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
WHEREAS, the Council has determined that the City’s policy regarding procurement of goods and services should:
• Assure that modern, professional, and generally accepted purchasing policies are followed by the City; and
• Provide for increased public confidence in the procedures followed in City procurements; and
• Ensure the fair and equitable treatment of all persons who deal with the procurement system of the City; and
• Provide increased economy in City procurement activities and maximize to the fullest extent practicable the purchasing value of public monies of the City; and
• Provide safeguards for the maintenance of a procurement system of quality and integrity; and
• Minimize adverse environmental impacts of City purchases; and
• Provide opportunities for local businesses; and
• Promote the payment of a living wage by vendors doing business with the City; and
• Obtain in a cost-effective and timely manner the materials, services and construction required by the City to serve its residents and businesses.

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

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

WHEREAS, the Council has determined that modernization of the procurement provisions of the Takoma Park Code is necessary to improve the efficiency of the City’s procurement of goods and ensure that the renewal of software and electronic services contracts are in the City’s best interest.
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
TAKOMA PARK, MARYLAND, that, effective immediately, Division 1, Purchasing and
Disposition, of Title 7 of the Takoma Park Code is hereby amended as follows:

Title 7, PURCHASING AND TAXATION

Division 1. Purchasing and Disposition

Chapter 7.04. GENERAL PROVISIONS

Sec. 7.04.010. Purposes.
The purposes of this division are to provide for an efficient, cost-effective and equitable system of
public purchasing by the City; to obtain the maximum purchasing value of public funds in
procurement; to provide for a procurement system of quality and integrity; to provide for selling
surplus goods in a manner which is efficient and equitable, and yields the highest sales price; and to
permit the continued development of procurement policies and practices.

Sec. 7.04.030. Scope.
A. Except as otherwise provided, this division applies to every disposition for value or
expenditure of public funds by the City for public purchasing.
B. When the procurement or disposition involves Federal, state, or county assistance or
contract funds or is subject to Federal, state, or county regulations, the procurement or disposition
shall be conducted in accordance with any applicable mandatory laws or regulations.

Sec. 7.04.160. Definitions.
The terms defined in this section shall have the meanings set forth below whenever they appear in
this division unless the context in which they are used clearly requires a different meaning or a
different definition is prescribed for a particular provision.

Awarding authority means the person or entity within the City authorized to award a contract.
Bid means an offer, in writing, to furnish goods, services, or construction in conformity with the specifications, delivery terms and conditions or other requirements included in the invitation for bids or an offer to purchase property.

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

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

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

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

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

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

*Competitive sealed proposal* means a method of procurement in which goods, services, or construction items are defined in a list of specifications; the specifications are included in a Request for Proposals (RFP); proposals are received by a specified time in sealed envelopes or
via authorized electronic submission method; and an award is made to the proposer most closely
meeting specifications as determined by an evaluation that uses a set of evaluation criteria. Cost is
one criterion among others, all of which may be assigned specific weights.

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

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

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

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

Contractor means any person having a contract with the City.

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

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

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

Informality means a minor defect or variation of a bid or proposal from the requirements of the
Invitation to Bid, or the Request for Proposal, which does not materially affect the price, quality,
quantity or delivery schedule for the goods, services, or construction being procured.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Split purchasing means when a recognized need for a certain volume of goods, services, or
construction is purposefully split into smaller increments in order to evade any requirement of
this division.

_Surplus goods_ means all goods the City Manager has determined have become surplus,
obsolete or unusable.

_Tie bids_ are responsive bids from responsible bidders that are substantially the same in price,
terms and conditions and that meet all the requirements and evaluation criteria set forth in the
invitation for bids.

_Using department_ means any City department, office, or agency that utilizes any goods,
services, or construction procured under this division.

_Written or in writing_ includes information that is electronically transmitted or stored.

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

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

A. Procure or supervise the procurement of all goods, services, and construction needed by the
City;

B. Sell, trade or otherwise dispose of surplus goods belonging to the City;

C. Exercise general supervision and control over all inventories of supplies belonging to the City;

D. Develop procedures, standards, and policies, and forms, including but not limited to a
Purchasing Manual, as may be necessary for the effective implementation of this division;

E. Conduct pre-bid or pre-proposal conferences where appropriate;

F. Make written recommendations for the award of formal contracts;

G. Keep informed of current developments in the field of purchasing, prices, market conditions,
and new products;
H. Assure that sufficient funds have been appropriated to cover the cost of all purchases or contracts;

I. Establish and maintain programs for the inspection, testing, and acceptance of goods, services, and construction;

J. Maintain contract files associated with procurements;

K. Change specifications and terminate solicitations;

L. Make determinations of bidder and offeror responsibility;

M. Require bonds, insurance, and other forms of protection for the City in connection with the procurement process;

N. Ensure compliance with this division by reviewing and monitoring procurements conducted by any designee, department, or employee delegated authority under Section 7.04.24;

O. Make all written determinations required by this division, except as may otherwise be provided by this division; and

P. Perform other functions and duties as required by this division or as may be assigned.

Sec. 7.04.23. City procurement records.

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

Sec. 7.04.24. Delegation of authority by City Manager.

The City Manager may establish procedures and standards for delegating authority to purchase certain goods, services, or construction items, and to make determinations required by this division to other City employees or departments, if such delegation is deemed appropriate for the effective
Sec. 7.04.36. Types of contracts.
Subject to the requirements of this division, any type of contract that is appropriate to the procurement and that will promote the best interests of the City may be used.

Sec. 7.04.37. Documentation of purchases required.
For all purchases of goods or services, the person responsible for making the purchase shall obtain and retain documentation of the purchase that includes the goods or services purchased, the identity of the vendor, the date of the purchase, and the method of payment.

Sec. 7.04.38. Formal written contracts required.
Except for the purchase of goods and equipment, formal written contracts signed by the City Manager and the contractor shall be required for procurements exceeding $30,000.00, including indefinite quantities contracts estimated to exceed $30,000.00 in any given fiscal year or contract term.

Sec. 7.04.39. Awarding authority.
A. All contracts involving more than $50,000.00 shall be awarded by the Council, except
1. when the contract involves more than $50,000.00 because of a price preference for environmentally preferable purchasing of no more than 15%; and
2. as may be specifically provided in this division.
B. Except for those contracts awarded by the Council and when emergency procurements are necessary, all formal contracts shall be awarded by the City Manager.
C. All other contracts shall be awarded by the City Manager or Deputy City Manager, personally (not their designees).

Sec. 7.04.40. Contract modifications; change orders; price adjustments.
The following contract changes (including contract modifications, change orders, and price adjustment) must be approved by the Council:

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

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

Sec. 7.04.41. Multi-term contracts.

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

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

1. Changes in pricing of the same or similar goods and services;

2. Advances in relevant technology;

3. Performance of the contractor;

4. Changes in the City’s needs;

5. The costs the City will incur as a result of changing to a new contractor, such as required equipment purchases, interruptions to City operations, and retraining of staff.
C. Subscriptions and Software Licenses. For subscription and software license contracts that include an evergreen renewal clause, the department head shall consider the factors in subsection (B) and make a recommendation to the City Manager whether to renew or terminate the contract at least once every five years.

Sec. 7.04.42. Voidable contracts.

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

7.04.43. Reports to the City Council.

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

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

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

C. As soon as practicable, a report of each emergency procurement exceeding $30,000 that
includes the cost, the reason for the emergency, a brief explanation of the reason for the choice of vendor; and any efforts taken following the emergency to prevent the need for future emergency purchases.

CHAPTER 7.08, SOURCE SELECTION

Article I. General Provisions

Sec. 7.08.51. In general.
Notwithstanding any provision of this division, the Council may approve any method of procurement that it deems to be in the best interest of the City.

Article II. Competitive Procurement.

Sec. 7.08.61. Formal solicitation—Competitive sealed bidding.
A. Conditions for use. Formal contracts shall be awarded by competitive sealed bidding, except as otherwise provided in this division.
B. Invitation for bids. An Invitation for Bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
C. Public notice. Public notice of the Invitation for Bids shall be given at least fifteen (15) days prior to the date set forth therein for the opening of bids, unless the City Manager determines, in writing, that circumstances require a shorter notice period.
D. Bid opening. Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as is deemed appropriate together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection.
E.  **Late bids.** Late bids will not be accepted.

F.  **Bid acceptance and evaluation.** Except as authorized in this article, bids shall be accepted without alteration or correction. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in a bid evaluation that are not set forth in the Invitation for Bids.

G.  **Waiver of minor informality or immaterial bid defect.** The City Manager may waive a minor informality or immaterial bid defect if such waiver is determined to be in the best interest of the City. A minor informality means a bid requirement that is merely a matter of form or is an immaterial provision in the solicitation. A bid defect is immaterial when the significance of the defect is negligible when contrasted with the total cost or scope of the procurement. The decision of the City Manager with respect to whether a requirement is a minor informality or whether a bid defect is immaterial is final and may not be challenged by a bidder.

H.  **Correction or withdrawal of bids; cancellation of awards.**

1. Where a mistake is discovered before bid opening, the bid may be modified or withdrawn by written or electronic notice received by the City Manager prior to the time set for bid opening.

2. Where a mistake is discovered after bid opening but prior to contract award, a bid:
   a. May be corrected where the error made, and the intended bid price can be determined solely from the bid documents submitted, and the City Manager determines that the mistake was inadvertent and bona fide;
   b. May be withdrawn where the bid was submitted in good faith and the bid
price is substantially lower than the other bids due solely to a clerical mistake therein
as opposed to a judgment mistake and the mistake was due to an unintentional
arithmetic error or an unintentional omission of a quantity of work, labor or material
made directly in the compilation of a bid, which unintentional arithmetic error or
unintentional omission can be clearly shown by objective evidence drawn from
inspection of original work papers, documents and materials used in the preparation
of the bid.

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

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

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

6. If a bid is withdrawn or award canceled under the authority of this section, the
lowest remaining bid shall be deemed to be the low bid.
7. Nothing herein shall prevent the City from rejecting all bids if deemed to be in the interest of the City or fair competition.

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

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

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

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

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

J. Tie bids. In the case of a tie bid between a local business and a non-local business award shall be made to the local business. If tie bids are received from two or more local businesses or from two (2) or more nonlocal businesses, a drawing shall be conducted. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet. The City reserves the right to reject all bids and rebid the contract.
K. **Multi-step seated bidding.** When it is considered impractical to initially prepare a purchase
description to support an award based on price, an Invitation for Bids may be issued requesting the
submission of unpriced offers to be followed by an Invitation for Bids limited to those bidders
whose offers have qualified under the criteria set forth in the first solicitation.

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

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

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

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

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

1. Professional services.

2. Design-build projects.

C. **Request for Proposal (RFP); evaluating factors.** The City Manager shall issue a written
Request for Proposal (RFP) indicating in general terms that which is sought to be procured, specifying the relative importance of price and other factors that shall be used in evaluating the proposal, and applicable contractual terms and conditions, including any specific capabilities and qualifications required of the contractor.

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

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

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

G. **Discussion with Responsible Offerors and Revisions to Proposals.** If provided in the RFP, the City Manager or the using department may conduct discussions with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to facilitate full understanding of, and responsiveness to, the solicitation requirements. Offerors shall then be afforded an opportunity to revise their proposals prior to award
for the purpose of obtaining best and final proposals. In conducting discussions, there shall be no
disclosure of any information derived from proposals submitted by competing offerors.

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

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

Sec. 7.08.63. Informal solicitation.

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

B. The award shall be made to the lowest responsive and responsible person. The name of the
person submitting a bid, quotation, proposal, or offer and the date and amount of each bid,
quotation, or offer shall be recorded and maintained as part of the contract file.
Sec. 7.08.64. Request for expressions of interest.

A. Conditions of use. A request for expressions of interest may be used to:
   1. Obtain information needed to prepare a subsequent procurement;
   2. Develop a ready source of potential offerors who can respond to a subsequent procurement; or
   3. Resolve technological or programmatic questions relative to how the City requirements can best be supplied.

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

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

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

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

Sec. 7.08.65. Unsolicited proposals.

A. Processing of Unsolicited Proposals. If the City receives a proposal, other than one submitted in response to a solicitation, the City Manager shall forward the proposal to the using department.
B. *Conditions for Use.* To be considered for evaluation, an unsolicited proposal:

1. Shall be in writing;
2. Shall be sufficiently detailed to allow a judgment to be made concerning the potential utility of the proposal to the City; and

C. *Evaluation.* The City Manager shall determine whether the proposal meets the requirements of Section 7.08.65(B). The City Manager shall make the determination within thirty (30) days after receiving the unsolicited proposal. If the City Manager fails to make a determination within thirty days, the unsolicited proposal shall be considered disapproved.

D. If the City Manager determines that the proposal does not meet the requirements of this section, a contract award shall not be made based on the unsolicited proposal.

E. *Discussion with Responsible Offeror.* The City Manager and the using department may conduct discussions with an offeror who submits an unsolicited proposal for the purpose of clarification and to assure full understanding. An offeror may be afforded an opportunity to revise their proposal prior to award.

F. *Public notice before award.* Not less than thirty (30) days before the award and execution of a contract based on an unsolicited proposal, the City Manager shall publish a notice of intent to award the contract on the City's website. If, during the 30-day period before contract award, a person files a written petition with the City for reconsideration of an approval determination, the awarding authority shall reconsider and make written findings affirming or reversing the approval.

G. *Contract Award.* Subject to the provisions set forth herein, award of an unsolicited proposal shall be made in accordance with Section 7.04.39.
H. *Confidentiality.* The proposal, except for information properly identified by the offeror as proprietary or confidential, shall be open for public inspection.

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

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

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

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

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

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

1. Price and other criteria set forth in the solicitation documents;

2. The ability, capacity, skill and financial resources of the bidder or offeror to perform the contract or provide the service required within the time specified, without delay or interference;

3. The character, integrity, reputation, judgment, experience, and efficiency of the bidder or offeror;

4. References and the quality of performance of previous contracts or services;

5. The previous and existing compliance by the bidder or offeror with laws and
policies relating to a contract with the City;

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

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

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

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

E. Nondisclosure of information.

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

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

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

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

560 B. A record of sole source procurements shall be maintained that lists each contractor's name, the amount and type of each contract, a listing of the items and services procured under each 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 complex nature carried out in phases makes it not feasible to continue subsequent phases with other than the first phase source, contracts for subsequent phases may be awarded to the first phase source without competition.

568 Sec. 7.08.84. Emergency procurements.

569 A. The City Manager may authorize emergency procurements of goods, services, or 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;
Where delay would significantly injure the City financially or otherwise; 
3. To prevent a breakdown in machinery and/or threatened termination of essential services (including maintenance and repair of essential office equipment); 
4. To prevent spoilage; 
5. Any other circumstance in which goods, services, or construction are needed for immediate use; 

B. Emergency procurements shall be made with such competition as is practical under the circumstances. 

C. As soon as practicable, a record of each emergency procurement shall be made containing the following: 

1. A written explanation of the circumstances of the emergency; 
2. A tabulation of bids or quotes received, if any; 
3. The contractor's name, the amount and type of contract, a listing of the items procured under the contract. 

D. To the extent feasible under the circumstances, a person to whom purchasing authority has been delegated shall obtain the approval of the City Manager for emergency procurement in excess of $10,000.00. 

Sec. 7.08.85. Related construction projects. 

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

A. City improvements consist of a single structure, portion of a single structure or complex of related structures containing both City and private improvements or improvements of another government; and 

B. The party with whom the City contracts for construction of the City improvements is also
constructing the private or other governmental improvements within the single structure or complex of related structures; and

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

Sec. 7.08.86. Contract extensions.

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

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

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

Sec. 7.08.87. Exemptions.

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

A. Professional services and other services associated with actual or potential litigation,
administrative, or regulatory proceedings.

B. Professional services not exceeding $50,000.00. No contractor or other person may be a party to, or beneficiary of, more than one contract awarded pursuant to this provision within any given fiscal year.

C. Purchases for water, sewer, electric, or other utility services.

D. Sale, rental, or purchases of land and improvements on the land, and rights-of-way.

E. Grants or contracts with other public bodies.

F. Goods purchased from a public auction sale, including an internet auction, provided that a written determination is made in advance by the City Manager that such purchase is in the best interest of the City.

G. Purchases for special police work when the Chief of Police certifies to the City Manager that items are needed for undercover police operations.

H. Purchases of goods and personal services for direct use by individual recipients of services under the public assistance programs administered by the City.

I. Purchases from nonprofit sheltered workshops serving the handicapped.

J. Expenditures for travel, subscription, courses, seminars, and conventions, membership dues and subscription fees.

K. Advertising.

L. Procurement of temporary employment services.

M. Procurement of entertainment, instructional, facilitating, or educational services for City officials, staff, or residents, or for social, cultural, or recreational programs or events offered or sponsored by the City.

N. Acquisition of works of art for public display.
O. Employment contracts and employee relocation costs.

P. Sponsorship agreements.

Q. On-going proprietary software maintenance or support.

R. Employee benefits.

Sec. 7.08.88. Special procurements.

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

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

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

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

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

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

C. A record of special procurements shall be maintained that lists the date of each contract, the contractor's name, the amount and type of each contract, the goods or services procured, and a summary of the reasons justifying the special procurement. A file shall be retained for at least five years for each special procurement that includes a copy of the contract, the written determination that competitive procurement was not in the City’s best interest, and documentation supporting the determination. Supporting documentation may include correspondence regarding the expiration of the offer, historical pricing from the vendor, and contemporaneous pricing from competitive
Sec. 7.08.89. Environmentally preferable purchasing.

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

1. Use recycled materials.
2. Generate minimal waste in manufacturing or use.
3. Are durable, longer lasting, reusable, refillable or compostable.
4. Use minimal energy and water.
5. Involve minimal use of toxic and hazardous materials.
7. Minimize production of environmental pollutants including ozone precursors.
8. Are locally supplied or produced.

B. Price Preference. To the greatest extent practicable, the City shall purchase environmentally preferable and locally supplied products and services and may provide for a price preference for such products and services not to exceed 15%.
C. Locality Preference. The City may give preference in purchasing products and services to locally supplied products, goods, and services, Montgomery County green certified businesses, and State of Maryland certified small businesses.

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

Sec. 7.08.89. Socially responsible purchasing.

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

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

Article V. Disposition of Surplus Goods

Sec. 7.08.101. Generally.

All using departments shall submit to the City Manager reports listing inventories of all goods that are no longer used, that have become obsolete or which are surplus to the needs of the department. The City Manager shall transfer serviceable surplus goods between using departments in lieu of filling requisitions for the purchase of new or additional inventory of the same or similar articles unless such transfer is determined by the City Manager to be contrary to the best interests of the City.
Sec. 7.08.102. Methods of sale.

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

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

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

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

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

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

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

Sec. 7.08.103. Worthless items.

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

Sec. 7.08.104. Waivers.
Upon a written determination that strict compliance with this article is contrary to the best interests of the City, the City Manager may waive the provisions of this article and authorize the disposal of surplus goods in the most practical manner.

Article VI. Contract Requirements

Sec. 7.08.116. Standard contract provisions.

Contracts shall include:

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

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

Sec. 7.08.117. Incentive contracting.

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

Sec. 7.08.121. Maximum practical competition.

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

Sec. 7.08.136. Bid security.
A. **Requirement for bid security.**

1. Bid security shall be required for all construction contracts where performance security is required.

2. At the discretion of the City Manager, bid security may be required for other contracts.

3. Where bid security is required, a successful bidder shall forfeit such security upon failure to enter into a contract within the time specified in the Invitation for Bids or contract award.

B. **Form of security.** Bid security shall be in the form of a bond provided by a surety company authorized to do business in Maryland, or the equivalent in cash, letter of credit, or in such other form satisfactory to the City.

C. **Amount of bid security.** Bid security for a construction contract shall be in an amount equal to at least 5% of the amount of the bid. Bid security for other than a construction contract shall be in such amount as is determined by the City Manager to sufficiently guarantee that the bidder to whom the contract is awarded will enter into the contract for the work described in the bid.

D. **Rejection of bids for noncompliance with bid security requirements.** When the invitation for bids requires security, noncompliance requires that the bid be rejected, unless it is determined in writing that such noncompliance is insubstantial.

E. **Withdrawal of bids.** If a bidder is permitted to withdraw a bid before award, or is excluded from the competition prior to award, no action shall be taken against the bidder or the bid security.

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

A. When required, amounts. When a construction contract is awarded the following bonds or other security, in a form satisfactory to the City, shall be delivered to the City and shall become
binding on the parties upon the execution of the contract:

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

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

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

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

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

B. Certification of payments. Any contractor, prior to receiving a progress or final payment under a contract covered hereunder, shall certify in writing that such contractor has made payment from the proceeds of prior payments, and that such contractor will make timely payments from the proceeds of the progress or final payment then due such contractor, to such contractor's
subcontractors and suppliers in accordance with such contractor's contractual arrangement with
them.

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

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

**Sec. 7.08.138. Additional bonds.**

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

**7.08.139 Nuclear-Free requirements.**

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

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

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

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

E. The City Council, upon advice of the Nuclear-Free Takoma Park Committee, shall annually
publish a list of nuclear weapons’ producers to guide the City, its officials, employees and agents in
the implementation of subsections (A) through (C) of this section. The list shall not preclude
application or enforcement of these provisions to or against any other nuclear weapons’ producer.

F. Waivers.

1. The provisions of subsections (A) and (B) of this section may be waived by resolution
passed by a majority vote of the Mayor and Council, provided that:
   a. The Mayor and Council shall determine, after a diligent good-faith search, that a
      necessary good or service cannot reasonably be obtained from any source other than
      a nuclear weapons’ producer;
   b. The City Manager shall notify the Nuclear-Free Takoma Park Committee of the
      Mayor and Council’s intent to consider a waiver resolution 30 days prior to the
      formal consideration of such a resolution and that the Committee, upon receipt of
      such notice, shall provide the City Council with its considered advice; provided,
      however, that failure to provide such advice shall not prohibit the City Council from
      taking appropriate action after the 30-day notification period; and
   c. The City Council shall hold a public hearing prior to the passage of a waiver
      resolution and no sooner than 30 days after the notification to the Committee of the
      City Council’s intent to consider such a resolution.

2. The reasonableness of an alternative source shall be determined upon the consideration
of the following factors:
   a. The intent and purpose of this chapter;
   b. Documented evidence establishing that the necessary good or service is vital to
      the health or safety of the residents or employees of the City, with the understanding
that the absence of such evidence shall diminish the necessity for waiver;

c. The recommendations of the City Manager and the Nuclear-Free Takoma Park Committee;

d. The availability of goods or services from a non-nuclear-weapons’ producer reasonably meeting the specification or requirements of the necessary good or service;

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

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

7.08.140 Compliance with living wage requirements.

All non-exempt procurement actions shall comply with Article VII, Living Wage Requirement, of this chapter.
Every City contract for the provision of services, awarded after a competitive bid or proposal process, shall require the contractor and any subcontractor to pay each employee assigned to perform services under the City contract a living wage. As used in this article, “covered employer” refers to any contractor or subcontractor who is subject to the City’s living wage requirement.

7.08.190 Exemptions.

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

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

B. A contract:

1. With a public entity.

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

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

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

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

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

7.08.200 Solicitation requirements.

A. The City’s living wage requirement shall be identified and set forth in all non-exempt procurement solicitations for the contract.
B. Each response to a bid or proposal to provide services to the City and each City contract for services must include a certification that the contractor and each subcontractor shall comply with the City’s living wage requirements or a certification by the contractor or subcontractor setting forth the applicable exemption from the living wage requirement, along with supporting documentation for the exemption. Any contractor or subcontractor who knowingly makes a false statement in such certification, or who fails to comply with the living wage requirement during performance of a City contract for services, shall be subject to loss of the contract and disqualification from future City contracts.

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

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

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

7.08.210 Living wage requirement.

A. Except as permitted under Section 7.08.200(D), each covered employer must pay each employee who is not exempt under subsection (F) of this section no less than the City’s living wage rate.
B. The City’s living wage rate shall be equal to the Montgomery County living wage rate established and published by Montgomery County pursuant to Section 11B-33A of the Montgomery County Code and any applicable regulations, as amended and in effect from time-to-time.

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

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

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

F. The living wage requirements of this section do not apply to any employee:
   1. Who performs no measurable work related to any contract with the City;
   2. Who participates in a government-operated or government-sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under this section;
3. Who participates for no longer than 120 days in any calendar year in a government-operated or government-sponsored summer youth employment program; or

4. For whom a lower wage rate is expressly set in a bona fide collective bargaining agreement.

G. If any Federal, State, or City law or regulation requires payment of a higher wage, that law or regulation controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.

7.08.220 Notices.

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

B. Within 3 days of an employee’s request, a covered employer shall provide to such employee a written statement in English and Spanish, on such form as shall be provided by the City, of the then required living wage rate.

7.08.230 Enforcement.

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

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

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

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

7.08.240 Review of living wage requirement.

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

Article VIII. Ethics in Contracting

Sec. 7.04.250. Multiple bidding.

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

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

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

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

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

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

Sec. 7.04.260. Collusive bidding.

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

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

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

Sec. 7.04.270. Illegal gifts and kickbacks.

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

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

C. A person must not:

1. Provide, attempt to provide, or offer to provide a kickback;

2. Solicit, accept, or attempt to accept a kickback;

3. Claim that the unlawfully induced contract or subcontract fulfills any legal, regulatory, or contractual requirement.

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

Sec. 7.04.280. Split purchasing/sale prohibited.

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

Sec. 7.04.290. Conflicts of interest.

A. The provisions of Title III, Ethics, shall be applicable to this division.
B. No City official or employee shall participate in any procurement, except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to it, when the official or employee knows that the official or employee or any member of the official's or employee's immediate family has a financial interest pertaining to the procurement.

Where an official or employee or any member of the official's or employee's immediate family holds a financial interest in a blind trust, the official or employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that the existence of the blind trust has been disclosed in writing to the City Manager.

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

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

Sec. 7.04.300. Disclosure of subsequent employment.

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

Sec. 7.04.310. Remedies; penalties.

In addition to any other penalties provided by applicable law, any contract in violation of the
provisions of this article shall be voidable at the option of the City, and any person responsible for
the making of a contract in willful violation of the provisions of Sections 7.04.260, 7.04.270 or
7.04.290 shall be charged with a misdemeanor.

Division 1. Purchasing

Chapter 7.04
GENERAL PROVISIONS

7.04.010 Purpose.--
The purposes of this division are:

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

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

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

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

7.04.030 Administration.--
The City Administrator and the Administrator’s designee shall have the authority to adopt and
enforce rules and regulations in accordance with the procedures set forth in Chapter 2 of this Code,
to promote the efficiency of operations and compliance with the provisions of this division. (Prior code §9A-3)

7.04.040 Definitions.
The following terms shall have the following meanings when used in this division:

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

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

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

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

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

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

“Department head” means one of the following: the City Clerk, the Chief of Police, the Director of Public Works, the Library Director, the Director of Recreation, the Director of Housing and Community Development or such other employees as the City Administrator may designate from time to time.
“Emergency” means any condition or unforeseen curtailment, diminution or termination of an essential service which poses an immediate danger or threat to the public health, safety or welfare.

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

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

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

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

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

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

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

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

“Price preference” means a percentage of increase in price that the City may pay to obtain a designated recycled or environmentally preferable product or service.
“Procurement” means buying, purchasing, renting, leasing or otherwise acquiring any goods, services or construction. It also includes all functions that pertain to the obtaining of any good, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of a contract and all phases of contract administration.

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

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

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

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

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

“Responsible bidder or offeror” means a person or entity who has the capability in all respects to perform fully the contract requirements and the experience, integrity, reliability, capacity, facilities, equipment and credit which will assure good faith performance. Any person who is in default on the payment of taxes, licenses or other moneys due the City shall not be deemed “responsible.”
“Responsive bidder” means a person or entity who has submitted a bid which conforms in all material aspects to the invitation for bids.

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

7.04.050 Expenditure of City funds.—
No City funds shall be expended unless:

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

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

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

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

If the project, goods or services were authorized in the budget ordinance but exceed the budgeted amount, an ordinance approving such expenditure may be enacted upon a single reading without being read at 2 meetings of the City Council prior to adoption, provided, however, that the City Administrator makes a determination that funds are available to cover the cost of the procurement.
B. Nothing in subsection (A) of this section shall prohibit the City Council from approving the
purchase of items not included in the City budget, upon receipt of a written justification and a
written determination by the City Administrator that funds are available for the purchase. City-
Council approval shall be accomplished by 2 readings of an ordinance.

C. The City Administrator shall:

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

2. Be responsible for the administration of a centralized system of purchasing and-
procurement of goods and services for the City and for effectuating the provisions of this-
division.

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

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

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


7.08.010 Written contracts.--

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

B. Written contracts signed by the City Administrator or the Administrator’s designee and the-
contractor shall be used for the following types of procurements:

1. Construction work exceeding $10,000.00;
2. Professional services exceeding $5,000.00. (Prior code § 9A-7)

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

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

Article 2. Competitive Bidding and Source Selection

7.08.040 Conditions for use.—
A. General. All City contracts shall be awarded by competitive sealed bidding or competitive sealed proposals, except as otherwise provided in:

1. Section 7.08.070(A), Small purchases;
2. Section 7.08.070(B), Professional services;
3. Section 7.08.070(C), Emergency procurement;
4. Section 7.08.070(D), Sole source procurement;
5. Section 7.08.070(E), Cooperative purchasing.

B. City Vendors or Suppliers. The City Administrator or designee shall take all reasonable steps to assure that all qualified vendors or suppliers of goods or services residing or having their principal offices in the City are made aware of the City’s issuance of invitations for bids or request
for proposals and given an opportunity to submit bids or proposals in response thereto. (Prior code § 9A-10)

7.08.050 Competitive sealed bidding.--

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

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

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

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

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

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

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

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

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

4. Acceptance and Evaluation of Bids. Bids shall be evaluated based on the requirements set forth in the invitation for bids. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as, but not limited to, discounts, transportation costs and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bid.
5. Correction or Withdrawal of Bids. Correction or withdrawal of inadvertently erroneous bids before or after award or cancellation of awards or contracts based on bid mistakes shall be permitted in accordance with such regulations as the City Administrator may establish. After the opening of bids, no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination by the City Administrator.

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

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

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

7.08.060 Competitive sealed proposals.

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

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

2. For the procurement of professional services.

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

C. Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 7.08.050 (B)(2).
D. Receipt of Proposals. No proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the evaluation process. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open to public inspection only after contract award.

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

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

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

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

Article 3. Other Procurement Methods

7.08.070 Procurements exempt from competitive bidding—

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

B. Professional Services. Any procurement of or contract for professional services may be made without the requirement of competitive bidding. The City Administrator may, by regulations,
establish competitive negotiation or selection procedures for professional service contracts or classes of professional service contracts.

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

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

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

7.08.080 Procedure for procurements exempt from competitive bidding—

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

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

7.08.100 Records of procurement actions.

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

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

Chapter 7.08
SOURCE SELECTION AND CONTRACT FORMATION

7.08.110 Compliance with Chapter 14.04.

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

7.08.120 Purchase orders.

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

B. No department head shall make any purchase on behalf of or chargeable to the City except by means of a purchase order signed in accordance with subsection (A) of this section; provided, however, that this subsection (B) shall not apply to expenditures made in advance of a purchase in emergencies as defined in and subject to the regulations that may be established by the City Administrator; provided, however, that in the case of emergency expenditures, a purchase order must be obtained from the City Administrator or designee within 72 hours of the purchase.
C. No person employed by the City or providing services to the City as an independent contractor shall purchase or cause to be purchased through or from the City any item for his or her personal use. Without limitation on any other legal actions or remedies available, violations of this section shall be sufficient cause for dismissal, suspension or termination of employment or of any contract for services, as the City Council may determine. A violation of this section shall be a Class A offense. (Prior code § 9A-18)

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

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

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

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

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

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

3. When the City is using an outside printer, the City must obtain both a price quote for recycled and nonrecycled paper and shall require that the job be done using recycled paper if there is a price differential of 15% or less.
4. All copiers and laser printers purchased by the City after the effective date of this legislation shall be able to use recycled paper, and all copiers shall be able to perform 2-sided copying as an automatic function.

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

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

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

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

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

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

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

7.08.145 Environmentally preferable purchasing.

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

1. Use recycled materials.
2. Generate minimal waste in manufacturing or use.
3. Are durable, longer lasting, reusable, refillable or compostable.
4. Use minimal energy and water.
5. Involve minimal use of toxic and hazardous materials.
7. Minimize production of environmental pollutants including ozone precursors.
8. Are locally supplied or produced.

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

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

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

1. Energy and Water Savings. Where applicable, energy-efficient equipment shall be purchased with the most up-to-date energy efficiency functions. This includes, but is not limited to, high-efficiency space heating systems and high-efficiency space cooling equipment.
2. Energy Efficiency Certifications. All products purchased by the City for which United States Environmental Protection Agency (U.S. EPA) Energy Star or WaterSense certification is available shall meet that certification, when practicable. When Energy Star or WaterSense labels are not available, energy-efficient products that are in the upper 25% of energy efficiency as designated by the Federal Energy Management Program are preferred.

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

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

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

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

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

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

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

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

4. Cleaning or disinfecting products (i.e., for janitorial or automotive use) shall not contain ingredients that are carcinogens, mutagens, or teratogens. These include chemicals listed by-
the U.S. EPA or the National Institute for Occupational Safety and Health on the Toxics
Release Inventory.

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

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

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

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


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

a. Responsible Purchasing Network (various products);

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

c. Greenguard Environmental Institute (various products);

d. CFPA (chlorine free paper);

e. EPEAT (electronics);

f. Forest Stewardship Council (paper products);

g. Resilient Floor Covering Institute (flooring products);

h. Carpet and Rug Institute (carpets).

F. Practicability of Procurement. In an assessment of the practicability of the procurement or
purchase of specific environmentally preferable or locally available products, the City shall
consider, among other relevant factors, product availability, product longevity, and product
suitability for its intended use, including whether the product meets established performance-
standards, any adverse impact of the product on the health and safety of employees and residents,
and cost. Nothing contained in this section shall require a City department, purchaser, or contractor
to procure or purchase products that do not perform adequately for their intended use, exclude-
adequate competition, or cost more than 15% above the standard cost for the product. (Ord-
2014-41 § 1, 2014)

Article 4. Disposition of Goods

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

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

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

B. Goods which have been found by the City Administrator to have become surplus, obsolete or
unusable, and whose current value is estimated to be less than $10,000.00, may be disposed of by-
the methods described in regulations the City Administrator may establish. Such dispositions shall,
wherever feasible, be based on competitive price quotations and shall be made to a responsible
purchaser offering the highest price. The City Administrator is authorized to sell by auction such-
property to the highest responsible bidder, after public notice, when, in the City Administrator’s-
opinion, the return to the City is expected to increase by this procedure. In order to produce the
highest return for the disposition of such personal property, the City Administrator may select from
the following disposition methods the method which will yield the greatest return under the
circumstances of each disposition:

1. Competitive sealed bids;
2. Competitive sealed proposals;
3. Competitive auction sale;
4. Trade-in or exchange for goods which are of current need;
5. Competitive negotiation. (Prior code § 9A-21)

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

Article 5. Living Wage Requirement

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

7.08.190 Exemptions.
The provisions of this article do not apply to the following:

A. A contract for services valued at less than $20,000.00.
B. A contract:
1. With a public entity.

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

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

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

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

C. If the City Manager makes a written determination that application of this article would conflict with an applicable Federal, State or County program, contract, or grant requirement, then the living wage requirements of this article shall not apply to the contract or program. (Ord. 2013-26 § 1, 2013/Ord. 2007-55 § 1 (part), 2007)

7.08.200 Solicitation requirements.

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

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

C. A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirement under this article.
D. If a contractor or subcontractor commits in its bid or proposal to provide health insurance to any employee who provides services to the City under a City contract, the contractor or subcontractor may:

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

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

7.08.210 Living wage requirement.

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

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

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

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

E. Each covered employer must include the living wage requirements of this article in every subcontract so that the provisions of this article will be binding upon each subcontractor.
F. The living wage requirements of this section do not apply to any employee:

1. Who performs no measurable work related to any contract with the City;

2. Who participates in a government-operated or government-sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under this section;

3. Who participates for no longer than 120 days in any calendar year in a government-operated or government-sponsored summer youth employment program; or

4. For whom a lower wage rate is expressly set in a bona-fide collective bargaining agreement.

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

7.08.220 Notices.

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

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

7.08.230 Enforcement.

A. During the term of the City contract and for a period of 3 years after the expiration or earlier termination of the City contract, each contractor and subcontractor subject to the provisions of this article, shall keep and preserve records which show the wages provided by such contractor and its subcontractors to each employee who provided services under the City contract. The City Manager, or designee, shall have the power to examine such records at reasonable times during normal business hours for the purpose of administering and enforcing the provisions of this article, and to make copies of all or any parts thereof.
B. As an additional term of the City contract, no covered employer shall discharge, reduce the compensation of, or otherwise retaliate against an employee for asserting any right under this article, filing a complaint of violation, or taking any other action to enforce the requirements of this article. Any retaliation is subject to all sanctions for noncompliance with this article.

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

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

(Ord. 2007-55 § 1 (part), 2007)

7.08.240 Review of living wage requirement.

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

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Chapter 14.04
NUCLEAR-FREE ZONE

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14.04.060 Eligibility for City contracts.

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

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

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

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

F. Waivers.

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

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

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

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

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

   a. The intent and purpose of this chapter;

   b. Documented evidence establishing that the necessary good or service is vital to the health or safety of the residents or employees of the City, with the understanding that the absence of such evidence shall diminish the necessity for waiver;
e.—The recommendations of the City Administrator and the Nuclear-Free Takoma Park Committee;

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

e.—Quantifiable substantial additional costs that would result from the use of a good or service of a non-nuclear-weapons’ producer, provided that this factor shall not become the sole consideration.
Explanatory Note: Deleted text is shown with strikeout and new text is underlined.

Adopted this ________ th day of ______________________ 2018, by roll-call vote as follows:

Aye:
Nay:
Absent:
Abstain: