small businesses.

690 D. The City Manager shall promulgate regulations implementing this section, which shall include
691 legitimate environmentally friendly certifications and industry standards, specifications for the
692 purchase of certain goods and services as appropriate, and environmentally harmful chemicals,
693 compounds, and materials to be avoided.

694 **Sec. 7.08.89. Socially responsible purchasing.**

695 A. General Preferences. Social responsibility considerations shall become part of the City's
696 normal purchasing and procurement decisions, with the goals of promoting social justice,
697 consistent with such traditional factors as safety, price, performance, and availability.

698 B. The City Manager shall promulgate regulations implementing this section, which shall include
699 legitimate socially conscious certifications and industry standards, specifications for the purchase
700 of certain goods and services as appropriate, and materials and sources to be avoided.

701

702 **Article V. Disposition of Surplus Goods**

703 **Sec. 7.08.101. Generally.**

704 All using departments shall submit to the City Manager reports listing inventories of all goods that
705 are no longer used, that have become obsolete or which are surplus to the needs of the department.

706 The City Manager shall transfer serviceable surplus goods between using departments in lieu of
707 filling requisitions for the purchase of new or additional inventory of the same or similar articles
708 unless such transfer is determined by the City Manager to be contrary to the best interests of the
709 City.

710 **Sec. 7.08.102. Methods of sale.**

711 A. All surplus goods shall be disposed of using any of the following methods which will yield
712 the greatest return under the circumstances:

713 1. Transfer to another City department, whenever feasible, before other methods of
714 disposal are considered.

715 2. Sale to the highest responsible bidder by the competitive bid or proposal procedures
716 prescribed in Article II of this division, except that the goal shall be to obtain the highest
717 price from prospective purchasers.

718 3. Competitive auction sale, including internet auction sale, after reasonable public
719 notice.

720 4. Trade-in or exchange of goods that are of current need.

721 5. Surplus goods may be first offered to City employees at a set price determined by
722 the City Manager to be reasonably equivalent to the best price the City could expect to
723 obtain on the open market.

724 B. Notwithstanding any other provision of this section, the City Manager may authorize
725 making a gift, loan, or sale below fair market value of surplus goods to other public entities or to
726 non-profit entities upon a written determination that such gift, loan, or sale would be in the best
727 interest of the City.

728 **Sec. 7.08.103. Worthless items.**

729 In the event the City Manager determines that the goods offered for disposal have no real or scrap
730 value, they may be recycled or disposed of as refuse in a manner that complies with all applicable
731 environmental laws, regulations and permits.

732 **Sec. 7.08.104. Waivers.**

733 Upon a written determination that strict compliance with this article is contrary to the best interests
734 of the City, the City Manager may waive the provisions of this article and authorize the disposal of
735 surplus goods in the most practical manner.

736

737 **Article VI. Contract Requirements**

738 **Sec. 7.08.116. Standard contract provisions.**

739 Contracts shall include:

740 A. Such standard provisions that may be required by any procedures, standards or policies
741 developed by the City Manager to implement this division.

742 B. Such other provisions determined by the City Manager in consultation with the using
743 department to be appropriate under the circumstances.

744 **Sec. 7.08.117. Incentive contracting.**

745 Construction and other contracts may include provisions that afford the contractor the opportunity
746 to share in any cost savings realized by the City when project costs are reduced by such contractor,
747 without affecting the project quality, during construction of the project. Any fee charged by the
748 project engineer or architect for determining such cost savings shall be paid as a separate cost and
749 shall not be calculated as part of any cost savings.

750 **Sec. 7.08.121. Maximum practical competition.**

751 All specifications shall be drafted so as to promote overall economy for the purposes intended and
752 to encourage maximum free and open competition in satisfying the City's minimum needs and shall
753 not be unduly restrictive. This section applies to all specifications including, but not limited to,
754 those prepared for the City by architects, engineers, designers, and drafters.

755 **Sec. 7.08.136. Bid security.**

- 756 A. *Requirement for bid security.*
- 757 1. Bid security shall be required for all construction contracts where performance
758 security is required.
- 759 2. At the discretion of the City Manager, bid security may be required for other
760 contracts.
- 761 3. Where bid security is required, a successful bidder shall forfeit such security upon
762 failure to enter into a contract within the time specified in the Invitation for Bids or contract
763 award.
- 764 B. *Form of security.* Bid security shall be in the form of a bond provided by a surety company
765 authorized to do business in Maryland, or the equivalent in cash, letter of credit, or in such other
766 form satisfactory to the City.
- 767 C. *Amount of bid security.* Bid security for a construction contract shall be in an amount equal
768 to at least 5% of the amount of the bid. Bid security for other than a construction contract shall be in
769 such amount as is determined by the City Manager to sufficiently guarantee that the bidder to whom
770 the contract is awarded will enter into the contract for the work described in the bid.
- 771 D. *Rejection of bids for noncompliance with bid security requirements.* When the invitation for
772 bids requires security, noncompliance requires that the bid be rejected, unless it is determined in
773 writing that such noncompliance is insubstantial.
- 774 E. *Withdrawal of bids.* If a bidder is permitted to withdraw a bid before award, or is excluded
775 from the competition prior to award, no action shall be taken against the bidder or the bid security.

776 **Sec. 7.08.137. Contract performance and payment bonds.**

- 777 A. When required, amounts. When a construction contract is awarded the following bonds or
778 other security, in a form satisfactory to the City, shall be delivered to the City and shall become

779 binding on the parties upon the execution of the contract:

780 1. A performance bond payable to the City, executed by a surety company authorized
781 to do business in this State, or the equivalent in cash or other security, conditioned upon the
782 faithful performance of the contract, including all warranties and guarantees. The bond or
783 other security shall be in an amount equal to 100% of the price specified in the contract; and

784 2. A payment bond, executed by a surety company authorized to do business in this
785 State, or the equivalent in cash, letter of credit, or other security satisfactory to the City, for
786 the protection of all persons supplying labor and materials, including lessors of equipment
787 to the extent of the fair rental value thereof, to the contractor or its subcontractors for the
788 performance of the work provided for in the contract.

789 a. For a contract exceeding \$100,000.00 the bond or other security shall be in
790 an amount equal to 100% of the price specified in the contract.

791 b. For a contract exceeding \$30,000.00 but not exceeding \$100,000.00 the
792 bond or other security shall be in an amount equal to 50% of the price specified in
793 the contract.

794 c. No payment bond is required for a contract not exceeding \$30,000.00 unless
795 a written determination is made that a payment bond is appropriate under the
796 circumstances. Such a bond shall be in an amount not to exceed 50% of the contract
797 price.

798 B. *Certification of payments.* Any contractor, prior to receiving a progress or final payment
799 under a contract covered hereunder, shall certify in writing that such contractor has made payment
800 from the proceeds of prior payments, and that such contractor will make timely payments from the
801 proceeds of the progress or final payment then due such contractor, to such contractor's

802 subcontractors and suppliers in accordance with such contractor's contractual arrangement with
803 them.

804 C. *Waiver or reduction of requirement for bonds.* The City Manager may waive or reduce, in
805 writing, the requirement for performance bonds for construction contracts under \$30,000.00.

806 D. *Maintenance bond.* Contract specifications may require security in an amount determined
807 by the City Manager; adequately cover reasonable maintenance, repair, or replacement costs during
808 the contract warranty or guarantee period.

809 **Sec. 7.08.138. Additional bonds.**

810 Nothing in this article shall be construed to limit the authority of the City to require any additional
811 bonds or other security in addition to, or in cases other than, those specified.

812 **7.08.139 Nuclear-Free requirements.**

813 A. The City and its officials, employees or agents shall not knowingly and intentionally grant any
814 award, contract or purchase order, directly or indirectly, to any nuclear weapons producer.

815 B. The City and its officials, employees or agents shall not knowingly and intentionally grant any
816 award, contract or purchase order, directly or indirectly, to purchase or lease products produced by
817 a nuclear weapons' producer.

818 C. The recipient of a City contract, award or purchase order shall certify to the City Clerk by a
819 notarized statement that it is not knowingly or intentionally a nuclear weapons' producer.

820 D. The City shall phase out the use of any products of a nuclear weapons' producer which it owns
821 or possesses. Insofar as non-nuclear alternatives are not available, for the purpose of maintaining a
822 product during its normal useful life and for the purpose of purchasing or leasing replacement parts,
823 supplies and services for such products. Subsections (A) and (B) of this section shall not apply.

824 E. The City Council, upon advice of the Nuclear-Free Takoma Park Committee, shall annually

825 publish a list of nuclear weapons' producers to guide the City, its officials, employees and agents in
826 the implementation of subsections (A) through (C) of this section. The list shall not preclude
827 application or enforcement of these provisions to or against any other nuclear weapons' producer.

828 F. Waivers.

829 1. The provisions of subsections (A) and (B) of this section may be waived by resolution
830 passed by a majority vote of the Mayor and Council, provided that:

831 a. The Mayor and Council shall determine, after a diligent good-faith search, that a
832 necessary good or service cannot reasonably be obtained from any source other than
833 a nuclear weapons' producer;

834 b. The City Manager shall notify the Nuclear-Free Takoma Park Committee of the
835 Mayor and Council's intent to consider a waiver resolution 30 days prior to the
836 formal consideration of such a resolution and that the Committee, upon receipt of
837 such notice, shall provide the City Council with its considered advice; provided,
838 however, that failure to provide such advice shall not prohibit the City Council from
839 taking appropriate action after the 30-day notification period; and

840 c. The City Council shall hold a public hearing prior to the passage of a waiver
841 resolution and no sooner than 30 days after the notification to the Committee of the
842 City Council's intent to consider such a resolution.

843 2. The reasonableness of an alternative source shall be determined upon the consideration
844 of the following factors:

845 a. The intent and purpose of this chapter;

846 b. Documented evidence establishing that the necessary good or service is vital to
847 the health or safety of the residents or employees of the City, with the understanding

848 that the absence of such evidence shall diminish the necessity for waiver;
849 c. The recommendations of the City Manager and the Nuclear-Free Takoma Park
850 Committee;
851 d. The availability of goods or services from a non-nuclear-weapons' producer
852 reasonably meeting the specification or requirements of the necessary good or
853 service;
854 e. Quantifiable substantial additional costs that would result from the use of a
855 good or service of a non-nuclear-weapons' producer, provided that this factor shall
856 not become the sole consideration.

857 G. Nothing in this chapter shall be interpreted, construed or applied to prevent the Mayor and
858 Council or the City Manager or his or her designee of the City, from acting to remedy, ameliorate or
859 prevent an emergency situation presenting a clear and present danger to the public health, safety
860 and general welfare, as defined in Section 2-6.1 of this Code, provided that should any such
861 emergency situation require the purchase of products or services from or entry into a contract with
862 a nuclear weapons producer, then the City Manager or his or her designee shall notify the
863 Chairperson or his or her designee of the Nuclear-Free Takoma Park Committee within 3 working
864 days of the City's actions.

865 **7.08.140 Compliance with living wage requirements.**

866 All non-exempt procurement actions shall comply with Article VII, Living Wage Requirement, of
867 this chapter.

868

869 **Article VII. Living Wage Requirement**

870 **7.08.180 Scope.**

871 Every City contract for the provision of services, awarded after a competitive bid or proposal
872 process, shall require the contractor and any subcontractor to pay each employee assigned to
873 perform services under the City contract a living wage. As used in this article, “covered employer”
874 refers to any contractor or subcontractor who is subject to the City’s living wage requirement.

875 **7.08.190 Exemptions.**

876 The provisions of this article do not apply to the following:

877 A. A contract for services valued at less than \$30,000.00.

878 B. A contract:

879 1. With a public entity.

880 2. With a nonprofit organization that has qualified for an exemption from Federal income
881 taxes under Section 501(c)(3) of the Internal Revenue Code.

882 3. Procured through an emergency procurement, sole source procurement, or cooperative
883 purchase procurement.

884 4. For electricity, telephone, cable television, water, sewer, or similar service delivered by
885 a regulated public utility.

886 5. For the purchase or lease of goods, equipment or vehicles.

887 C. If the City Manager makes a written determination that application of this article would
888 conflict with an applicable Federal, State or County program, contract, or grant requirement, then
889 the living wage requirements of this article shall not apply to the contract or program.

890 **7.08.200 Solicitation requirements.**

891 A. The City’s living wage requirement shall be identified and set forth in all non-exempt
892 procurement solicitations for the contract.

893 B. Each response to a bid or proposal to provide services to the City and each City contract for
894 services must include a certification that the contractor and each subcontractor shall comply with
895 the City’s living wage requirements or a certification by the contractor or subcontractor setting
896 forth the applicable exemption from the living wage requirement, along with supporting
897 documentation for the exemption. Any contractor or subcontractor who knowingly makes a false
898 statement in such certification, or who fails to comply with the living wage requirement during
899 performance of a City contract for services, shall be subject to loss of the contract and
900 disqualification from future City contracts.

901 C. A contractor must not split or subdivide a contract, pay an employee through a third party,
902 or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any
903 requirement under this article.

904 D. If a contractor or subcontractor commits in its bid or proposal to provide health insurance to
905 any employee who provides services to the City under a City contract, the contractor or
906 subcontractor may:

- 907 1. Certify in its bid or proposal the per-employee hourly cost of the employer’s share of the
908 premium for that insurance; and
- 909 2. Reduce the wage paid under Section 7.08.210 to any employee covered by the health
910 insurance by all or part of the per-employee hourly cost of the employer’s share of the health
911 insurance premium.

912 **7.08.210 Living wage requirement.**

913 A. Except as permitted under Section 7.08.200(D), each covered employer must pay each
914 employee who is not exempt under subsection (F) of this section no less than the City’s living wage
915 rate.

916 B. The City's living wage rate shall be equal to the Montgomery County living wage rate
917 established and published by Montgomery County pursuant to Section 11B-33A of the
918 Montgomery County Code and any applicable regulations, as amended and in effect from
919 time-to-time.

920 C. The City's living wage rate shall be adjusted as of July 1st of each year to reflect the most
921 current Montgomery County living wage rate and shall be applicable to any contract awarded
922 thereafter until the date of the next adjustment; provided, however, that the wage rates in effect at
923 the time a contract is awarded to a covered employer by the City shall remain in effect under such
924 contract during its original term. At the time of the exercise of any renewal option under a City
925 contract with a covered employer, the required wage rate shall be adjusted as provided above, and
926 as adjusted, shall remain in effect during the renewal term.

927 D. The City Manager shall establish the applicable living wage rate by April 1st of each year
928 and cause such rate to be published in English and Spanish on the City's web site. Notice of the
929 required living wage rate also shall be stated in procurement solicitations, as required by
930 Section 7.08.200(A).

931 E. Each covered employer must include the living wage requirements of this article in every
932 subcontract so that the provisions of this article will be binding upon each subcontractor.

933 F. The living wage requirements of this section do not apply to any employee:

- 934 1. Who performs no measurable work related to any contract with the City;
- 935 2. Who participates in a government-operated or government-sponsored program that
936 restricts the earnings of or wages paid to employees to a level below the wage required under
937 this section;

- 938 3. Who participates for no longer than 120 days in any calendar year in a
939 government-operated or government-sponsored summer youth employment program; or
940 4. For whom a lower wage rate is expressly set in a bona fide collective bargaining
941 agreement.
- 942 G. If any Federal, State, or City law or regulation requires payment of a higher wage, that law
943 or regulation controls. If any applicable collective bargaining agreement requires payment of a
944 higher wage, that agreement controls.

945 **7.08.220 Notices.**

- 946 A. Each covered employer shall conspicuously post notice of the required City living wage
947 rate, in English and Spanish, on such form as shall be provided by the City.
- 948 B. Within 3 days of an employee's request, a covered employer shall provide to such employee
949 a written statement in English and Spanish, on such form as shall be provided by the City, of the
950 then required living wage rate.

951 **7.08.230 Enforcement.**

- 952 A. During the term of the City contract and for a period of 3 years after the expiration or earlier
953 termination of the City contract, each contractor and subcontractor subject to the provisions of this
954 article, shall keep and preserve records which show the wages provided by such contractor and its
955 subcontractors to each employee who provided services under the City contract. The City Manager,
956 or designee, shall have the power to examine such records at reasonable times during normal
957 business hours for the purpose of administering and enforcing the provisions of this article, and to
958 make copies of all or any parts thereof.
- 959 B. As an additional term of the City contract, no covered employer shall discharge, reduce the
960 compensation of, or otherwise retaliate against an employee for asserting any right under this

961 article, filing a complaint of violation, or taking any other action to enforce the requirements of this
962 article. Any retaliation is subject to all sanctions for noncompliance with this article.

963 C. City contracts may specify that liquidated damages for any noncompliance with this article
964 include the amount of any unpaid wages, with interest at the judgment rate from the date originally
965 due and less any deductions required or permitted by law, and that the contractor is jointly and
966 severally liable for any noncompliance by a subcontractor.

967 D. Any contractor or subcontractor which fails to pay an employee the living wage required by
968 this article shall be liable to the employee in the amount of the unpaid wages, plus interest at the
969 judgment rate from the date originally due and less any deductions required or permitted by law,
970 reasonable attorney's fees, and damages for any retaliation for asserting any right under this article.

971 Any aggrieved employee of a covered employer under a City contract shall be deemed a third-party
972 beneficiary of the City contract and of the provisions mandated by this article in the City contract.

973 **7.08.240 Review of living wage requirement.**

974 The City Council shall review the living wage requirement, including the exemptions set forth in
975 Section 7.08.190, every 3 years. Subsequent to such review, the City Council shall determine
976 whether to continue or modify the City's living wage requirement. The Council's failure to conduct
977 such review shall have no effect on the validity of the living wage requirement set forth in this
978 article.

979

980 **Article VIII. Ethics in Contracting**

981 **Sec. 7.04.250. Multiple bidding.**

982 A. Unless multiple or alternate bids are requested in the solicitation, more than one (1) bid or
983 proposal received in response to a single solicitation from a business, including any affiliate, under

984 the same or different names will be rejected.

985 B. Reasonable grounds for believing that a bidder or offeror is interested in more than one bid
986 or proposal for a solicitation both as a bidder or offeror and as a subcontractor for another bidder or
987 offeror, will result in rejection of all bids or proposals in which the bidder or offeror is interested.
988 However, a business acting only as a subcontractor may be included as a subcontractor for two or
989 more bidders or offerors submitting a bid or proposal for the work.

990 C. Bidders or offerors rejected under the above provisions shall be disqualified if they respond
991 to a re-solicitation for the same work.

992 D. The City Manager may waive the provisions in subsection (b) of this section upon a written
993 determination that the City's interest would be best served by such a waiver.

994 E. Amount of liability for damages. A person who enters into a contract with the City after
995 engaging in collusion with another person for the purpose of defrauding the City shall be liable for
996 damages equal to three (3) times the value of the loss to the City that is attributable to the collusion.

997 F. All documents involved in any procurement in which collusion is suspected shall be
998 retained until the City Attorney approves their destruction.

999 **Sec. 7.04.260. Collusive bidding.**

1000 A. *Notification, rejection of bids or proposals.* When collusion is suspected among any bidders
1001 or offerors, any or all bids or proposals may be rejected, and a written notice of such suspicion shall
1002 be transmitted to the City Attorney.

1003 B. *Retention of documents.* All documents involved in any procurement in which collusion is
1004 suspected shall be retained until the City Attorney approves their destruction.

1005 C. *Amount of liability for damages.* A person who enters into a contract with the City after
1006 engaging in collusion with another person for the purpose of defrauding the City shall be liable for

1007 damages equal to three (3) times the value of the loss to the City which is attributable to the
1008 collusion.

1009 **Sec. 7.04.270. Illegal gifts and kickbacks.**

1010 A. Gifts. A bidder, offeror, or contractor must not make or offer to make a gift to a public
1011 official or employee that the public official or employee is prohibited from accepting under Title 2,
1012 Ethics.

1013 B. No person shall demand or receive anything of value in return for an agreement not to
1014 compete on a public contract.

1015 C. A person must not:

- 1016 1. Provide, attempt to provide, or offer to provide a kickback;
- 1017 2. Solicit, accept, or attempt to accept a kickback;
- 1018 3. Claim that the unlawfully induced contract or subcontract fulfills any legal,
1019 regulatory, or contractual requirement.

1020 D. If a person makes a gift, kickback or other prohibited payment as described in this section,
1021 the amount thereof shall be conclusively presumed to have been included in the price of the prime
1022 contract or the subcontract and ultimately borne by the City and will be recoverable from both the
1023 maker and recipient. Recovery from one offending party shall not preclude recovery from other
1024 offending parties. The City may offset the amount of any gift, kickback, or other payment from any
1025 sum owed to the prime contractor by the City.

1026 **Sec. 7.04.280. Split purchasing/sale prohibited.**

1027 No purchase or sale shall be divided for the purpose of evading the provisions of this division.

1028 **Sec. 7.04.290. Conflicts of interest.**

1029 A. The provisions of Title III, Ethics, shall be applicable to this division.

1030 B. No City official or employee shall participate in any procurement, except in the exercise of
1031 an administrative or ministerial duty which does not affect the disposition or decision with respect
1032 to it, when the official or employee knows that the official or employee or any member of the
1033 official's or employee's immediate family has a financial interest pertaining to the procurement.
1034 Where an official or employee or any member of the official's or employee's immediate family
1035 holds a financial interest in a blind trust, the official or employee shall not be deemed to have a
1036 conflict of interest with regard to matters pertaining to that financial interest, provided that the
1037 existence of the blind trust has been disclosed in writing to the City Manager.

1038 C. Upon discovery of an actual or potential conflict of interest, the official or employee shall
1039 promptly file a written statement of disqualification and shall withdraw from further participation
1040 in the transaction involved.

1041 D. For the purposes of this section, a person who owns less than three percent (3%) of the stock
1042 of any publicly held corporation listed on a national stock exchange shall not be considered to have
1043 a financial interest in that corporation.

1044 **Sec. 7.04.300. Disclosure of subsequent employment.**

1045 No public employee or former public employee having official responsibility for procurement
1046 transactions shall accept employment with any bidder, offeror or contractor with whom the
1047 employee or former employee dealt in an official capacity concerning procurement transactions for
1048 a period of one (1) year from the cessation of employment by the City unless the employee or
1049 former employee, provides written notification to, and obtains written approval from, the City
1050 Manager prior to commencement of employment by that bidder, offeror or contractor.

1051 **Sec. 7.04.310. Remedies; penalties.**

1052 In addition to any other penalties provided by applicable law, any contract in violation of the

1053 provisions of this article shall be voidable at the option of the City, and any person responsible for
1054 the making of a contract in willful violation of the provisions of Sections 7.04.260, 7.04.270 or
1055 7.04.290 shall be charged with a misdemeanor.

1056 **Division 1. Purchasing**

1057 **Chapter 7.04**
1058 **GENERAL PROVISIONS**

1059 **~~7.04.010 Purpose.~~**

1060 ~~The purposes of this division are:~~

1061 ~~A.—To provide for fair and equitable treatment of all persons involved in public purchasing by the~~
1062 ~~City;~~

1063 ~~B.—To ensure the maximum purchasing value of public funds in procurement;~~

1064 ~~C.—To provide safeguards for maintaining a procurement and disposition system of quality and~~
1065 ~~integrity. (Prior code § 9A-1)~~

1066 **~~7.04.020 Scope.~~**

1067 ~~This division applies to every disposition for value or expenditure of public funds by the City for~~
1068 ~~public purchasing irrespective of its source. When the procurement or disposition involves Federal~~
1069 ~~assistance or contract funds or is subject to Federal regulations, the procurement or disposition shall~~
1070 ~~be conducted in accordance with any applicable mandatory Federal law and regulation which is not~~
1071 ~~reflected in this division. Nothing in this division shall be construed as prohibiting or limiting the~~
1072 ~~City's right to employ its own personnel for the construction or reconstruction of public~~
1073 ~~improvements or any other purpose without advertising for or receiving bids or proposals. (Prior~~
1074 ~~code § 9A-2)~~

1075 **~~7.04.030 Administration.~~**

1076 ~~The City Administrator and the Administrator's designee shall have the authority to adopt and~~
1077 ~~enforce rules and regulations in accordance with the procedures set forth in Chapter 2 of this Code,~~

1078 to promote the efficiency of operations and compliance with the provisions of this division. (Prior
1079 code §9A-3)

1080 **7.04.040 Definitions.**

1081 The following terms shall have the following meanings when used in this division:

1082 “Bid” means an offer, in writing, to furnish goods or services in conformity with the specifications,
1083 delivery terms and conditions or other requirements included in the invitation for bids or an offer to
1084 purchase property pursuant to Chapter 7.08, Article 4.

1085 “Competitive sealed bid” means a method of procurement in which a good, service or construction
1086 item is defined in a list of specifications; the specifications are included in an invitation for bids; the
1087 bids are received by a specified time in sealed envelopes; an award is made to the responsive and
1088 responsible bidder providing the lowest bid.

1089 “Competitive sealed proposal” means a method of procurement in which a good, service or
1090 construction item is defined in a list of specifications; the specifications are included in a request for
1091 proposals; proposals are received by a specified time in sealed envelopes; and an award is made to
1092 the proposer most closely meeting specifications as determined by an evaluation that uses a set of
1093 evaluation criteria. Cost is one criterion, among others, all of which may be assigned specific
1094 weights.

1095 “Contract” means all types of City agreements, regardless of what they may be called, for the
1096 procurement or disposal of goods, services or construction.

1097 “Contractor” means any person or business having a contract with the City.

1098 “Cooperative purchasing” means procurement conducted by or on behalf of more than one
1099 governmental unit.

1100 “Department head” means one of the following: the City Clerk, the Chief of Police, the Director of
1101 Public Works, the Library Director, the Director of Recreation, the Director of Housing and
1102 Community Development or such other employees as the City Administrator may designate from
1103 time to time.

1104 ~~“Emergency” means any condition or unforeseen curtailment, diminution or termination of an~~
1105 ~~essential service which poses an immediate danger or threat to the public health, safety or welfare.~~

1106 ~~“Environmentally preferable products” means products that have a lesser or reduced adverse effect~~
1107 ~~on human health and the environment when compared with competing products that serve the same~~
1108 ~~purpose. This comparison may consider raw materials acquisition, production, manufacturing,~~
1109 ~~packaging, distribution, reuse, operation, maintenance, or disposal of the product.~~

1110 ~~“Goods” means supplies, materials, equipment and all tangible property, except real property.~~

1111 ~~“Indefinite quantities contract” means a contract whereby the City agrees to purchase and the~~
1112 ~~contractor agrees to provide the goods or construction of a designated type or unit which the City~~
1113 ~~may require, without specifying in the contract the exact quantity.~~

1114 ~~“Invitation for bids” means all documents, whether attached or incorporated by reference, utilized~~
1115 ~~for soliciting bids.~~

1116 ~~“Life cycle costs” means specific and quantifiable costs associated with an item over its useful life,~~
1117 ~~including costs of disposal, in addition to the purchase price.~~

1118 ~~“Locally supplied” means products and goods made or supplied, or services provided, from an~~
1119 ~~independently owned and operated individual, business, or organization located within 150 miles of~~
1120 ~~the City.~~

1121 ~~“Percentage price preference” means the percent by which a bid from a responsible bidder or price~~
1122 ~~available from a vendor whose product contains recycled materials (or a greater use of recycled~~
1123 ~~material) may exceed the lowest responsive bid submitted by a responsible bidder whose product~~
1124 ~~does not contain recycled material (or a lesser use of recycled material).~~

1125 ~~“Post consumer waste” means an item that has served its intended use, such as old newspapers or~~
1126 ~~magazines, and has been separated and diverted from the waste stream for the purposes of~~
1127 ~~collection and recycling. It does not include waste generated during production of an end product,~~
1128 ~~such as printer’s waste.~~

1129 ~~“Price preference” means a percentage of increase in price that the City may pay to obtain a~~
1130 ~~designated recycled or environmentally preferable product or service.~~

1131 ~~“Procurement” means buying, purchasing, renting, leasing or otherwise acquiring any goods,~~
1132 ~~services or construction. It also includes all functions that pertain to the obtaining of any good,~~
1133 ~~service or construction, including description of requirements, selection and solicitation of sources,~~
1134 ~~preparation and award of a contract and all phases of contract administration.~~

1135 ~~“Professional services” means personal services of members of a licensed or otherwise recognized~~
1136 ~~profession, including but not limited to accountants, architects, attorneys, auditors, engineers,~~
1137 ~~medical practitioners, surveyors and the like.~~

1138 ~~“Proposal” means an offer to supply goods or perform services or to purchase goods to be disposed~~
1139 ~~of in response to a request for proposals by the City where competitive sealed proposals or~~
1140 ~~negotiations will be used rather than the competitive sealed bid process.~~

1141 ~~“Recycled material” means material recovered from or otherwise diverted from the waste stream,~~
1142 ~~including recycled paper. It includes post-consumer waste, but does not include those materials and~~
1143 ~~by-products generated from and commonly reused during production of an end product.~~

1144 ~~“Recycled paper” means paper or a paper product that contains recycled materials with a total gross~~
1145 ~~content of post-consumer waste of at least 80%, or if such a paper product is unavailable or~~
1146 ~~otherwise impracticable to procure that the paper or paper product has been de-inked or contains a~~
1147 ~~level of post-consumer waste that exceeds the then-current minimum content standards of the~~
1148 ~~United States Environmental Protection Agency for paper and paper products containing recovered~~
1149 ~~materials (40 CFR 250), or if a paper or paper product meeting the requirements set out herein is~~
1150 ~~unavailable or otherwise impracticable to procure, that the paper or paper product conforms to the~~
1151 ~~then-current minimum content standards adopted by the United States Environmental Protection~~
1152 ~~Agency for paper and paper products containing recovered materials (40 CFR 250).~~

1153 ~~“Request for proposals” means all documents, whether attached or incorporated by reference, used~~
1154 ~~for soliciting proposals.~~

1155 ~~“Responsible bidder or offeror” means a person or entity who has the capability in all respects to~~
1156 ~~perform fully the contract requirements and the experience, integrity, reliability, capacity, facilities,~~
1157 ~~equipment and credit which will assure good faith performance. Any person who is in default on the~~
1158 ~~payment of taxes, licenses or other moneys due the City shall not be deemed “responsible.”~~

1159 ~~“Responsive bidder” means a person or entity who has submitted a bid which conforms in all~~
1160 ~~material aspects to the invitation for bids.~~

1161 ~~“Specifications” means any description of the design or functional characteristics or of the nature of~~
1162 ~~a good, service or construction item. It may include a description of any requirement for inspecting,~~
1163 ~~testing or preparing a good, service or construction item. (Ord. 2014 41 § 2 (part), 2014/prior code~~
1164 ~~§ 9A-4)~~

1165 ~~**7.04.050 Expenditure of City funds.**~~

1166 ~~No City funds shall be expended unless:~~

1167 ~~A.—The expenditure is authorized in the budget ordinance for the current year, previously~~
1168 ~~approved by ordinance or an ordinance revising it;~~

1169 ~~B.—The expenditure is made pursuant to a contract or purchase order signed in accordance with~~
1170 ~~this division;~~

1171 ~~C.—The contract or purchase order pursuant to which the expenditure is made has been approved~~
1172 ~~by the City Council or by the City Administrator as required by this division. (Prior code § 9A-5)~~

1173 ~~**7.04.060 Powers and duties of City Council and Administrator.**~~

1174 ~~A.—The City Council shall, by ordinance duly enacted, approve all expenditures of \$5,000.00 or~~
1175 ~~more for professional services and all expenditures of \$10,000.00 or more for any other single~~
1176 ~~purchase of goods or services other than professional services; provided, however, that ordinances~~
1177 ~~approving such expenditures may be enacted upon a single reading without being read at 2~~
1178 ~~meetings of the City Council prior to adoption, if each such expenditure is specifically authorized in~~
1179 ~~the budget ordinance for the current year or an ordinance revising it and the cost of the procurement~~
1180 ~~is equal to or less than the budgeted amount.~~

1181 ~~If the project, goods or services were authorized in the budget ordinance but exceed the budgeted~~
1182 ~~amount, an ordinance approving such expenditure may be enacted upon a single reading without~~
1183 ~~being read at 2 meetings of the City Council prior to adoption; provided, however, that the City~~
1184 ~~Administrator makes a determination that funds are available to cover the cost of the procurement.~~

1185 ~~B.— Nothing in subsection (A) of this section shall prohibit the City Council from approving the~~
1186 ~~purchase of items not included in the City budget, upon receipt of a written justification and a~~
1187 ~~written determination by the City Administrator that funds are available for the purchase. City~~
1188 ~~Council approval shall be accomplished by 2 readings of an ordinance.~~

1189 ~~C.— The City Administrator shall:~~

1190 ~~1.— Approve all City expenditures for goods or services which are not required to be~~
1191 ~~approved by the City Council, whether made pursuant to contract or purchase order;~~

1192 ~~2.— Be responsible for the administration of a centralized system of purchasing and~~
1193 ~~procurement of goods and services for the City and for effectuating the provisions of this~~
1194 ~~division.~~

1195 ~~3.— Establish such rules and regulations as he or she may deem necessary in order to carry out~~
1196 ~~the provisions of this division.~~

1197 ~~D.— The City Administrator may delegate his or her powers and duties under this division to a~~
1198 ~~designated City employee.~~

1199 ~~E.— The City Administrator shall have the authority to enter into contracts on behalf of the City for~~
1200 ~~the purchase of goods and services once such purchases have been duly authorized in accordance~~
1201 ~~with this division and cooperative purchasing agreements as authorized in this division. The Mayor~~
1202 ~~shall have the authority to enter into all other contracts and agreements on behalf of the City,~~
1203 ~~including, but not limited to, agreements with other governmental entities and agreements~~
1204 ~~concerning matters of City policy, subject to the approval of the Council. (Prior code § 9A-6)~~

1205 **Article 1. General Provisions**

1206 **~~7.08.010 Written contracts.—~~**

1207 ~~A.— All contracts involving more than \$10,000.00 shall be awarded by the Council.~~

1208 ~~B.— Written contracts signed by the City Administrator or the Administrator's designee and the~~
1209 ~~contractor shall be used for the following types of procurements:~~

1210 ~~1.— Construction work exceeding \$10,000.00;~~

1211 2.—Professional services exceeding \$5,000.00. (Prior code § 9A-7)

1212 **7.08.020 Voidable contracts.—**

1213 If any official of the City purchases or contracts for any goods, services or capital improvements in
1214 a manner contrary to the provisions of this chapter, such purchase or contract shall be voidable by
1215 the City. However, when, in the opinion of the City Administrator, the contracting violation
1216 occurred through no fault of the contractor, the contractor may be reimbursed on the basis of goods
1217 and services furnished or work performed in good faith, in such amount as the City Administrator
1218 may determine. (Prior code § 9A-8)

1219 **7.08.030 Validity of claims.—**

1220 No person or entity shall have a valid or enforceable claim against the City for the payment of any
1221 moneys or any other thing of value pursuant to an alleged contract or agreement, unless the contract
1222 or agreement has been signed and authorized as provided in this division. (Prior code § 9A-9)

1223 **Article 2. Competitive Bidding and Source Selection**

1224 **7.08.040 Conditions for use.—**

1225 A.—General. All City contracts shall be awarded by competitive sealed bidding or competitive
1226 sealed proposals, except as otherwise provided in:

1227 1.—Section 7.08.070(A), Small purchases;

1228 2.—Section 7.08.070(B), Professional services;

1229 3.—Section 7.08.070(C), Emergency procurement;

1230 4.—Section 7.08.070(D), Sole source procurement;

1231 5.—Section 7.08.070(E), Cooperative purchasing.

1232 B.—City Vendors or Suppliers. The City Administrator or designee shall take all reasonable steps
1233 to assure that all qualified vendors or suppliers of goods or services residing or having their
1234 principal offices in the City are made aware of the City's issuance of invitations for bids or request

1235 for proposals and given an opportunity to submit bids or proposals in response thereto. (Prior code
1236 § 9A-10)

1237 **~~7.08.050 Competitive sealed bidding.~~**

1238 A.—~~Conditions for Use. Competitive sealed bidding shall be used when all of the following~~
1239 ~~circumstances apply:~~

1240 1.—~~Time permits the solicitation, submission and evaluation of sealed bids;~~

1241 2.—~~The award will be made on the basis of price and price related factors;~~

1242 3.—~~It is not necessary to conduct discussions with responding sources about their bids; and~~

1243 4.—~~There is reasonable expectation of receiving more than one bid.~~

1244 B.—~~Procedure. The following general procedures shall be followed for awarding contracts by~~
1245 ~~competitive sealed bidding.~~

1246 1.—~~Invitation for Bids. An invitation for bids shall be issued, which shall include~~
1247 ~~specifications and all contractual terms and conditions applicable to the procurement.~~

1248 2.—~~Public Notice. Public notice of the invitation for bids shall be given at a reasonable time~~
1249 ~~prior to the date set forth therein for the opening of bids. Such notice may include publication~~
1250 ~~in a newspaper of general circulation.~~

1251 3.—~~Opening of Bids. Bids shall be opened publicly in the presence of one or more witnesses~~
1252 ~~at the time and place designated in the invitation for bids. The amount of each bid and such~~
1253 ~~other relevant information as may be specified by regulation, together with the name of each~~
1254 ~~bidder, shall be recorded; the record and each bid shall be open to public inspection.~~

1255 4.—~~Acceptance and Evaluation of Bids. Bids shall be evaluated based on the requirements set~~
1256 ~~forth in the invitation for bids. Those criteria that will affect the bid price and be considered in~~
1257 ~~evaluation for award shall be objectively measurable, such as, but not limited to, discounts,~~
1258 ~~transportation costs and total or life cycle costs. The invitation for bids shall set forth the~~
1259 ~~evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in~~
1260 ~~the invitation for bid.~~

1261 5.—~~Correction or Withdrawal of Bids. Correction or withdrawal of inadvertently erroneous~~
1262 ~~bids before or after award or cancellation of awards or contracts based on bid mistakes shall~~
1263 ~~be permitted in accordance with such regulations as the City Administrator may establish.~~
1264 ~~After the opening of bids, no changes in bid prices or other provisions of bids prejudicial to~~
1265 ~~the interest of the City or fair competition shall be permitted. Except as otherwise provided by~~
1266 ~~regulation, all decisions to permit the correction or withdrawal of bids or to cancel awards or~~
1267 ~~contracts based on bid mistakes shall be supported by a written determination by the City~~
1268 ~~Administrator.~~

1269 6.—~~Award. The contract shall be awarded with reasonable promptness by written notice to~~
1270 ~~the most responsible and responsive bidder whose bid meets the requirements and criteria set~~
1271 ~~forth in the invitation for bids.~~

1272 7.—~~Multistep Sealed Bidding. When it is considered impractical to initially prepare a~~
1273 ~~purchase description to support an award based on price, an invitation for bids may be issued~~
1274 ~~requesting the submission of unpriced offers to be followed by an invitation for bids limited to~~
1275 ~~those bidders or offerors whose offers have been qualified under the criteria set forth in the~~
1276 ~~first solicitation.~~

1277 C.—~~Cancellation of Invitation for Bids. An invitation for bids, or other solicitations may be~~
1278 ~~canceled or any or all bids may be rejected, in whole or in part, as may be specified in the~~
1279 ~~solicitation when it is in the best interests of the City. (Prior code 9A-11)~~

1280 **~~7.08.060 Competitive sealed proposals.~~**

1281 A.—~~Conditions for Use. A contract may be entered into by the use of competitive sealed proposal~~
1282 ~~method:~~

1283 1.—~~When the City Administrator determines, in writing, that due to stated circumstances, the~~
1284 ~~use of competitive sealed bidding is either not practical or not advantageous to the City; or~~

1285 2.—~~For the procurement of professional services.~~

1286 B.—~~Request for Proposals. Proposals shall be solicited through a request for proposals.~~

1287 C.—~~Public Notice. Adequate public notice of the request for proposals shall be given in the same~~
1288 ~~manner as provided in Section 7.08.050 (B)(2).~~

1289 ~~D.—Receipt of Proposals. No proposals shall be handled so as to permit disclosure of the identity~~
1290 ~~of any offeror or the contents of any proposal to competing offerors during the evaluation process.~~
1291 ~~A register of proposals shall be prepared containing the name of each offeror, the number of~~
1292 ~~modifications received, if any, and a description sufficient to identify the item offered. The register~~
1293 ~~of proposals shall be open to public inspection only after contract award.~~

1294 ~~E.—Evaluation Factors. The request for proposals shall state the relative importance of price and~~
1295 ~~other evaluation factors.~~

1296 ~~F.—Discussion with Responsible Offeror and Revisions to Proposals. As provided in the request~~
1297 ~~for proposals, discussions may be conducted with responsible offerors who submit proposals~~
1298 ~~determined to be reasonably susceptible to being selected for award for the purpose of clarification~~
1299 ~~to assure full understanding of and conformance with the solicitation requirements. Offerors shall~~
1300 ~~be accorded fair and equal treatment with respect to any opportunity for discussion and revision of~~
1301 ~~proposal, and such revisions may be permitted after submissions and prior to award for the purpose~~
1302 ~~of obtaining best and final offers. In conducting discussions, there shall be no discussion of the~~
1303 ~~identity of competing offerors.~~

1304 ~~G.—Award. Award shall be made to the responsible offeror whose proposal is determined to be the~~
1305 ~~most advantageous to the City, taking into consideration price and evaluation factors set forth in the~~
1306 ~~request for proposals. The contract file shall contain the basis on which the award is made.~~

1307 ~~H.—Cancellation of Request for Proposals. A request for proposals or other solicitations may be~~
1308 ~~canceled or any or all proposals may be rejected, in whole or in part, as may be specified in the~~
1309 ~~solicitation when it is in the best interests of the City. (Prior code 9A-12)~~

1310 **~~Article 3. Other Procurement Methods~~**

1311 **~~7.08.070 Procurements exempt from competitive bidding.~~**

1312 ~~A.—Small Purchases. Any procurement not exceeding the amount of \$10,000.00 may be made~~
1313 ~~without the requirement of competitive bidding; provided, however, that procurement requirements~~
1314 ~~shall not be artificially divided so as to constitute a small purchase under this section.~~

1315 ~~B.—Professional Services. Any procurement of or contract for professional services may be made~~
1316 ~~without the requirement of competitive bidding. The City Administrator may, by regulations,~~

1317 ~~establish competitive negotiation or selection procedures for professional service contracts or~~
1318 ~~classes of professional service contracts.~~

1319 ~~C.—Emergency Procurement. The City Administrator or designee may make or authorize others to~~
1320 ~~make emergency procurements without the requirement of competitive bidding when there exists a~~
1321 ~~threat to the public health, welfare or safety under emergency conditions, provided that the City~~
1322 ~~Administrator or designee shall make a written determination of the basis for the emergency, which~~
1323 ~~shall be approved by the City Council by resolution, that such emergency procurements shall be~~
1324 ~~made with such competition as is practicable under the circumstances and that the City~~
1325 ~~Administrator shall make a written determination of the basis for the selection of the particular~~
1326 ~~contractor, which shall be included in the contract file. In no case, shall failure to plan for provision~~
1327 ~~of a City service constitute an emergency under this subsection.~~

1328 ~~D.—Sole Source Procurement. A contract may be awarded for a good, service or construction item~~
1329 ~~without the requirement of competitive bidding when, under such regulations as the City~~
1330 ~~Administrator may establish, the City Administrator determines, in writing, that there is only one~~
1331 ~~available source for the good, service or construction item or if a specific manufacturer's product is~~
1332 ~~required to ensure compatibility with existing installed equipment and so notifies the City Council.~~
1333 ~~The City Administrator's determination shall be subject to review and approval by the City Council~~
1334 ~~by resolution.~~

1335 ~~E.—Cooperative Purchasing. The City Administrator may enter into contracts or agreements for~~
1336 ~~cooperative purchasing, as defined in Section 7.04.040 (F) of this chapter, without the requirement~~
1337 ~~of competitive bidding by the City, provided that such cooperative purchasing meets all of the~~
1338 ~~requirements of this division and Chapter 8A of this Code and is consistent with their provisions in~~
1339 ~~every respect and that the cooperative purchasing agreement is subject to review and approval by~~
1340 ~~the City Council by resolution prior to any actual purchase or purchases being made thereunder.~~
1341 ~~(Prior code § 9A-13)~~

1342 **~~7.08.080 Procedure for procurements exempt from competitive bidding.~~**

1343 ~~Insofar as it is practical, in all procurements exempt from the requirement of competitive bidding,~~
1344 ~~with the exception of sole source procurement and cooperative purchasing, proposals for the good~~
1345 ~~or service required shall be solicited from at least 3 qualified sources. In the event that 3 qualified~~
1346 ~~sources do not exist, the City Administrator or his or her designee shall make a written~~
1347 ~~determination of that fact and report that determination to the City Council. (Prior code § 9A-14)~~

1348 ~~**7.08.090 Extensions.**~~
1349 ~~An extension of a contract may be awarded without competition when the City Administrator finds,~~
1350 ~~in writing, that circumstances warrant the extension of an existing contract at the same unit price,~~
1351 ~~provided that the extension occurs within 12 months of the date of the execution of the original~~
1352 ~~contract and does not exceed 25% of the total original price. (Prior code § 9A-15)~~

1353 ~~**7.08.100 Records of procurement actions.**~~

1354 ~~A.—Contents of Record. All determinations and other written records pertaining to any~~
1355 ~~solicitation, award or performance of a contract shall be maintained for the City in a contract file.~~
1356 ~~All records shall be maintained for such time as required by State law or regulation but for not less~~
1357 ~~than 3 years.~~

1358 ~~B.—Submission to the City Council. A copy of such record shall be submitted to the City Council~~
1359 ~~upon request. Such record shall be available for public inspection. (Prior code § 9A-16)~~

1360 Chapter 7.08
1361 SOURCE SELECTION AND CONTRACT FORMATION

1362 ~~**7.08.110 Compliance with Chapter 14.04.**~~

1363 ~~Notwithstanding any other provision of this division, all procurement actions shall comply in every~~
1364 ~~respect with all the provisions of Chapter 14.04 of this Code, known as the “Takoma Park~~
1365 ~~Nuclear Free Zone Act.” (Prior code § 9A-17)~~

1366 ~~**7.08.120 Purchase orders.**~~

1367 ~~A.—City purchases shall be memorialized by a written contract or a purchase order signed in~~
1368 ~~accordance with this chapter. Purchase orders shall be consecutively numbered from the start of~~
1369 ~~each fiscal year. Purchase orders shall be signed by the City Administrator or his or her designee.~~

1370 ~~B.—No department head shall make any purchase on behalf of or chargeable to the City except by~~
1371 ~~means of a purchase order signed in accordance with subsection (A) of this section; provided,~~
1372 ~~however, that this subsection (B) shall not apply to expenditures made in advance of a purchase in~~
1373 ~~emergencies as defined in and subject to the regulations that may be established by the City~~
1374 ~~Administrator; provided, however, that in the case of emergency expenditures, a purchase order~~
1375 ~~must be obtained from the City Administrator or designee within 72 hours of the purchase.~~

1376 C.— No person employed by the City or providing services to the City as an independent contractor
1377 shall purchase or cause to be purchased through or from the City any item for his or her personal-
1378 use. Without limitation on any other legal actions or remedies available, violations of this section-
1379 shall be sufficient cause for dismissal, suspension or termination of employment or of any contract
1380 for services, as the City Council may determine. A violation of this section shall be a Class A-
1381 offense. (Prior code § 9A-18)

1382 **~~7.08.130 Petty cash expenditures.~~**

1383 The City Administrator shall have the authority to establish procedures for petty cash expenditures.
1384 Such procedures may provide for departmental petty cash levels of up to \$200.00 for expenditures
1385 made by or with the approval of department heads. Such petty cash expenditures shall be made after
1386 such price shopping as the department head deems appropriate or is otherwise established by the
1387 City Administrator. (Prior code § 9A-19)

1388 **~~7.08.140 Purchase of recycled products.~~**

1389 A.— General Preference. The City shall purchase recycled products whenever sufficient quantities
1390 are readily available and meet the City's specifications. The City shall purchase recycled products
1391 that contain the highest percentage of recovered material and are produced to the greater extent with
1392 post-consumer materials.

1393 B.— Price Preference. To the extent practicable the City shall purchase recycled products and may
1394 provide for a price preference not to exceed 15%.

1395 C.— Purchase of Certain Specified Products and Services. Notwithstanding any other provision of
1396 this division, all procurement actions shall comply with the following provisions:

1397 1.— All City stationery and envelopes with the City return address shall be made of recycled
1398 paper.

1399 2.— The City newsletter shall be produced on recycled content newsprint.

1400 3.— When the City is using an outside printer, the City must obtain both a price quote for
1401 recycled and nonrecycled paper and shall require that the job be done using recycled paper if
1402 there is a price differential of 15% or less.

1403 4.—All copiers and laser printers purchased by the City after the effective date of this
1404 legislation shall be able to use recycled paper, and all copiers shall be able to perform 2-sided
1405 copying as an automatic function.

1406 D.—Product Specifications. All departments of the City shall review and revise product
1407 specifications so as to conform to the following guidelines:

1408 1.—Specifications shall not require the use of products made from virgin materials.

1409 2.—Specifications shall not exclude the use of recycled products.

1410 3.—A minimum percentage of recovered material content shall be incorporated into each
1411 specification when it is known that there are sufficient and readily available supplies of a
1412 particular recycled product.

1413 E.—Practicability of Procurement. In an assessment of the practicability of procurement of goods
1414 containing recycled materials, the City shall consider, among other relevant factors, product
1415 availability, product suitability for intended use, including whether the product meets established
1416 performance standards and will not negatively impact the health and safety of employees and
1417 residents, and cost.

1418 F.—Certification of Recycled Content. The City shall require the seller to certify in writing that any
1419 recycled product sold to the City by competitive bid contract or cooperative purchase contains the
1420 minimum percentage of recovered materials set forth in the City's product specification and shall
1421 also specify the percentage of post-consumer materials contained in the product.

1422 G.—Labeling of Recycled Products. To the extent practical, all products purchased by the City
1423 made from recycled materials shall be labeled as such. City stationery, envelopes with the City
1424 return address and the City newsletter shall be labeled as being printed on recycled paper. (Prior
1425 code § 9A-19.1)

1426 **~~7.08.145 Environmentally preferable purchasing.~~**

1427 A.—General Preferences. Environmental and energy considerations shall become part of the City's
1428 normal purchasing and procurement decisions, with the goals of justifying environmental and
1429 energy costs of City decisions and choosing minimal-effect options, consistent with such traditional
1430 factors as safety, price, performance, and availability. The City also prefers to do business with

1431 ~~vendors and contractors that are locally owned, use and sell environmentally preferable products or~~
1432 ~~services, produce minimal waste, and use recycled products and environmentally preferable~~
1433 ~~purchasing practices, as services provided by local suppliers reduce environmental impact due to~~
1434 ~~transportation and keep municipal funds in the community. To the greatest extent practicable, the~~
1435 ~~City shall purchase environmentally and energy preferable products and services that:~~

1436 ~~1.—Use recycled materials.~~

1437 ~~2.—Generate minimal waste in manufacturing or use.~~

1438 ~~3.—Are durable, longer lasting, reusable, refillable or compostable.~~

1439 ~~4.—Use minimal energy and water.~~

1440 ~~5.—Involve minimal use of toxic and hazardous materials.~~

1441 ~~6.—Minimize production of greenhouse gases.~~

1442 ~~7.—Minimize production of environmental pollutants including ozone precursors.~~

1443 ~~8.—Are locally supplied or produced.~~

1444 ~~B.— Price Preference. To the greatest extent practicable, the City shall purchase environmentally~~
1445 ~~preferable and locally supplied products and services, and may provide for a price preference for~~
1446 ~~such products and services not to exceed 15%.~~

1447 ~~C.— Locality Preference. The City may give preference in purchasing products and services to~~
1448 ~~locally supplied products, goods, and services, Montgomery County green certified businesses, and~~
1449 ~~State of Maryland certified small businesses.~~

1450 ~~D.— Purchase of Certain Specified Products and Services. City procurement actions shall comply~~
1451 ~~with the following provisions:~~

1452 ~~1.—Energy and Water Savings. Where applicable, energy efficient equipment shall be~~
1453 ~~purchased with the most up to date energy efficiency functions. This includes, but is not~~
1454 ~~limited to, high efficiency space heating systems and high efficiency space cooling~~
1455 ~~equipment.~~

1456 ~~2.—Energy Efficiency Certifications. All products purchased by the City for which United~~
1457 ~~States Environmental Protection Agency (U.S. EPA) Energy Star or WaterSense certification~~
1458 ~~is available shall meet that certification, when practicable. When Energy Star or WaterSense~~
1459 ~~labels are not available, energy efficient products that are in the upper 25% of energy~~
1460 ~~efficiency as designated by the Federal Energy Management Program are preferred.~~

1461 ~~3.—Recycled Content Products. All products for which the U.S. EPA has established~~
1462 ~~minimum recycled content standard guidelines, such as those for printing paper, office paper,~~
1463 ~~janitorial paper, construction, landscaping, parks and recreation, transportation, vehicles,~~
1464 ~~miscellaneous, and nonpaper office products, shall contain the highest post-consumer content~~
1465 ~~practicable, but no less than the minimum recycled content standards established by U.S.~~
1466 ~~EPA Guidelines. These standards are described at www.epa.gov/cpg.~~

1467 ~~4.—Remanufactured Products. The City shall purchase remanufactured products such as~~
1468 ~~laser toner cartridges, tires, furniture, equipment, and automotive parts whenever practicable,~~
1469 ~~but without reducing safety, quality, or effectiveness.~~

1470 ~~5.—Ozone Depleting Compounds. The use of refrigerants, solvents and other products shown~~
1471 ~~to deplete stratospheric ozone shall be phased out and new purchases shall not contain them.~~

1472 ~~6.—Pollutants. All detergents shall be readily biodegradable and, where practicable, shall not~~
1473 ~~contain phosphates.~~

1474 ~~E.—Product Specifications. All departments of the City shall review and revise product~~
1475 ~~specifications so as to conform to the following guidelines, to the extent practicable:~~

1476 ~~1.—Specifications shall not require the use of products made from virgin materials.~~

1477 ~~2.—Specifications shall not exclude the use of recycled or remanufactured products.~~

1478 ~~3.—A minimum percentage of recovered material content shall be incorporated into each~~
1479 ~~specification when it is known that there are sufficient and readily available supplies of a~~
1480 ~~particular recycled product.~~

1481 ~~4.—Cleaning or disinfecting products (i.e., for janitorial or automotive use) shall not contain~~
1482 ~~ingredients that are carcinogens, mutagens, or teratogens. These include chemicals listed by~~

1483 the U.S. EPA or the National Institute for Occupational Safety and Health on the Toxics
1484 Release Inventory.

1485 5.—Wherever practicable, products and materials shall use and meet the following federal
1486 standards where applicable:

1487 a.—U.S. EPA Energy Star (energy efficient products);

1488 b.—U.S. EPA WaterSense (water efficient products);

1489 c.—U.S. EPA guidelines (various other products at www.epa.gov/epg);

1490 d.—U.S. Green Building Council LEED standards.

1491 6.—At the discretion of the City Manager, industry standards for environmentally preferable
1492 products, including construction, landscaping, paper, park and recreation, transportation, vehicular,
1493 nonpaper office and other products should be followed. Current examples of these are:

1494 a.—Responsible Purchasing Network (various products);

1495 b.—EcoLogo (various products), Green Seal (various products);

1496 c.—Greenguard Environmental Institute (various products);

1497 d.—CFPA (chlorine free paper);

1498 e.—EPEAT (electronics);

1499 f.—Forest Stewardship Council (paper products);

1500 g.—Resilient Floor Covering Institute (flooring products);

1501 h.—Carpet and Rug Institute (carpets).

1502 F.—Practicability of Procurement. In an assessment of the practicability of the procurement or
1503 purchase of specific environmentally preferable or locally available products, the City shall
1504 consider, among other relevant factors, product availability, product longevity, and product
1505 suitability for its intended use, including whether the product meets established performance
1506 standards, any adverse impact of the product on the health and safety of employees and residents,

1507 and cost. Nothing contained in this section shall require a City department, purchaser, or contractor
1508 to procure or purchase products that do not perform adequately for their intended use, exclude
1509 adequate competition, or cost more than 15% above the standard cost for the product. (Ord.
1510 2014-41 § 1, 2014)

1511 **Article 4. Disposition of Goods**

1512 **~~7.08.150 Generally.~~**

1513 A.—All departments, at such times and in such form as may be prescribed, shall submit to the City
1514 Administrator reports listing stocks of all articles which are no longer used, which have become
1515 obsolete or which are surplus to the needs of the department. The City Administrator shall transfer
1516 serviceable surplus goods between using departments in lieu of filling requisitions for the purchase
1517 of new or additional stock of the same or similar articles, unless such transfer is contrary to the best
1518 interests of the City as determined by the City Administrator.

1519 B.—The City Administrator shall provide a report on disposed equipment/goods to the Council on
1520 a quarterly basis. (Prior code § 9A-20)

1521 **~~7.08.160 Methods of sale.~~**

1522 A.—Except as provided in this article, all goods which have become surplus, obsolete or unusable
1523 and whose current estimated value is \$10,000.00 or more shall be sold to the highest responsible
1524 bidder by the competitive bid or proposal procedures prescribed in Article 2 of this chapter, except
1525 that the goal shall be to obtain the highest price from prospective purchasers. The City
1526 Administrator may waive the competitive bid or proposal procedures and sell such property by
1527 auction or by private sale after reasonable public notice when the return to the City is expected to be
1528 increased or the nature of the goods is such as to make competitive bid or proposal procedures
1529 impractical.

1530 B.—Goods which have been found by the City Administrator to have become surplus, obsolete or
1531 unusable, and whose current value is estimated to be less than \$10,000.00, may be disposed of by
1532 the methods described in regulations the City Administrator may establish. Such dispositions shall,
1533 wherever feasible, be based on competitive price quotations and shall be made to a responsible
1534 purchaser offering the highest price. The City Administrator is authorized to sell by auction such
1535 property to the highest responsible bidder, after public notice, when, in the City Administrator's

1536 ~~opinion, the return to the City is expected to increase by this procedure. In order to produce the~~
1537 ~~highest return for the disposition of such personal property, the City Administrator may select from~~
1538 ~~the following disposition methods the method which will yield the greatest return under the~~
1539 ~~circumstances of each disposition:~~

1540 1.—~~Competitive sealed bids;~~

1541 2.—~~Competitive sealed proposals;~~

1542 3.—~~Competitive auction sale;~~

1543 4.—~~Trade in or exchange for goods which are of current need;~~

1544 5.—~~Competitive negotiation. (Prior code § 9A-21)~~

1545 **~~7.08.170 Worthless items.—~~**

1546 ~~In the event that the City Administrator or designee determines that the goods offered for disposal~~
1547 ~~have no real or scrap value, they may be disposed of as refuse. (Prior code § 9A-22)~~

1548 **Article 5. Living Wage Requirement**

1549 **~~7.08.180 Scope.—~~**

1550 ~~Every City contract for the provision of services, awarded after a competitive bid or proposal~~
1551 ~~process, shall require the contractor and any subcontractor to pay each employee assigned to~~
1552 ~~perform services under the City contract a living wage. As used in this article, “covered employer”~~
1553 ~~refers to any contractor or subcontractor who is subject to the City’s living wage requirement. (Ord.~~
1554 ~~2013-26 § 1, 2013/Ord. 2007-55 § 1 (part), 2007)~~

1555 **~~7.08.190 Exemptions.—~~**

1556 ~~The provisions of this article do not apply to the following:~~

1557 A.—~~A contract for services valued at less than \$20,000.00.~~

1558 B.—~~A contract:~~

- 1559 1.—~~With a public entity.~~
- 1560 2.—~~With a nonprofit organization that has qualified for an exemption from Federal income~~
1561 ~~taxes under Section 501(c)(3) of the Internal Revenue Code.~~
- 1562 3.—~~Procured through an emergency procurement, sole source procurement, or cooperative~~
1563 ~~purchase procurement.~~
- 1564 4.—~~For electricity, telephone, cable television, water, sewer, or similar service delivered by a~~
1565 ~~regulated public utility.~~
- 1566 5.—~~For the purchase or lease of goods, equipment or vehicles.~~
- 1567 C.—~~If the City Manager makes a written determination that application of this article would~~
1568 ~~conflict with an applicable Federal, State or County program, contract, or grant requirement, then~~
1569 ~~the living wage requirements of this article shall not apply to the contract or program. (Ord.~~
1570 ~~2013-26 § 1, 2013/Ord. 2007-55 § 1 (part), 2007)~~
- 1571 **~~7.08.200 Solicitation requirements.~~**
- 1572 A.—~~The City's living wage requirement shall be identified and set forth in all non-exempt~~
1573 ~~procurement solicitations for the contract.~~
- 1574 B.—~~Each response to a bid or proposal to provide services to the City and each City contract for~~
1575 ~~services must include a certification that the contractor and each subcontractor shall comply with~~
1576 ~~the City's living wage requirements or a certification by the contractor or subcontractor setting~~
1577 ~~forth the applicable exemption from the living wage requirement, along with supporting~~
1578 ~~documentation for the exemption. Any contractor or subcontractor who knowingly makes a false~~
1579 ~~statement in such certification, or who fails to comply with the living wage requirement during~~
1580 ~~performance of a City contract for services, shall be subject to loss of the contract and~~
1581 ~~disqualification from future City contracts.~~
- 1582 C.—~~A contractor must not split or subdivide a contract, pay an employee through a third party, or~~
1583 ~~treat an employee as a subcontractor or independent contractor, to avoid the imposition of any~~
1584 ~~requirement under this article.~~

1585 ~~D.—If a contractor or subcontractor commits in its bid or proposal to provide health insurance to~~
1586 ~~any employee who provides services to the City under a City contract, the contractor or~~
1587 ~~subcontractor may:~~

1588 1.—~~Certify in its bid or proposal the per employee hourly cost of the employer’s share of the~~
1589 ~~premium for that insurance; and~~

1590 2.—~~Reduce the wage paid under Section 7.08.210 to any employee covered by the health~~
1591 ~~insurance by all or part of the per employee hourly cost of the employer’s share of the health~~
1592 ~~insurance premium. (Ord. 2007 55 § 1 (part), 2007)~~

1593 **~~7.08.210 Living wage requirement.~~**

1594 ~~A.—Except as permitted under Section 7.08.200(D), each covered employer must pay each~~
1595 ~~employee who is not exempt under subsection (F) of this section no less than the City’s living wage~~
1596 ~~rate.~~

1597 ~~B.—The City’s living wage rate shall be equal to the Montgomery County living wage rate~~
1598 ~~established and published by Montgomery County pursuant to Section 11B 33A of the~~
1599 ~~Montgomery County Code and any applicable regulations, as amended and in effect from~~
1600 ~~time to time.~~

1601 ~~C.—The City’s living wage rate shall be adjusted as of July 1st of each year to reflect the most~~
1602 ~~current Montgomery County living wage rate and shall be applicable to any contract awarded~~
1603 ~~thereafter until the date of the next adjustment; provided, however, that the wage rates in effect at~~
1604 ~~the time a contract is awarded to a covered employer by the City shall remain in effect under such~~
1605 ~~contract during its original term. At the time of the exercise of any renewal option under a City~~
1606 ~~contract with a covered employer, the required wage rate shall be adjusted as provided above, and~~
1607 ~~as adjusted, shall remain in effect during the renewal term.~~

1608 ~~D.—The City Manager shall establish the applicable living wage rate by April 1st of each year and~~
1609 ~~cause such rate to be published in English and Spanish on the City’s web site. Notice of the required~~
1610 ~~living wage rate also shall be stated in procurement solicitations, as required by~~
1611 ~~Section 7.08.200(A).~~

1612 ~~E.—Each covered employer must include the living wage requirements of this article in every~~
1613 ~~subcontract so that the provisions of this article will be binding upon each subcontractor.~~

1614 ~~F.—The living wage requirements of this section do not apply to any employee:~~
1615 ~~1.—Who performs no measurable work related to any contract with the City;~~
1616 ~~2.—Who participates in a government operated or government sponsored program that~~
1617 ~~restricts the earnings of or wages paid to employees to a level below the wage required under~~
1618 ~~this section;~~
1619 ~~3.—Who participates for no longer than 120 days in any calendar year in a~~
1620 ~~government operated or government sponsored summer youth employment program; or~~
1621 ~~4.—For whom a lower wage rate is expressly set in a bona fide collective bargaining~~
1622 ~~agreement.~~

1623 ~~G.—If any Federal, State, or City law or regulation requires payment of a higher wage, that law or~~
1624 ~~regulation controls. If any applicable collective bargaining agreement requires payment of a higher~~
1625 ~~wage, that agreement controls. (Ord. 2007 55 § 1 (part), 2007)~~

1626 ~~**7.08.220 Notices.—**~~

1627 ~~A.—Each covered employer shall conspicuously post notice of the required City living wage rate,~~
1628 ~~in English and Spanish, on such form as shall be provided by the City.~~

1629 ~~B.—Within 3 days of an employee's request, a covered employer shall provide to such employee a~~
1630 ~~written statement in English and Spanish, on such form as shall be provided by the City, of the then~~
1631 ~~required living wage rate. (Ord. 2007 55 § 1 (part), 2007)~~

1632 ~~**7.08.230 Enforcement.—**~~

1633 ~~A.—During the term of the City contract and for a period of 3 years after the expiration or earlier~~
1634 ~~termination of the City contract, each contractor and subcontractor subject to the provisions of this~~
1635 ~~article, shall keep and preserve records which show the wages provided by such contractor and its~~
1636 ~~subcontractors to each employee who provided services under the City contract. The City Manager,~~
1637 ~~or designee, shall have the power to examine such records at reasonable times during normal~~
1638 ~~business hours for the purpose of administering and enforcing the provisions of this article, and to~~
1639 ~~make copies of all or any parts thereof.~~

1640 B.—As an additional term of the City contract, no covered employer shall discharge, reduce the
1641 compensation of, or otherwise retaliate against an employee for asserting any right under this
1642 article, filing a complaint of violation, or taking any other action to enforce the requirements of this
1643 article. Any retaliation is subject to all sanctions for noncompliance with this article.

1644 C.—City contracts may specify that liquidated damages for any noncompliance with this article
1645 include the amount of any unpaid wages, with interest at the judgment rate from the date originally
1646 due and less any deductions required or permitted by law, and that the contractor is jointly and
1647 severally liable for any noncompliance by a subcontractor.

1648 D.—Any contractor or subcontractor which fails to pay an employee the living wage required by
1649 this article shall be liable to the employee in the amount of the unpaid wages, plus interest at the
1650 judgment rate from the date originally due and less any deductions required or permitted by law,
1651 reasonable attorney’s fees, and damages for any retaliation for asserting any right under this article.
1652 Any aggrieved employee of a covered employer under a City contract shall be deemed a third party
1653 beneficiary of the City contract and of the provisions mandated by this article in the City contract.
1654 (Ord. 2007-55 § 1 (part), 2007)

1655 **7.08.240 Review of living wage requirement.**—

1656 The City Council shall review the living wage requirement, including the exemptions set forth in
1657 Section 7.08.190, every 3 years following the effective date of this article. Subsequent to such
1658 review, the City Council shall determine whether to continue or modify the City’s living wage
1659 requirement. The Council’s failure to conduct such review shall have no effect on the validity of the
1660 living wage requirement set forth in this article. (Ord. 2007-55 § 1 (part), 2007)

1661 * * *

1662 **Chapter 14.04**
1663 **NUCLEAR-FREE ZONE**

1664 * * *

1665 **14.04.060 Eligibility for City contracts.**

1667 A.—The City and its officials, employees or agents shall not knowingly and intentionally grant any
1668 award, contract or purchase order, directly or indirectly, to any nuclear weapons producer.

1669 B.—The City and its officials, employees or agents shall not knowingly and intentionally grant any
1670 award, contract or purchase order, directly or indirectly, to purchase or lease products produced by
1671 a nuclear weapons' producer.

1672 C.—The recipient of a City contract, award or purchase order shall certify to the City Clerk by a
1673 notarized statement that it is not knowingly or intentionally a nuclear weapons' producer.

1674 D.—The City shall phase out the use of any products of a nuclear weapons' producer which it owns
1675 or possesses. Insofar as non nuclear alternatives are not available, for the purpose of maintaining a
1676 product during its normal useful life and for the purpose of purchasing or leasing replacement parts,
1677 supplies and services for such products. Subsections (A) and (B) of this section shall not apply.

1678 E.—The City Council, upon advice of the Nuclear-Free Takoma Park Committee, shall within 6-
1679 months of its appointment and annually thereafter establish and publish a list of nuclear weapons'
1680 producers to guide the City, its officials, employees and agents in the implementation of
1681 subsections (A) through (C) of this section. The list shall not preclude application or enforcement of
1682 these provisions to or against any other nuclear weapons' producer.

1683 F.—Waivers.

1684 1.—The provisions of subsections (A) and (B) of this section may be waived by resolution
1685 passed by a majority vote of the Mayor and Council, provided that:

1686 a.—The Mayor and Council shall determine, after a diligent good faith search, that a
1687 necessary good or service cannot reasonably be obtained from any source other than
1688 a nuclear weapons' producer;

1689 b.—The City Administrator or his or her designee shall notify the Nuclear-Free
1690 Takoma Park Committee of the Mayor and Council's intent to consider a waiver
1691 resolution 30 days prior to the formal consideration of such a resolution and that the
1692 Committee, upon receipt of such notice, shall provide the City Council with its
1693 considered advice; provided, however, that failure to provide such advice shall not
1694 prohibit the City Council from taking appropriate action after the 30-day
1695 notification period; and

1696 c.—The City Council shall hold a public hearing prior to the passage of a waiver
1697 resolution and no sooner than 30 days after the notification to the Committee of the
1698 City Council's intent to consider such a resolution.

1699 2.—The reasonableness of an alternative source shall be determined upon the consideration
1700 of the following factors:

1701 a.—The intent and purpose of this chapter;

1702 b.—Documented evidence establishing that the necessary good or service is vital to
1703 the health or safety of the residents or employees of the City, with the understanding
1704 that the absence of such evidence shall diminish the necessity for waiver;

1705 ~~e.—The recommendations of the City Administrator and the Nuclear Free Takoma~~
1706 ~~Park Committee;~~

1707 ~~d.—The availability of goods or services from a non-nuclear weapons' producer~~
1708 ~~reasonably meeting the specification or requirements of the necessary good or~~
1709 ~~service;~~

1710 ~~e.—Quantifiable substantial additional costs that would result from the use of a~~
1711 ~~good or service of a non-nuclear weapons' producer, provided that this factor shall~~
1712 ~~not become the sole consideration.~~

1713 **Explanatory Note:** Deleted text is shown with strikeout and new text is underlined.

1714

1715

1716 Adopted this _____ th day of _____ 2018, by roll-call vote as follows:

1717

1718 **Aye:**

1719 **Nay:**

1720 **Absent:**

1721 **Abstain:**

1722