



Takoma Park City Council Meeting – July 14, 2021 Agenda Item 5

Work Session

Discussion of Proposed Code Amendments to Takoma Park Code, Title 7, Purchasing and Taxation, Chapters 7.04, 7.08, 7.12, 7.16, 7.32 and Title 14, Nuclear-Free Zone, Chapter 14.04

Recommended Council Action

Continue discussion of proposed Code amendments and provide feedback.

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. The provisions in these chapters provide safeguards for maintaining the integrity and quality of the City's procurement system. Other than some minor additions, this section of the Code has not been substantively updated since before 2000.

The City Council reviewed potential purchasing code changes during two work sessions on October 24, 2018 and November 7, 2018 but decided not to advance the amendment ordinance to first reading citing a need for further legal analysis. With the recent adoption of the Fiscal 2022 budget, City staff have revisited this section of the code with the goal of modernizing the City's procurement practices during the new fiscal year beginning July 1, 2021.

Any updates to the purchasing code will be particularly impactful for City operations in Fiscal 2022 in expectation of the additional \$17.4 million in American Rescue Plan funding that the City is federally required to obligate by 2024. City Attorney Skip Cornbrooks of Karpinski, Cornbrooks & Karp assisted staff in taking a fresh look at these chapters. The staff review process benefitted from his expertise in revising purchasing codes for municipalities throughout the region.

With reference to modern-day best practices in municipal procurement, staff have provided several recommended amendments to the Code for Council to consider. The most substantive amendments include:

- Social Equity Considerations
 - Incorporating social equity factors as considerations for procurement specifications
- Awarding Authority
 - Increasing the dollar amount of purchases that must be approved by Council from \$5,000 for professional services and \$10,000 for other single purchase of goods or services to \$50,000
 - Requiring that the City Manager sign contracts for all purchases greater than \$30,000
 - Requiring that the City Manager or designee approve purchases less than \$30,000
- Required Reports to Council

- Periodic, but at least annual, report to the Council regarding all purchases between \$30,000 and \$50,000 and all emergency purchases between \$10,000 and \$30,000
- Immediate reports to Council regarding all emergency purchases above \$30,000
- Procedural Requirements
 - Increasing the purchase amount requiring competitive sealed bids and proposals (commonly referred to as a “Request for Proposals”) from \$10,000 to \$30,000
 - Increasing the purchase amounts requiring staff to obtain at least three proposals (commonly referred to as “quotes”) from \$0-\$10,000 to \$10,000-\$29,999
 - Requiring staff to make reasonable efforts to obtain lowest cost for purchases below \$10,000
- Administrative Regulations
 - Incorporating the City Contracts section of the Nuclear Free Zone chapter of the Code within Purchasing section (since it is focused on purchasing); consider including detailed requirements in administrative regulations
 - For environmentally friendly purchasing, consider moving detailed requirements to administrative regulations to accommodate industry changes over time
- New Purchasing Mechanisms
 - Creating competitive bid exemptions that allow the City to take advantage of limited term “sale” offers and rider contracts from other governmental entities
 - Clearly defining multi-term contracts and indefinite quantities contracts

The enclosed document reflects the amendments proposed – underlined denotes new language, strikethrough denotes deleted language. On July 7, the Deputy City Manager and City Attorney provided a powerpoint overview of the proposed amendments; additional amendments will be made based on feedback and direction from Council in this second work session. A first reading ordinance is scheduled for Council’s voting consideration on July 21 and a second reading on July 28.

Council Priority

Fiscally Sustainable Government; Environmentally Sustainable Community

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. The proposed amendments also add sustainability factors as key considerations in writing procurement specifications and permit a price preference for sustainable purchases.

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

Social equity factors such as the use of local businesses, human health impacts, and the use of Maryland Minority, Women, and Emerging Small Businesses will be codified as guiding considerations for procurement specifications.

Attachments and Links

- Proposed Amendments to Takoma Park Code, Title 7, Purchasing and Taxation

1 Introduced by: _____

First Reading: _____

2 Second Reading: _____

3 Effective Date: _____

4
5 **CITY OF TAKOMA PARK, MARYLAND**
6 **ORDINANCE 2021-__**

7
8 **AMENDING THE TAKOMA PARK CODE, TITLE 7, PURCHASING AND**
9 **TAXATION, CHAPTER 7.04 GENERAL PROVISIONS, CHAPTER 7.08**
10 **SOURCE SELECTION AND CONTRACT FORMATION, CHAPTER 7.16**
11 **REAL AND PERSONAL PROPERTY, CHAPTER 7.32 ADMISSIONS AND**
12 **AMUSEMENT TAX, AND TAKOMA PARK CODE, TITLE 14, NUCLEAR-**
13 **FREE ZONE, CHAPTER 14.04.**

14
15 **WHEREAS,** the Maryland Code, Local Government Article, Section 5–202, as amended,
16 authorizes the legislative body of each municipal corporation in the State of
17 Maryland to pass ordinances that such legislative body deems necessary to assure
18 the good government of the municipality, to protect and preserve the
19 municipality’s rights, property and privileges, to preserve peace and good order,
20 to secure persons and property from danger and destruction, and to protect the
21 health, comfort, and convenience of the citizens of the municipality;

22
23 **WHEREAS,** Section 401(a) of the City Charter states that the Council has the power to pass
24 all such ordinances not contrary to the Constitution and laws of the State of
25 Maryland as it may deem necessary for the good government of the City, for the
26 protection and preservation of the City’s property, rights, and privileges, for the
27 preservation of peace and good order, for securing persons and property from
28 violence, danger or destruction, and for the protection and promotion of the
29 health, safety, comfort, convenience, welfare, and happiness of the residents of
30 and visitors in the City;

31
32 **WHEREAS,** Section 812 of the City Charter subjects all real property located within the City’s
33 corporate limits to taxation for municipal purposes;

34
35 **WHEREAS,** Section 401(b)(20) of the City Charter authorizes the Council to levy, assess and
36 collect taxes, fees, assessments, and charges against property;

37
38 **WHEREAS,** Section 826(a) of the City Charter empowers the City Council to establish, by
39 ordinance, rules and regulations regarding purchases and contracts for the City;

40
41 **WHEREAS,** Title 7 of the City Code has not been revised in more than twenty years, contains
42 outdated references to Prince George’s County and former versions of the
43 Annotated Code of Maryland, and the threshold dollar amounts that trigger more
44 stringent and time-consuming source selection procedures set forth therein, are
45 outdated and have not kept pace with inflation; and

1
2 **WHEREAS,** the Council, has determined that modernization of the procurement provisions of
3 Title 7 of the Takoma Park Code is necessary to improve the efficiency of the
4 City’s procurement of goods and services, the City’s ability to make more timely
5 purchases, and to ensure the appropriate and orderly assessment and collection of
6 taxes within the City.
7

8 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
9 **TAKOMA PARK, MARYLAND, THAT** Title 7, Purchasing and Taxation and Title 14, Chapter
10 14.04 of the Takoma Park Code are hereby amended as follows:
11

12 **Division 1. Purchasing**
13
14 **Chapter 7.04**
15 **GENERAL PROVISIONS**
16

17 Sections:

- 18
19 7.04.010 Purpose.
20 7.04.015 Sustainability and Social Equity Factors
21 7.04.020 Scope.
22 7.04.030 Administration.
23 7.04.040 Definitions.
24 7.04.050 Expenditure of City funds.
25 7.04.060 Powers and duties of City Council and Administrator.
26

27 **7.04.010 Purpose.**
28

29 The purposes of this division are:
30

- 31 A. To provide for fair and equitable treatment of all persons involved in public purchasing by
32 the City;
33
34 B. To provide for an efficient, cost-effective, environmentally sustainable, and equitable
35 system of public procurement and ~~To~~ to ensure the maximum purchasing value of public funds in
36 procurement; and
37
38 C. To provide safeguards for maintaining a procurement and disposition system of quality and
39 integrity. (Prior code § 9A-1)
40

41 **7.04.015 Sustainability and Social Equity Considerations.**
42

- 43 A. The City will incorporate the following factors when writing specifications for procuring
44 materials, products or services:
45

1 1. Environmental factors to be considered include, but are not limited to, the life cycle
2 assessment of:

3
4 a. Pollutant releases;

5
6 b. Toxicity, especially the use of persistent, bio-accumulative, and toxic (PBT)
7 chemicals;

8
9 c. Waste generation;

10
11 d. Greenhouse gas emissions;

12
13 e. Energy consumption;

14
15 f. Depletion of natural resources; and

16
17 g. Impacts on biodiversity.

18
19 2. Social equity factors to be considered include, but are not limited to:

20
21 a. Human health impacts;

22
23 b. Use of local businesses; and

24
25 c. Use of State of Maryland Minority, Women, and Emerging Small
26 Businesses.

27
28 B. While not all factors will be incorporated into every purchase, it is the intent of this policy
29 that the City will make a good faith effort to incorporate and balance these factors to the maximum
30 extent possible and as permitted by law.

31
32 C. Price Preference. To the greatest extent practicable, the City shall purchase
33 environmentally preferable and locally supplied products and services and may provide for a price
34 preference for such products and services not to exceed 15%.

35
36 **7.04.020 Scope.**

37
38 This division applies to every disposition for value or expenditure of public funds by the City for
39 public purchasing irrespective of its source. When the procurement or disposition involves Federal,
40 State or County assistance or contract funds or is subject to Federal, State or County laws or
41 regulations, the procurement or disposition shall be conducted in accordance with any applicable
42 mandatory Federal, State, or County laws and regulations which ~~is~~ are not reflected in this division.
43 Nothing in this division shall be construed as prohibiting or limiting the City's right to employ its
44 own personnel for the construction or reconstruction of public improvements or any other purpose
45 without advertising for or receiving bids or proposals. (Prior code § 9A-2)

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7.04.030 Administration.

The City ~~Administrator~~ Manager and the ~~Administrator's~~ Manager'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, including purchase orders, regardless of what they may be called, for the procurement or disposal of goods, services or construction.

“Formal contract” means a written contract for procurements exceeding \$30,000.00 in value that must be signed by the City Manager.

“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

1 Community Development or such other employees as the City ~~Administrator~~ Manager may
2 designate from time to time.

3
4 “Emergency” means any condition or unforeseen curtailment, diminution or termination of an
5 essential service which poses an immediate danger or threat to the public health, safety or welfare.

6
7 “Environmentally preferable products” means products that have a lesser or reduced adverse effect
8 on human health and the environment when compared with competing products that serve the
9 same purpose. This comparison may consider raw materials acquisition, production,
10 manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

11
12 “Goods” means supplies, materials, equipment and all tangible property, except real property.

13
14 “Indefinite quantities contract” means a contract whereby the City agrees to purchase and the
15 contractor agrees to provide the goods or construction of a designated type or unit which the City
16 may require, without specifying in the contract the exact quantity.

17
18 “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized
19 for soliciting bids.

20
21 “Life cycle costs” means specific and quantifiable costs associated with an item over its useful
22 life, including costs of disposal, in addition to the purchase price.

23
24 “Locally supplied” means products and goods made or supplied, or services provided, from an
25 independently owned and operated individual, business, or organization located within 150 miles
26 of the City.

27
28 “Percentage price preference” means the percent by which a bid from a responsible bidder or price
29 available from a vendor whose product contains recycled materials (or a greater use of recycled
30 material) may exceed the lowest responsive bid submitted by a responsible bidder whose product
31 does not contain recycled material (or a lesser use of recycled material).

32
33 “Rider contract” means an agreement procuring goods or services in which a vendor provides the
34 same goods or services to the City at the same price and under the same material terms and
35 conditions of the underlying contract, excluding quantities, between the vendor or contractor and
36 another governmental entity, and may include contracts awarded through City participation in
37 programs established by cooperative purchasing organizations or purchasing associations.

38
39 “Post-consumer waste” means an item that has served its intended use, such as old newspapers or
40 magazines, and has been separated and diverted from the waste stream for the purposes of
41 collection and recycling. It does not include waste generated during production of an end product,
42 such as printer’s waste.

43
44 “Price preference” means a percentage of increase in price that the City may pay to obtain a
45 designated recycled or environmentally preferable product or service.

1
2 “Procurement” means buying, purchasing, renting, leasing or otherwise acquiring any goods,
3 services or construction. It also includes all functions that pertain to the obtaining of any good,
4 service or construction, including description of requirements, selection and solicitation of sources,
5 preparation and award of a contract and all phases of contract administration.

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

9
10 “Proposal” means an offer to supply goods or perform services or to purchase goods to be disposed
11 of in response to a request for proposals by the City where competitive sealed proposals or
12 negotiations will be used rather than the competitive sealed bid process.

13
14 “Recycled material” means material recovered from or otherwise diverted from the waste stream,
15 including recycled paper. It includes post-consumer waste, but does not include those materials
16 and by-products generated from and commonly reused during production of an end product.

17
18 “Recycled paper” means paper or a paper product that contains recycled materials with a total
19 gross content of post-consumer waste of at least 80%, or if such a paper product is unavailable or
20 otherwise impracticable to procure that the paper or paper product has been de-inked or contains
21 a level of post-consumer waste that exceeds the then-current minimum content standards of the
22 United States Environmental Protection Agency for paper and paper products containing recovered
23 materials (40 CFR 250), or if a paper or paper product meeting the requirements set out herein is
24 unavailable or otherwise impracticable to procure, that the paper or paper product conforms to the
25 then-current minimum content standards adopted by the United States Environmental Protection
26 Agency for paper and paper products containing recovered materials (40 CFR 250).

27
28 “Request for proposals” means all documents, whether attached or incorporated by reference, used
29 for soliciting proposals.

30
31 “Responsible bidder or offeror” means a person or entity who has the capability in all respects to
32 perform fully the contract requirements and the experience, integrity, reliability, capacity,
33 facilities, equipment and credit which will assure good faith performance. Any person who is in
34 default on the payment of taxes, licenses or other moneys due the City shall not be deemed
35 “responsible.”

36
37 “Responsive bidder” means a person or entity who has submitted a bid which conforms in all
38 material aspects to the invitation for bids.

39
40 “Specifications” means any description of the design or functional characteristics or of the nature
41 of a good, service or construction item. It may include a description of any requirement for
42 inspecting, testing or preparing a good, service or construction item. (Ord. 2014-41 § 2 (part),
43 2014/prior code § 9A-4)

44
45

1 **7.04.050 Expenditure of City funds.**
2

3 No City funds shall be expended unless:
4

5 A. The expenditure is authorized in the budget ordinance for the current year, previously
6 approved by ordinance or an ordinance revising it;
7

8 B. The expenditure is made pursuant to a contract or purchase order signed in accordance with
9 this division;
10

11 C. The contract or purchase order pursuant to which the expenditure is made has been
12 approved by the City Council or by the City ~~Administrator~~ Manager as required by this division.
13 (Prior code § 9A-5)
14

15 **7.04.060 Powers and duties of City Council and Administrator.**
16

17 A. The City Council shall, by ordinance duly enacted, approve all expenditures exceeding of
18 ~~\$50,000.00 or more for professional services and all expenditures of \$10,000.00 or more for any~~
19 ~~other single purchase of goods or services other than professional services~~; provided, however,
20 that ordinances approving such expenditures may be enacted upon a single reading without being
21 read at 2 meetings of the City Council prior to adoption, if each such expenditure is specifically
22 authorized in the budget ordinance for the current year or an ordinance revising it and the cost of
23 the procurement is equal to or less than the budgeted amount.
24

25 If the project, goods or services were authorized in the budget ordinance but exceed the budgeted
26 amount, an ordinance approving such expenditure may be enacted upon a single reading without
27 being read at 2 meetings of the City Council prior to adoption; provided, however, that the City
28 ~~Administrator~~ Manager makes a determination, in writing, that funds are available to cover the
29 cost of the procurement.
30

31 B. Nothing in subsection (A) of this section shall prohibit the City Council from approving
32 the purchase of items not included in the City budget, upon receipt of a written justification and a
33 written determination by the City ~~Administrator~~ Manager that funds are available for the purchase.
34 City Council approval shall be accomplished by 2 readings of an ordinance.
35

36 C. The City ~~Administrator~~ Manager shall:
37

38 1. Approve all City expenditures for goods or services which are not required to be
39 approved by the City Council, whether made pursuant to contract or purchase order;
40

41 2. Be responsible for the administration of a centralized system of purchasing and
42 procurement of goods and services for the City and for effectuating the provisions of this
43 division.
44

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

4 D. The City ~~Administrator~~ Manager may delegate in writing ~~his or her~~ their powers and duties
5 under this division to a designated City employee. Any such designee may only approve
6 expenditures that are equal to or less than thirty-thousand dollars and zero cents (\$30,000.00).
7

8 E. The City ~~Administrator~~ Manager shall have the authority to enter into contracts on behalf
9 of the City for the purchase of goods and services once such purchases have been duly authorized
10 in accordance with this division and cooperative purchasing agreements as authorized in this
11 division. ~~The Mayor shall have the authority to enter into all other contracts and agreements on~~
12 ~~behalf of the City, including, but not limited to, agreements with other governmental entities and~~
13 ~~agreements concerning matters of City policy, subject to the approval of the Council.~~ (Prior code
14 § 9A-6)
15

Chapter 7.08
SOURCE SELECTION AND CONTRACT FORMATION

Sections:

- 1
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5
6 Article 1. General Provisions
7 7.08.010 Written contracts.
8 7.08.015 Contract modifications; change orders; price adjustments
9 7.08.020 Voidable contracts.
10 7.08.025 Multi-term contracts.
11 7.08.026 Indefinite quantities contracts.
12 7.08.030 Validity of claims.
13 7.08.031 Compliance with Chapter 14.04 – Takoma Park Nuclear Free Zone Act.
14 7.08.035 Records of procurement actions.
15
16 Article 2. Competitive Bidding and Source Selection
17 7.08.040 Conditions for use.
18 7.08.050 Competitive sealed bidding.
19 7.08.060 Competitive sealed proposals.
20
21 Article 3. Other Procurement Methods
22 7.08.070 Procurements exempt from competitive bidding.
23 7.08.080 Procedure for procurements exempt from competitive bidding.
24 7.08.090 Extensions.
25 ~~7.08.100 Records of procurement actions.~~
26 ~~7.08.110 Compliance with Chapter 14.04.~~
27 ~~7.08.12000~~ Purchase orders.
28 ~~7.08.1310~~ Petty cash expenditures.
29 ~~7.08.14120~~ Purchase of recycled products.
30 ~~7.08.14530~~ Environmentally preferable purchasing.
31
32 ~~Article 54.~~ Living Wage Requirement
33 ~~7.08.18040~~ Scope.
34 ~~7.08.19050~~ Exemptions.
35 ~~7.08.200160~~ Solicitation requirements.
36 ~~7.08.210170~~ Living wage requirement.
37 ~~7.08.220180~~ Notices.
38 ~~7.08.320190~~ Enforcement.
39 ~~7.08.24200~~ Review of living wage requirement.
40
41 Article 5. Bonds and Bid Security
42 7.08.210 Bid security
43 7.08.220 Contract performance and payment bonds
44 7.08.230 Additional bonds
45

- 1 Article ~~6~~4 Disposition of Goods
- 2 7.08.~~150~~240 Generally.
- 3 7.08.~~160~~250 Methods of sale.
- 4 7.08.~~170~~260 Worthless items.

5
6 **Article 1. General Provisions**

7
8 **7.08.010 Written contracts.**

9
10 A. All contracts involving more than ~~\$150,000.00~~ shall be awarded by the Council.

11
12 B. All contracts equal to or less than \$50,000.00 shall be awarded by the City Manager or
13 their designee, subject to the provisions of Section 7.04.060(D). ~~Written contracts signed by the~~
14 ~~City Administrator or the Administrator's designee and the contractor shall be used for the~~
15 ~~following types of procurements:~~

16
17 1. ~~Construction work exceeding \$10,000.00;~~

18
19 2. ~~Professional services exceeding \$5,000.00. (Prior code § 9A-7)~~

20
21 C. The City Manager may delegate, in writing, the authority to award contracts equal to or
22 less than \$30,000.00.

23
24 D. All procurements exceeding \$30,000.00 in value require a formal contract.

25
26 E. All procurements not exceeding \$30,000.000 in value must be supported by written
27 documentation.

28
29 **7.08.015 Contract modifications; change orders; price adjustments**

30
31 A. The following contract changes (including contract modifications, change orders, and price
32 adjustments) must be approved by ordinance which may be enacted upon a single reading pursuant
33 to Section 7.04.060(A):

34
35 1. Changes to any contract not originally awarded by the Council when the cumulative
36 value of the original contract and all changes to the contract exceed \$50,000.00;

37
38 2. Changes to any contract originally awarded, or any contract previously modified
39 by the Council when the cumulative value of all changes exceeds both:

40
41 a. \$50,000.00; and

42
43 b. 10% of the original contract.
44

1 B. Except as otherwise provided by applicable law, the City Manager shall approve all other
2 contract changes in writing.

3
4 **7.08.020 Voidable contracts.**

5
6 If any official of the City purchases or contracts for any goods, services or capital improvements
7 in a manner contrary to the provisions of this eChapter, such purchase or contract shall be voidable
8 by the City. However, when, in the opinion of the City ~~Administrator~~ Manager, the contracting
9 violation occurred through no fault of the contractor, the contractor may be reimbursed on the basis
10 of goods and services furnished or work performed in good faith, in such amount as the City
11 ~~Administrator~~ Manager may determine. (Prior code § 9A-8)

12
13 **7.08.025 Multi-term contracts.**

14
15 A contract for goods, insurance, or services may be entered into for any period of time deemed to
16 be in the best interest of the City, not to exceed three years, provided that the term of the contract
17 and conditions of renewal or extension, if any, are included in the solicitation and funds are
18 available for the first fiscal period at the time of contracting. When funds are not appropriated or
19 otherwise made available to support continuation of performance in a subsequent fiscal period, the
20 contract shall be canceled with no penalty to the City.

21
22 **7.08.026 Indefinite quantities contracts.**

23
24 The City may utilize indefinite quantities contracts, as defined in Section 7.04.040, to procure
25 goods or services to be furnished at specific times, or as ordered, at fixed unit prices. During the
26 term of a requirements contract, the City should use reasonable efforts to order all actual
27 requirements of the City, or one of its departments, during a specified period of time. Failure to
28 utilize a specific indefinite quantities contract for a particular procurement must not be considered
29 a breach of the contractual obligation unless the contract specifically provides that the contractor
30 is the exclusive source for the goods or services. Where practical, an indefinite quantities contract
31 should include a maximum amount of funds that may be expended pursuant to such contracts
32 within a one-year period.

33
34 **7.08.030 Validity of claims.**

35
36 No person or entity shall have a valid or enforceable claim against the City for the payment of any
37 moneys or any other thing of value pursuant to an alleged contract or agreement, unless the contract
38 or agreement has been signed and authorized as provided in this division. (Prior code § 9A-9)

39
40 **7.08.031 Compliance with Chapter 14.04 – Takoma Park Nuclear Free Zone Act.**

41
42 A. The City and its officials, employees or agents shall not knowingly and intentionally grant
43 any award, contract or purchase order, directly or indirectly, to any nuclear weapons producer.
44

1 B. The City and its officials, employees or agents shall not knowingly and intentionally grant
2 any award, contract or purchase order, directly or indirectly, to purchase or lease products
3 produced by a nuclear weapons' producer.
4

5 C. The recipient of a City contract, award or purchase order shall certify to the City Clerk
6 Manager by a notarized statement that it is not knowingly or intentionally a nuclear weapons'
7 producer. On an annual basis, the City Manager shall provide a list of all such certifications to the
8 City Council.
9

10 D. The City shall phase out the use of any products of a nuclear weapons' producer which it
11 owns or possesses that are at the end of their useful life. Insofar as non-nuclear alternatives are not
12 available, for the purpose of maintaining a product during its normal useful life and for the purpose
13 of purchasing or leasing replacement parts, supplies and services for such products. Subsections
14 (A) and (B) of this section shall not apply.
15

16 E. The City Council, upon advice of the Nuclear-Free Takoma Park Committee, shall within
17 6 months of its appointment and annually thereafter establish and publish a list of nuclear weapons'
18 producers to guide the City, its officials, employees and agents in the implementation of
19 subsections (A) through (C) of this section. The list shall not preclude application or enforcement
20 of these provisions to or against any other nuclear weapons' producer.
21

22 F. Waivers.
23

24 1. The provisions of subsections (A) and (B) of this section may be waived by
25 resolution passed by a majority vote of the Mayor and Council, provided that:
26

27 a. The Mayor and Council shall determine, after a diligent good-faith search,
28 that a necessary good or service cannot reasonably be obtained from any source
29 other than a nuclear weapons' producer;
30

31 b. The City Manager or their designee shall notify the Nuclear-Free Takoma
32 Park Committee of the Mayor and Council's intent to consider a waiver resolution
33 14 days prior to the formal consideration of such a resolution and that the
34 Committee, upon receipt of such notice, shall provide the City Council with its
35 considered advice; provided, however, that failure to provide such advice shall not
36 prohibit the City Council from taking appropriate action after the 14-day
37 notification period; and
38

39 c. The City Council shall consider a waiver resolution at its next regularly
40 scheduled meeting, prior to the passage of a waiver resolution, and no sooner than
41 30 days after the notification to the Committee of the City Council's intent to
42 consider such a resolution.
43

44 2. The City Manager shall adopt a regulation setting forth the factors relevant to
45 determining the reasonableness of an alternative source.

1
2 G. Violations. Redress for any violation of this Section shall lie in Chapter 14.04 of the City
3 of Takoma Park Code.

4
5 **7.08.035 Records of procurement actions.**

6
7 A. Contents of Record. All determinations and other written records pertaining to any
8 solicitation, award or performance of a contract shall be maintained for the City in a contract file.
9 All records shall be maintained for such time as required by State law or regulation but for not less
10 than 3 years.

11
12 B. Submission to the City Council. A copy of such record shall be submitted to the City
13 Council upon request. Such record shall be available for public inspection. (~~Prior code § 9A-16~~)

14
15 C. Reporting to the City Council. The City Manager shall immediately report to the City
16 Council any emergency purchase exceeding \$30,000.00. The City Manager shall provide a report
17 to the City Council at least once every fiscal year concerning:

- 18
19 1. All emergency procurements exceeding \$10,000.00 in value; and
20
21 2. All procurements between \$30,000.00 and \$50,000.00 in value.

22
23 (Prior code § 9A-16)

24
25 **Article 2. Competitive Bidding and Source Selection**

26
27 **7.08.040 Conditions for use.**

28
29 A. General. All City contracts shall be awarded by competitive sealed bidding or competitive
30 sealed proposals, except as otherwise provided in: Section 7.08.070.

- 31
32 ~~1. Section 7.08.070(A), Small purchases;~~
33
34 ~~2. Section 7.08.070(B), Professional services;~~
35
36 ~~3. Section 7.08.070(C), Emergency procurement;~~
37
38 ~~4. Section 7.08.070(D), Sole source procurement;~~
39
40 ~~5. Section 7.08.070(E), Cooperative purchasing.~~

41
42 B. City Vendors or Suppliers. The City ~~Administrator~~ Manager or designee shall take all
43 reasonable steps to assure that all qualified vendors or suppliers of goods or services residing or
44 having their principal offices in the City are made aware of the City's issuance of invitations for

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

3
4 **7.08.050 Competitive sealed bidding.**

5
6 A. Conditions for Use. Competitive sealed bidding shall be used when all of the following
7 circumstances apply:

- 8
9 1. Time permits the solicitation, submission and evaluation of sealed bids;
10
11 2. The award will be made on the basis of price and price-related factors;
12
13 3. It is not necessary to conduct discussions with responding sources about their bids;
14 and
15
16 4. There is reasonable expectation of receiving more than one bid.

17
18 B. Procedure. The following general procedures shall be followed for awarding contracts by
19 competitive sealed bidding.

- 20
21 1. Invitation for Bids. An invitation for bids shall be issued, which shall include
22 specifications and all contractual terms and conditions applicable to the procurement.
23
24 2. Public Notice. Public notice of the invitation for bids shall be given at a reasonable
25 time prior to the date set forth therein for the opening of bids. Such notice may include
26 publication in a newspaper of general circulation.
27
28 3. Opening of Bids. Bids shall be opened publicly in the presence of one or more
29 witnesses at the time and place designated in the invitation for bids. The amount of each
30 bid and such other relevant information as may be specified by regulation, together with
31 the name of each bidder, shall be recorded; the record and each bid shall be open to public
32 inspection.
33
34 4. Acceptance and Evaluation of Bids. Bids shall be evaluated based on the
35 requirements set forth in the invitation for bids. Those criteria that will affect the bid price
36 and be considered in evaluation for award shall be objectively measurable, such as, but not
37 limited to, discounts, transportation costs and total or life cycle costs. The invitation for
38 bids shall set forth the evaluation criteria to be used. No criteria may be used in bid
39 evaluation that are not set forth in the invitation for bid.
40
41 5. Correction or Withdrawal of Bids. Correction or withdrawal of inadvertently
42 erroneous bids before or after award or cancellation of awards or contracts based on bid
43 mistakes shall be permitted in accordance with such regulations as the City ~~Administrator~~
44 Manager may establish. After the opening of bids, no changes in bid prices or other
45 provisions of bids prejudicial to the interest of the City or fair competition shall be

1 permitted. Except as otherwise provided by regulation, all decisions to permit the
2 correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes
3 shall be supported by a written determination by the City ~~Administrator~~ Manager.
4

5 6. Award. The contract shall be awarded with reasonable promptness by written notice
6 to the most responsible and responsive bidder whose bid meets the requirements and
7 criteria set forth in the invitation for bids.
8

9 7. Multistep Sealed Bidding. When it is considered impractical to initially prepare a
10 purchase description to support an award based on price, an invitation for bids may be
11 issued requesting the submission of unpriced offers to be followed by an invitation for bids
12 limited to those bidders or offerors whose offers have been qualified under the criteria set
13 forth in the first solicitation.
14

15 C. Cancellation of Invitation for Bids. An invitation for bids, or other solicitations may be
16 canceled or any or all bids may be rejected, in whole or in part, as may be specified in the
17 solicitation when it is in the best interests of the City. (Prior code 9A-11)
18

19 **7.08.060 Competitive sealed proposals.**
20

21 A. Conditions for Use. A contract may be entered into by the use of competitive sealed
22 proposal method:
23

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

27
28 2. For the procurement of professional services; or
29

30 3. Procurements exempt from competitive bidding requirements pursuant to Section
31 7.08.070.
32

33 B. Request for Proposals. Proposals shall be solicited through a request for proposals.
34

35 C. Public Notice. Adequate public notice of the request for proposals shall be given in the
36 same manner as provided in Section 7.08.050 (B)(2).
37

38 D. Receipt of Proposals. No proposals shall be handled so as to permit disclosure of the
39 identity of any offeror or the contents of any proposal to competing offerors during the evaluation
40 process. A register of proposals shall be prepared containing the name of each offeror, the number
41 of modifications received, if any, and a description sufficient to identify the item offered. The
42 register of proposals shall be open to public inspection only after contract award.
43

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

1
2 F. Discussion with Responsible Offeror and Revisions to Proposals. As provided in the
3 request for proposals, discussions may be conducted with responsible offerors who submit
4 proposals determined to be reasonably susceptible to being selected for award for the purpose of
5 clarification to assure full understanding of and conformance with the solicitation requirements.
6 Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion
7 and revision of proposal, and such revisions may be permitted after submissions and prior to award
8 for the purpose of obtaining best and final offers. In conducting discussions, there shall be no
9 discussion of the identity of competing offerors.

10
11 G. Award. Award shall be made to the responsible offeror whose proposal is determined to be
12 the most advantageous to the City, taking into consideration price and evaluation factors set forth
13 in the request for proposals. The contract file shall contain the basis on which the award is made.

14
15 H. Cancellation of Request for Proposals. A request for proposals or other solicitations may
16 be canceled or any or all proposals may be rejected, in whole or in part, as may be specified in the
17 solicitation when it is in the best interests of the City. (Prior code 9A-12)

18 19 **Article 3. Other Procurement Methods**

20 21 **7.08.070 Procurements exempt from competitive bidding.**

22
23 A. ~~Small Purchases~~ under \$30,000.00. Any procurement of goods not exceeding the amount
24 of ~~\$130,000.00~~ \$30,000.00 may be made without the requirement of competitive bidding; provided, however,
25 that procurement requirements shall not be artificially divided so as to constitute a small purchase
26 under this section.

27
28 B. Professional Services. Any procurement of or contract for professional services may be
29 made without the requirement of competitive bidding. The City ~~Administrator~~ Manager may, by
30 regulations, establish competitive negotiation or selection procedures for professional service
31 contracts or classes of professional service contracts.

32
33 C. Emergency Procurement. The City ~~Administrator~~ Manager ~~or designee~~ may make or
34 authorize others to make emergency procurements without the requirement of competitive bidding
35 when there exists a threat to the public health, welfare or safety under emergency conditions,
36 provided that the City ~~Administrator~~ Manager ~~or designee~~ shall file promptly with Council a
37 certificate showing such emergency the necessity for such action, together with an itemized
38 account of all expenditures. ~~make a written determination of the basis for the emergency, which~~
39 ~~shall be approved by the City Council by resolution,~~ that such emergency procurements shall be
40 made with such competition as is practicable under the circumstances and that the City
41 ~~Administrator~~ Manager shall make a written determination of the basis for the selection of the
42 particular contractor, which shall be included in the contract file. In no case, shall failure to plan
43 for provision of a City service constitute an emergency under this subsection.
44

1 D. Sole Source Procurement. A contract for procurements not exceeding \$50,000.00 in value
2 may be awarded for a good, service or construction item without the requirement of competitive
3 bidding when, under such regulations as the City Administrator Manager may establish, the City
4 Administrator Manager determines, in writing, that there is only one available source for the good,
5 service or construction item or if a specific manufacturer's product is required to ensure
6 compatibility with existing installed equipment and so notifies the City Council. The City
7 Administrator Manager's determination shall be subject to review and approval by the City
8 Council by resolution.

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

17
18 F. Products or Services Immediately Available. Subject to written authorization by the City
19 Manager, when immediate action is necessary to take advantage of a sale or when the product or
20 service is immediately available from one vendor and not from lower bidders, the procurement
21 does not exceed \$50,000.00 in value, the delay would impair the City's ability to procure such
22 goods or services, and the price from the vendor who can deliver quickly is not materially higher
23 than the lower bids. (Prior code § 9A-13)

24
25 G. Rider contracts. The City Manager may use rider contracts, without the requirements of
26 competitive bidding by the City, if the contract was established in a manner consistent with the
27 purposes of this Title and:

- 28
29 1. The vendor provides to the City Manager, in writing, a statement extending the
30 terms of the contract to the City; and
31
32 2. The City Manager obtains copies of the solicitation document, scoring sheets and/or
33 bid tabulation, evidence of contract award and the underlying executed contract, or
34 explains in writing to the Mayor and City Council why the rider contract is
35 recommended in the absence of some or all of the documentation identified in this
36 subparagraph.

37
38 The quantity and dollar value of rider contracts may be amended; however, the scope and
39 specifications of goods and services must match the underlying contract.

40
41 H. In addition, the following types of transactions are exempt from competitive procurement:

- 42
43 1. Purchases for water, sewer, electric, postage, or other utility services;
44
45 2. Sales, rentals, or purchases of land and rights-of-way;

3. Employment contracts and employee relocation costs;
4. Temporary labor agreements;
5. 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 a purchase is in the best interest of the City;
6. Expenditures for travel, subscriptions, courses, seminars, and conventions, membership dues and subscription fees;
7. Acquisition of works of art for public display; and
8. Procurement of instructional or educational services for City officials, staff, or residents, or for social, cultural, or recreational programs or events offered or sponsored by the City.

7.08.080 Procedure for procurements exempt from competitive bidding.

A. Procurements equal to or exceeding \$10,000.00. Insofar as it is practical, in all procurements ~~exempt from the requirement of competitive bidding~~ equal to or exceeding \$10,000.00 in value, with the exception of sole source procurement, and cooperative purchasing, products or services immediately available, and riders, proposals for the goods or services required shall be solicited from at least three (3) qualified sources. In the event that three (3) qualified sources do not exist, the City ~~Administrator~~ Manager or ~~his or her~~ their designee shall make a written determination of that fact and report that determination to the City Council. (Prior code § 9A-14)

B. Procurements Less than \$10,000.00. For expenditures less than \$10,000, a reasonable effort shall be made to obtain goods or services at the lowest cost.

7.08.090 Extensions.

A. An extension of a contract may be awarded without competition when the City ~~Administrator~~ Manager 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.~~

B. For multi-year contracts, executed in accordance with Section 7.08.025, an initial extension under this Subsection may be made for a period of one year and approved by the City Manager. Any subsequent extensions must be approved by the City Council. 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. (Prior code § 9A-15)

1 **7.08.100 — Records of procurement actions.**
2

3 ~~A. Contents of Record. All determinations and other written records pertaining to any~~
4 ~~solicitation, award or performance of a contract shall be maintained for the City in a contract file.~~
5 ~~All records shall be maintained for such time as required by State law or regulation but for not less~~
6 ~~than 3 years.~~
7

8 ~~B. Submission to the City Council. A copy of such record shall be submitted to the City~~
9 ~~Council upon request. Such record shall be available for public inspection. (Prior code § 9A-16)~~
10

11 **7.08.110 — Compliance with Chapter 14.04.**

12 ~~Notwithstanding any other provision of this division, all procurement actions shall comply in every~~
13 ~~respect with all the provisions of Chapter 14.04 of this Code, known as the “Takoma Park Nuclear-~~
14 ~~Free Zone Act.” (Prior code § 9A-17)~~
15

16 **7.08.12000 Purchase orders.**
17

18 A. City purchases shall be memorialized by a written contract or a purchase order signed in
19 accordance with this ~~eChapter~~, except as specified in 7.08.100(D). Purchase orders shall be
20 consecutively numbered from the start of each fiscal year. Purchase orders shall be signed by the
21 City ~~Administrator~~ Manager or ~~his or her~~ their designee.
22

23 B. No department head shall make any purchase on behalf of or chargeable to the City except
24 by means of a purchase order signed in accordance with subsection (A) of this section; provided,
25 however, that this subsection (B) shall not apply to expenditures made in advance of a purchase in
26 emergencies as defined in and subject to the regulations that may be established by the City
27 ~~Administrator~~ Manager; provided, however, that in the case of emergency expenditures, a purchase
28 order must be obtained from the City ~~Administrator~~ Manager or designee within 72 hours of the
29 purchase.
30

31 C. No person employed by the City or providing services to the City as an independent
32 contractor shall purchase or cause to be purchased through or from the City any item for ~~his or her~~
33 their personal use. Without limitation on any other legal actions or remedies available, violations
34 of this section shall be sufficient cause for dismissal, suspension or termination of employment or
35 of any contract for services, as the City Council may determine. A violation of this section shall
36 be a Class A offense.
37

38 D. No department head shall order and obtain goods or services exceeding \$10,000.00 in value
39 without first securing a purchase order. (Prior code § 9A-18)
40

41 **7.08.13010 Petty cash expenditures.**
42

43 The City ~~Administrator~~ Manager shall have the authority to establish procedures for petty cash
44 expenditures. Such procedures may provide for departmental petty cash levels of up to \$200.00
45 for expenditures made by or with the approval of department heads. Such petty cash expenditures

1 shall be made after such price shopping as the department head deems appropriate or is otherwise
2 established by the City ~~Administrator~~ Manager. (Prior code § 9A-19)

3
4 **7.08.14020 Purchase of recycled products.**

5
6 A. General Preference. The City shall purchase recycled products whenever sufficient
7 quantities are readily available and meet the City's specifications. The City shall purchase recycled
8 products that contain the highest percentage of recovered material and are produced to the greater
9 extent with post-consumer materials.

10
11 B. Price Preference. To the extent practicable the City shall purchase recycled products and
12 may provide for a price preference not to exceed 15%.

13
14 C. Purchase of Certain Specified Products and Services. Notwithstanding any other provision
15 of this division, all procurement actions shall comply with the following provisions:

16
17 1. All City stationery and envelopes with the City return address shall be made of
18 recycled paper.

19
20 2. The City newsletter shall be produced on recycled content newsprint.

21
22 3. When the City is using an outside printer, the City must obtain both a price quote
23 for recycled and nonrecycled paper and shall require that the job be done using recycled
24 paper if there is a price differential of 15% or less.

25
26 4. All copiers and laser printers purchased by the City after the effective date of this
27 legislation shall be able to use recycled paper, and all copiers shall be able to perform 2-
28 sided copying as an automatic function.

29
30 D. Product Specifications. All departments of the City shall review and revise product
31 specifications so as to conform to the following guidelines:

32
33 1. Specifications shall not require the use of products made from virgin materials.

34
35 2. Specifications shall not exclude the use of recycled products.

36
37 3. A minimum percentage of recovered material content shall be incorporated into
38 each specification when it is known that there are sufficient and readily available supplies
39 of a particular recycled product.

40
41 E. Practicability of Procurement. In an assessment of the practicability of procurement of
42 goods containing recycled materials, the City shall consider, among other relevant factors, product
43 availability, product suitability for intended use, including whether the product meets established
44 performance standards and will not negatively impact the health and safety of employees and
45 residents, and cost.

1
2 F. Certification of Recycled Content. The City shall require the seller to certify in writing that
3 any recycled product sold to the City by competitive bid contract or cooperative purchase contains
4 the minimum percentage of recovered materials set forth in the City's product specification and
5 shall also specify the percentage of post-consumer materials contained in the product.
6

7 G. Labeling of Recycled Products. To the extent practical, all products purchased by the City
8 made from recycled materials shall be labeled as such. City stationery, envelopes with the City
9 return address and the City newsletter shall be labeled as being printed on recycled paper. (Prior
10 code § 9A-19.1)
11

12 **7.08.14530 Environmentally preferable purchasing.**
13

14 A. General Preferences. Environmental and energy considerations shall become part of the
15 City's normal purchasing and procurement decisions, with the goals of justifying environmental
16 and energy costs of City decisions and choosing minimal-effect options, consistent with such
17 traditional factors as safety, price, performance, and availability. The City also prefers to do
18 business with vendors and contractors that are locally owned, use and sell environmentally
19 preferable products or services, produce minimal waste, and use recycled products and
20 environmentally preferable purchasing practices, as services provided by local suppliers reduce
21 environmental impact due to transportation and keep municipal funds in the community. The City
22 Manager shall adopt regulations setting forth the applicable standards concerning environmentally
23 preferable purchasing. ~~To the greatest extent practicable, the City shall purchase environmentally
24 and energy preferable products and services that:~~
25

- 26 1. ~~Use recycled materials.~~
- 27
- 28 2. ~~Generate minimal waste in manufacturing or use.~~
- 29
- 30 3. ~~Are durable, longer lasting, reusable, refillable or compostable.~~
- 31
- 32 4. ~~Use minimal energy and water.~~
- 33
- 34 5. ~~Involve minimal use of toxic and hazardous materials.~~
- 35
- 36 6. ~~Minimize production of greenhouse gases.~~
- 37
- 38 7. ~~Minimize production of environmental pollutants including ozone precursors.~~
- 39
- 40 8. ~~Are locally supplied or produced.~~
- 41

42 ~~B. Price Preference. To the greatest extent practicable, the City shall purchase~~
43 ~~environmentally preferable and locally supplied products and services, and may provide for a price~~
44 ~~preference for such products and services not to exceed 15%.~~
45

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

4
5 ~~D.—— Purchase of Certain Specified Products and Services. City procurement actions shall~~
6 ~~comply with the following provisions:~~

7
8 ~~1.—— Energy and Water Savings. Where applicable, energy efficient equipment shall be~~
9 ~~purchased with the most up to date energy efficiency functions. This includes, but is not~~
10 ~~limited to, high efficiency space heating systems and high efficiency space cooling~~
11 ~~equipment.~~

12
13 ~~2.—— Energy Efficiency Certifications. All products purchased by the City for which~~
14 ~~United States Environmental Protection Agency (U.S. EPA) Energy Star or WaterSense~~
15 ~~certification is available shall meet that certification, when practicable. When Energy Star~~
16 ~~or WaterSense labels are not available, energy efficient products that are in the upper 25%~~
17 ~~of energy efficiency as designated by the Federal Energy Management Program are~~
18 ~~preferred.~~

19
20 ~~3.—— Recycled Content Products. All products for which the U.S. EPA has established~~
21 ~~minimum recycled content standard guidelines, such as those for printing paper, office~~
22 ~~paper, janitorial paper, construction, landscaping, parks and recreation, transportation,~~
23 ~~vehicles, miscellaneous, and nonpaper office products, shall contain the highest post-~~
24 ~~consumer content practicable, but no less than the minimum recycled content standards~~
25 ~~established by U.S. EPA Guidelines. These standards are described at www.epa.gov/cpg.~~

26
27 ~~4.—— Remanufactured Products. The City shall purchase remanufactured products such~~
28 ~~as laser toner cartridges, tires, furniture, equipment, and automotive parts whenever~~
29 ~~practicable, but without reducing safety, quality, or effectiveness.~~

30
31 ~~5.—— Ozone Depleting Compounds. The use of refrigerants, solvents and other products~~
32 ~~shown to deplete stratospheric ozone shall be phased out and new purchases shall not~~
33 ~~contain them.~~

34
35 ~~6.—— Pollutants. All detergents shall be readily biodegradable and, where practicable,~~
36 ~~shall not contain phosphates.~~

37
38 ~~E.—— Product Specifications. All departments of the City shall review and revise product~~
39 ~~specifications so as to conform to the following guidelines, to the extent practicable:~~

40
41 ~~1.—— Specifications shall not require the use of products made from virgin materials.~~

42
43 ~~2.—— Specifications shall not exclude the use of recycled or remanufactured products.~~
44

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

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

9
10 ~~5.——Wherever practicable, products and materials shall use and meet the following~~
11 ~~federal standards where applicable:~~

12
13 ~~a.——U.S. EPA Energy Star (energy efficient products);~~

14
15 ~~b.——U.S. EPA WaterSense (water efficient products);~~

16
17 ~~c.——U.S. EPA guidelines (various other products at www.epa.gov/cpg);~~

18
19 ~~d.——U.S. Green Building Council LEED standards.~~

20
21 ~~6.——At the discretion of the City Manager, industry standards for environmentally~~
22 ~~preferable products, including construction, landscaping, paper, park and recreation,~~
23 ~~transportation, vehicular, nonpaper office and other products should be followed. Current~~
24 ~~examples of these are:~~

25
26 ~~a.——Responsible Purchasing Network (various products);~~

27
28 ~~b.——EcoLogo (various products), Green Seal (various products);~~

29
30 ~~c.——Greenguard Environmental Institute (various products);~~

31
32 ~~d.——CFPA (chlorine free paper);~~

33
34 ~~e.——EPEAT (electronics);~~

35
36 ~~f.——Forest Stewardship Council (paper products);~~

37
38 ~~g.——Resilient Floor Covering Institute (flooring products);~~

39
40 ~~h.——Carpet and Rug Institute (carpets).~~

41
42 ~~F.——Practicability of Procurement. In an assessment of the practicability of the procurement or~~
43 ~~purchase of specific environmentally preferable or locally available products, the City shall~~
44 ~~consider, among other relevant factors, product availability, product longevity, and product~~
45 ~~suitability for its intended use, including whether the product meets established performance~~

1 ~~standards, any adverse impact of the product on the health and safety of employees and residents,~~
2 ~~and cost. Nothing contained in this section shall require a City department, purchaser, or contractor~~
3 ~~to procure or purchase products that do not perform adequately for their intended use, exclude~~
4 ~~adequate competition, or cost more than 15% above the standard cost for the product. (Ord. 2014-~~
5 ~~41 § 1, 2014)~~

6 7 **Article 4 5. Living Wage Requirement**

8 9 **7.08.18040 Scope.**

10
11 Every City contract for the provision of services, awarded after a competitive bid or proposal
12 process, shall require the contractor and any subcontractor to pay each employee assigned to
13 perform services under the City contract a living wage. As used in this article, “covered employer”
14 refers to any contractor or subcontractor who is subject to the City’s living wage requirement.
15 (Ord. 2013-26 § 1, 2013/Ord. 2007-55 § 1 (part), 2007)

16 17 **7.08.19050 Exemptions.**

18
19 The provisions of this article do not apply to the following:

- 20
21 A. A contract for services valued at less than \$20,000.00.
22
23 B. A contract:
24
25 1. With a public entity.
26
27 2. With a nonprofit organization that has qualified for an exemption from Federal
28 income taxes under Section 501(c)(3) of the Internal Revenue Code.
29
30 3. Procured through an emergency procurement, sole source procurement, or
31 cooperative purchase procurement.
32
33 4. For electricity, telephone, cable television, water, sewer, or similar service
34 delivered by a regulated public utility.
35
36 5. For the purchase or lease of goods, equipment or vehicles.
37
38 C. If the City Manager makes a written determination that application of this article would
39 conflict with an applicable Federal, State or County program, contract, or grant requirement, then
40 the living wage requirements of this article shall not apply to the contract or program. (Ord. 2013-
41 26 § 1, 2013/Ord. 2007-55 § 1 (part), 2007)

1 **7.08.200160 Solicitation requirements.**
2

3 A. The City's living wage requirement shall be identified and set forth in all non-exempt
4 procurement solicitations for the contract.
5

6 B. Each response to a bid or proposal to provide services to the City and each City contract
7 for services must include a certification that the contractor and each subcontractor shall comply
8 with the City's living wage requirements or a certification by the contractor or subcontractor
9 setting forth the applicable exemption from the living wage requirement, along with supporting
10 documentation for the exemption. Any contractor or subcontractor who knowingly makes a false
11 statement in such certification, or who fails to comply with the living wage requirement during
12 performance of a City contract for services, shall be subject to loss of the contract and
13 disqualification from future City contracts.
14

15 C. A contractor must not split or subdivide a contract, pay an employee through a third party,
16 or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any
17 requirement under this article.
18

19 D. If a contractor or subcontractor commits in its bid or proposal to provide health insurance
20 to any employee who provides services to the City under a City contract, the contractor or
21 subcontractor may:
22

23 1. Certify in its bid or proposal the per-employee hourly cost of the employer's share
24 of the premium for that insurance; and
25

26 2. Reduce the wage paid under Section 7.08.210 to any employee covered by the
27 health insurance by all or part of the per-employee hourly cost of the employer's share of
28 the health insurance premium. (Ord. 2007-55 § 1 (part), 2007)
29

30 **7.08.210170 Living wage requirement.**
31

32 A. Except as permitted under Section 7.08.200(D), each covered employer must pay each
33 employee who is not exempt under subsection (F) of this section no less than the City's living
34 wage rate.
35

36 B. The City's living wage rate shall be equal to the Montgomery County living wage rate
37 established and published by Montgomery County pursuant to Section 11B-33A of the
38 Montgomery County Code and any applicable regulations, as amended and in effect from time-to-
39 time.
40

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

1 contract with a covered employer, the required wage rate shall be adjusted as provided above, and
2 as adjusted, shall remain in effect during the renewal term.

3
4 D. The City Manager shall establish the applicable living wage rate by April 1st of each year
5 and cause such rate to be published in English and Spanish on the City's web site. Notice of the
6 required living wage rate also shall be stated in procurement solicitations, as required by Section
7 7.08.200(A).

8
9 E. Each covered employer must include the living wage requirements of this article in every
10 subcontract so that the provisions of this article will be binding upon each subcontractor.

11
12 F. The living wage requirements of this section do not apply to any employee:

- 13
14 1. Who performs no measurable work related to any contract with the City;
15
16 2. Who participates in a government-operated or government-sponsored program that
17 restricts the earnings of or wages paid to employees to a level below the wage required
18 under this section;
19
20 3. Who participates for no longer than 120 days in any calendar year in a government-
21 operated or government-sponsored summer youth employment program; or
22
23 4. For whom a lower wage rate is expressly set in a bona fide collective bargaining
24 agreement.

25
26 G. If any Federal, State, or City law or regulation requires payment of a higher wage, that law
27 or regulation controls. If any applicable collective bargaining agreement requires payment of a
28 higher wage, that agreement controls. (Ord. 2007-55 § 1 (part), 2007)

29
30 **7.08.220180 Notices.**

31
32 A. Each covered employer shall conspicuously post notice of the required City living wage
33 rate, in English and Spanish, on such form as shall be provided by the City.

34
35 B. Within 3 days of an employee's request, a covered employer shall provide to such
36 employee a written statement in English and Spanish, on such form as shall be provided by the
37 City, of the then required living wage rate. (Ord. 2007-55 § 1 (part), 2007)

38
39 **7.08.230190 Enforcement.**

40
41 A. During the term of the City contract and for a period of 3 years after the expiration or earlier
42 termination of the City contract, each contractor and subcontractor subject to the provisions of this
43 article, shall keep and preserve records which show the wages provided by such contractor and its
44 subcontractors to each employee who provided services under the City contract. The City
45 Manager, or designee, shall have the power to examine such records at reasonable times during

1 normal business hours for the purpose of administering and enforcing the provisions of this article,
2 and to make copies of all or any parts thereof.

3
4 B. As an additional term of the City contract, no covered employer shall discharge, reduce the
5 compensation of, or otherwise retaliate against an employee for asserting any right under this
6 article, filing a complaint of violation, or taking any other action to enforce the requirements of
7 this article. Any retaliation is subject to all sanctions for noncompliance with this article.

8
9 C. City contracts may specify that liquidated damages for any noncompliance with this article
10 include the amount of any unpaid wages, with interest at the judgment rate from the date originally
11 due and less any deductions required or permitted by law, and that the contractor is jointly and
12 severally liable for any noncompliance by a subcontractor.

13
14 D. Any contractor or subcontractor which fails to pay an employee the living wage required
15 by this article shall be liable to the employee in the amount of the unpaid wages, plus interest at
16 the judgment rate from the date originally due and less any deductions required or permitted by
17 law, reasonable attorney's fees, and damages for any retaliation for asserting any right under this
18 article. Any aggrieved employee of a covered employer under a City contract shall be deemed a
19 third-party beneficiary of the City contract and of the provisions mandated by this article in the
20 City contract. (Ord. 2007-55 § 1 (part), 2007)

21
22 **7.08.24000 Review of living wage requirement.**

23
24 The City Council shall review the living wage requirement, including the exemptions set forth in
25 Section 7.08.190, every 3 years following the effective date of this article. Subsequent to such
26 review, the City Council shall determine whether to continue or modify the City's living wage
27 requirement. The Council's failure to conduct such review shall have no effect on the validity of
28 the living wage requirement set forth in this article. (Ord. 2007-55 § 1 (part), 2007)

29
30 **Article 5. Bonds and Bid Security**

31
32 **7.08.210 Bid Security**

33
34 **A. Requirement for bid security.**

35
36 1. Bid security shall be required for all construction contracts where performance
37 security is required.

38
39 2. At the discretion of the City Manager, bid security may be required for other
40 contracts.

41
42 3. Where bid security is required, a successful bidder shall forfeit such security upon
43 failure to enter into a contract within the time specified in the Invitation for Bids or contract
44 award.
45

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

4
5 C. Amount of bid security. Bid security for a construction contract shall be in an amount equal
6 to at least five percent (5%) of the amount of the bid. Bid security for other than a construction
7 contract shall be in such amount as is determined by the City Manager to sufficiently guarantee
8 that the bidder to whom the contract is awarded will enter into the contract for the work described
9 in the bid.

10
11 D. Rejection of bids for noncompliance with bid security requirements. When the invitation
12 for bids requires security, noncompliance requires that the bid be rejected, unless it is determined
13 in writing that such noncompliance is insubstantial.

14
15 E. Withdrawal of bids. If a bidder is permitted to withdraw a bid before award, or is excluded
16 from the competition prior to award, no action shall be taken against the bidder or the bid security.

17
18 **7.08.220 Contract performance and payment bonds**

19
20 A. When required and amounts. When a construction contract is awarded, the following
21 bonds or other security, in a form satisfactory to the City, shall be delivered to the City and shall
22 become binding on the parties upon the execution of the contract:

23
24 1. A performance bond payable to the City, executed by a surety company authorized
25 to do business in the State, or the equivalent in cash or other security, conditioned upon the
26 faithful performance of the contract, including all warranties and guarantees. The bond or
27 other security shall be in an amount equal to one hundred percent (100%) of the price
28 specified in the contract; and

29
30 2. A payment bond, executed by a surety company authorized to do business in the
31 State, or the equivalent in cash, letter of credit, or other security deemed satisfactory to the
32 City, for the protection of all persons supplying labor and materials, including lessors of
33 equipment to the extent of the fair rental value thereof, to the contractor or its
34 subcontractors for the performance of the work provided for in the contract.

35
36 a. For a contract exceeding one hundred thousand dollars (\$100,000.00) the
37 bond or other security shall be in an amount equal to 100% of the price specified in
38 the contract.

39
40 b. For a contract exceeding \$25,000.00 but not exceeding \$100,000.00, the
41 bond or other security shall be in an amount equal to 50% of the price specified in
42 the contract.

43
44 c. No payment bond is required for a contract not exceeding \$25,000.00,
45 unless a written determination is made that a payment bond is appropriate under

1 the circumstances. Such a bond shall be in an amount not to exceed 50% of the
2 contract price.

3
4 B. Certification of payments. Any contractor, prior to receiving a progress or final payment
5 under a contract covered hereunder, shall certify in writing that such contractor has made payment
6 from the proceeds of prior payments, and that such contractor will make timely payments from the
7 proceeds of the progress or final payment then due such contractor, to such contractor's
8 subcontractors and suppliers in accordance with such contractor's contractual arrangement with
9 them.

10
11 C. Waiver or reduction of requirement for bonds. The City ~~Administrator~~ Manager may waive
12 or reduce, in writing, the requirement for performance bonds for construction contracts under
13 twenty-five thousand dollars (\$25,000.00).

14
15 D. Maintenance bond. Contract specifications may require security in an amount determined
16 by the City Manager to adequately cover reasonable maintenance, repair, or replacement costs
17 during the contract warranty or guarantee period.

18
19 **7.08.230 Additional bonds**

20
21 Nothing in this article shall be construed to limit the authority of the City to require any additional
22 bonds or other security in addition to, or in cases other than those specified in this article.

23
24 **Article 6 4. Disposition of Goods**

25
26 **7.08.150240 Generally.**

27
28 A. All departments, at such times and in such form as may be prescribed, shall submit to the
29 City ~~Administrator~~ Manager reports listing stocks of all articles which are no longer used, which
30 have become obsolete or which are surplus to the needs of the department. The City ~~Administrator~~
31 ~~Manager~~ shall transfer serviceable surplus goods between using departments in lieu of filling
32 requisitions for the purchase of new or additional stock of the same or similar articles, unless such
33 transfer is contrary to the best interests of the City as determined by the City ~~Administrator~~
34 ~~Manager~~.

35
36 B. The City ~~Administrator~~ Manager shall provide a report on disposed equipment/goods to
37 the Council on a quarterly basis. (Prior code § 9A-20)

38
39 **7.08.160250 Methods of sale.**

40
41 A. Except as provided in this article, all goods which have become surplus, obsolete or
42 unusable and whose current estimated value is \$10,000.00 or more shall be sold to the highest
43 responsible bidder by the competitive bid or proposal procedures prescribed in Article 2 of this
44 eChapter, except that the goal shall be to obtain the highest price from prospective purchasers. The
45 City ~~Administrator~~ Manager may waive the competitive bid or proposal procedures and sell such

1 property by auction or by private sale after reasonable public notice when the return to the City is
2 expected to be increased or the nature of the goods is such as to make competitive bid or proposal
3 procedures impractical.
4

5 B. Goods which have been found by the City ~~Administrator~~ Manager to have become surplus,
6 obsolete or unusable, and whose current value is estimated to be less than \$10,000.00, may be
7 disposed of by the methods described in regulations the City ~~Administrator~~ Manager may
8 establish. Such dispositions shall, wherever feasible, be based on competitive price quotations and
9 shall be made to a responsible purchaser offering the highest price. The City ~~Administrator~~
10 Manager is authorized to sell by auction such property to the highest responsible bidder, after
11 public notice, when, in the City ~~Administrator~~ Manager's opinion, the return to the City is expected
12 to increase by this procedure. In order to produce the highest return for the disposition of such
13 personal property, the City ~~Administrator~~ Manager may select from the following disposition
14 methods the method which will yield the greatest return under the circumstances of each
15 disposition:
16

- 17 1. Competitive sealed bids;
- 18
- 19 2. Competitive sealed proposals;
- 20
- 21 3. Competitive auction sale;
- 22
- 23 4. Trade-in or exchange for goods which are of current need;
- 24
- 25 5. Competitive negotiation. (Prior code § 9A-21)
- 26

27 **7.08.170260 Worthless items.**
28

29 In the event that the City ~~Administrator~~ Manager or their designee determines that the goods
30 offered for disposal have no real or scrap value, they may be disposed of as refuse. (Prior code §
31 9A-22)
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Chapter 7.16
REAL AND PERSONAL PROPERTY

Sections:

- 7.16.010 Definitions.
- 7.16.020 Annual tax levy on real and personal property.
- 7.16.030 Property tax credit.

7.16.010 Definitions.

The terms used in this chapter shall have the following meanings:

“Adjusted assessed value” means the assessed value of any real or personal property, as determined by the State Department of Assessments and Taxation, divided by 100 and rounded off to the nearest hundredth.

“Assessable and taxable base” means the assessed value of all real and personal property subject to the tax called for which is located in ~~one particular county~~ and the City, as such value is determined by the State of Maryland Department of Assessments and Taxation and reported annually to the City.

“Situs-County” means ~~the County in which the property subject to the tax called for is located in whole or in part~~ Montgomery County, Maryland.

“Situs-County payment” means any payment made by ~~Prince George’s County, Maryland, or~~ Montgomery County, Maryland; to the City in accordance with Section 6-305 of the Tax-Property Article of the Annotated Code of Maryland. (Prior code § 11A-1)

7.16.020 Annual tax levy on real and personal property.

Effective July 1, 2020~~1~~, all real and personal property which is subject to taxation by the City shall be subject to a tax on the assessed value of such real and personal property as such value is determined by the State Department of Assessments and Taxation, at the rate of:

Real Property	Tax Rate
Apartments	\$0.5397 per \$100 of assessed valuation
Commercial	\$0.5397 per \$100 of assessed valuation
Residential	\$0.5397 per \$100 of assessed valuation

Vacant	\$0.5397 per \$100 of assessed valuation
Personal Property	\$1.55 per \$100 of assessed valuation
Railroad and Public Utilities	\$1.57 per \$100 of assessed valuation

1
 2 (Ord. 2020-9 § 1, 2020/Ord. 2019-11 § 1, 2019/Ord. 2018-16 § 1, 2018/Ord. 2017-19 § 1,
 3 2017/Ord. 2016-17 § 1, 2016/Ord. 2015-19 § 1, 2015/Ord. 2014-27 § 1, 2014/Ord. 2013-16 § 1,
 4 2013/Ord. 2012-21 § 1, 2012/Ord. 2010-22 § 1, 2010/Ord. 2009-26 § 1, 2009/Ord. 2008-24, § 1,
 5 6-9-08/Ord. 2007-29 § 1, 2007: prior code § 11A-2)

6
 7 **7.16.030 Property tax credit.**

8
 9 A. Double Taxation Credit. Effective July 1, 1987, each taxpayer shall be entitled to a credit
 10 against the tax which would otherwise be due and payable to the City of equal to an amount
 11 determined by:

- 12
 13 1. Dividing the ~~Situs~~ County payment actually made in the fiscal year in which a tax
 14 credit is to be determined by the assessable and taxable base of the ~~Situs~~ County; and
 15
 16 2. Multiplying the result by each taxable property's adjusted assessed value.

17
 18 B. Uniform Application of Formula. This formula shall be applied uniformly to all classes of
 19 taxable real and personal property throughout the City.

20
 21 ~~C. Credit for Bi-County Property. In the event that any real or personal property is located in~~
 22 ~~both Prince George's and Montgomery Counties, any double taxation credit shall be allowed in~~
 23 ~~the same proportion as County property taxes are imposed. (Prior code § 11A-3)~~

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1 **Chapter 7.32**
2 **ADMISSIONS AND AMUSEMENT TAX**

3
4 Sections:

- 5
6 7.32.010 Definitions.
7 7.32.020 Admissions and amusement tax levy.
8 7.32.030 Additional tax for reduced charge or free admission.
9 7.32.040 Exemptions.

10
11 **7.32.010 Definitions.**

12
13 The term “admission and amusement charge”, unless expressly provided otherwise, means a
14 charge for:

- 15
16 A. Admission to a place, including any additional separate charge for admission within an
17 enclosure;
18
19 B. Use of a game of entertainment;
20
21 C. Use of a recreational or sports facility;
22
23 D. Use or rental of recreational or sports equipment; and
24
25 E. Merchandise, refreshments or a service sold or served in connection with entertainment at
26 a nightclub or room in a hotel, restaurant, hall, or other place where dancing privileges, music or
27 other entertainment is provided. (Prior code § 11A-11)

28
29 **7.32.020 Admissions and amusement tax levy.**

- 30
31 A. There is levied a tax at the rate of 10% of gross receipts derived from any admission and
32 amusement charge in the City.
33
34 B. If gross receipts subject to the admissions and amusement tax are also subject to the State
35 of Maryland sales and use tax, the total combined admission and amusement tax and sales and use
36 tax shall not exceed 10% of the gross receipts.
37
38 C. The admissions and amusements tax levied by this chapter shall be collected by the
39 Comptroller of the State of Maryland. (Prior code § 11A-12)

40
41 **7.32.030 Additional tax for reduced charge or free admission.**

- 42
43 A. There is levied an admission and amusement tax on a reduced charge or free admission at
44 the following rates:
45

- 1 1. \$0.05, if the charge for any other admission is \$0.50 or less;
- 2
- 3 2. \$0.10, if the charge for any other admission is more than \$0.50, but does not exceed
- 4 \$1.00; and
- 5
- 6 3. \$0.15, if the charge for any other admission is more than \$1.00.
- 7

8 B. The additional tax levied by this section shall be collected by the Comptroller of the State
9 of Maryland. (Prior code § 11A-13)

10
11 **7.32.040 Exemptions.**

12
13 No admissions and amusement tax shall be levied or collected on gross receipts:

14
15 A. Derived from any charge for merchandise, refreshments or a service sold or served at a
16 place where dancing is prohibited and the only entertainment provided is mechanical music, radio
17 or television;

18
19 B. Derived from any charge for admission to a live boxing or wrestling match; or a concert or
20 theatrical event presented or offered by a nonprofit group that is organized and operated to present
21 or offer an annual series of scheduled musical concerts or is organized and operated for a cultural
22 purpose and receives a grant directly or indirectly from the Maryland State Arts Council;

23
24 C. Derived from any charge for admission to or use of:

25
26 1. A facility or equipment in connection with a bingo game that is operated in
27 accordance with ~~Article 27, Sections 255 and 255B~~, Section 13-1803 of the Criminal Law
28 Article of the Annotated Code of Maryland;

29
30 2. A bowling alley or lane; or

31
32 3. A charter fishing boat;

33
34 D. Derived from any charge for admission or for merchandise, refreshments or a service, if
35 the gross receipts are used exclusively for:

36
37 1. A charitable, educational or religious purpose;

38
39 2. A volunteer fire company or nonprofit rescue squad;

40
41 3. A fraternal, service or veterans' organization chartered by a grant of Congress; or

42
43 4. The improvement, maintenance, or operation of an agricultural fair, if no net
44 earnings inure to the benefit of any stockholder or member of the association that conducts
45 the fair;

- 1 E. Derived from any charge for admission or for merchandise, refreshments or a service, if
2 the gross receipts are used exclusively for community or civic improvement by a nonprofit
3 community association that is organized and operated to promote the general welfare of the
4 community that the association serves and the net earnings of which do not inure to the benefit of
5 any stockholder or member of the association;
6
- 7 F. Derived from any charge for admission to a concert or theatrical event of a nonprofit
8 organization that is organized to present or offer any of the performing arts. (Prior code § 11A-14)
9

Chapter 14.04
NUCLEAR-FREE ZONE

Sections:

- 14.04.010 Title.
- 14.04.020 Purpose.
- 14.04.030 Findings.
- 14.04.040 Nuclear facilities prohibited.
- 14.04.050 Investment of City funds.
- ~~14.04.060 Eligibility for City contracts.~~
- ~~14.04.070~~60 Exclusions.
- ~~14.04.080~~70 Violations and penalties—Other remedies.
- ~~14.04.090~~80 Definitions.
- ~~14.04.100~~90 Notification.
- 14.04.1100 Nuclear-Free Takoma Park Committee.

14.04.010 Title.

This chapter shall be known as the “Takoma Park Nuclear-Free Zone Act.”

(Prior code § 8A-1)

14.04.020 Purpose.

The purpose of this Act is to establish the City as a nuclear-free zone in that work on nuclear weapons is prohibited and that harmful exposure to high-level nuclear waste is limited within the City limits. Citizens and representatives are urged to redirect resources previously used for nuclear weapons and nuclear power generation towards endeavors which promote and enhance life, such as human services, including child care, housing, schools, health care, emergency services, public transportation, energy conservation, public assistance and jobs. (Ord. 2005-29 (part), 2005: prior code § 8A-2)

14.04.030 Findings.

It is the finding of the Mayor and Council of the City, that:

- A. The nuclear arms race has been accelerating for more than 1/3 of a century, draining the world’s resources and presenting humanity with the ever-mounting threat of nuclear holocaust.
- B. There is no adequate method to protect Takoma Park residents in the event of nuclear war.
- C. Nuclear war threatens to destroy most higher life forms on this planet.

1 D. The use of resources for nuclear weapons prevents these resources from being used for
2 other human needs, including jobs, housing, education, health care, public transportation and
3 services for youth, the elderly and the disabled.

4
5 E. The United States, as a leading producer of nuclear weapons, should take the lead in the
6 process of global rejection of the arms race and the elimination of the threat of impending
7 holocaust.

8
9 F. An emphatic expression of the feelings on the part of private citizens and local
10 governments can help initiate such steps by the United States and the other nuclear weapons
11 powers.

12
13 G. Takoma Park is on record in support of a bilateral nuclear weapons freeze and has
14 expressed its opposition to civil-defense crisis relocation planning for nuclear war.

15
16 H. The failure of governments of nuclear nations adequately to reduce or eliminate the risk of
17 ultimately destructive nuclear attack requires that the people themselves, and their local
18 representatives, take action.

19
20 I. In view of the Nuremberg Principles, which hold individuals accountable for crimes against
21 humanity, and the illegality of nuclear weapons under international law, in adopting this chapter,
22 this community seeks to end its complicity with preparations for fighting a nuclear war.

23
24 J. The production of nuclear energy creates highly radioactive nuclear waste whose
25 transportation through the City creates substantial risk to the public safety and welfare of the City.
26 (Ord. 2005-29 (part), 2005/prior code § 8A-3)

27
28 **14.04.040 Nuclear facilities prohibited.**

29
30 A. The production of nuclear weapons shall not be allowed in the City. No facility, equipment,
31 components, supplies or substance used for the production of nuclear weapons shall be allowed in
32 the City.

33
34 B. No person, corporation, university, laboratory, institution or other entity in the City
35 knowingly and intentionally engaged in the production of nuclear weapons shall commence any
36 such work within the City after adoption of this chapter. (Prior code § 8A-4)

37
38 **14.04.050 Investment of City funds.**

39
40 The City ~~Administrator~~ Manager in conjunction with the Nuclear-Free Takoma Park Committee
41 shall propose, within 6 months of the Committee's creation, a socially responsible investment
42 policy and implementation plan, specifically addressing any investments the City may have or may
43 plan to have in industries and institutions which are knowingly and intentionally engaged in the
44 production of nuclear weapons. The proposed policy and plan shall be presented to the Mayor and

1 Council, who shall conduct a public hearing on the policy and plan before considering it for
2 adoption. (Prior code § 8A-5)

3
4 **14.04.060 — Eligibility for City contracts.**

5
6 A. ~~The City and its officials, employees or agents shall not knowingly and intentionally grant~~
7 ~~any award, contract or purchase order, directly or indirectly, to any nuclear weapons producer.~~

8
9 B. ~~The City and its officials, employees or agents shall not knowingly and intentionally grant~~
10 ~~any award, contract or purchase order, directly or indirectly, to purchase or lease products~~
11 ~~produced by a nuclear weapons' producer.~~

12
13 C. ~~The recipient of a City contract, award or purchase order shall certify to the City Clerk by~~
14 ~~a notarized statement that it is not knowingly or intentionally a nuclear weapons' producer.~~

15
16 D. ~~The City shall phase out the use of any products of a nuclear weapons' producer which it~~
17 ~~owns or possesses. Insofar as non-nuclear alternatives are not available, for the purpose of~~
18 ~~maintaining a product during its normal useful life and for the purpose of purchasing or leasing~~
19 ~~replacement parts, supplies and services for such products. Subsections (A) and (B) of this section~~
20 ~~shall not apply.~~

21
22 E. ~~The City Council, upon advice of the Nuclear-Free Takoma Park Committee, shall within~~
23 ~~6 months of its appointment and annually thereafter establish and publish a list of nuclear weapons'~~
24 ~~producers to guide the City, its officials, employees and agents in the implementation of~~
25 ~~subsections (A) through (C) of this section. The list shall not preclude application or enforcement~~
26 ~~of these provisions to or against any other nuclear weapons' producer.~~

27
28 F. ~~Waivers.~~

29
30 1. ~~The provisions of subsections (A) and (B) of this section may be waived by~~
31 ~~resolution passed by a majority vote of the Mayor and Council, provided that:~~

32
33 a. ~~The Mayor and Council shall determine, after a diligent good faith search,~~
34 ~~that a necessary good or service cannot reasonably be obtained from any source~~
35 ~~other than a nuclear weapons' producer;~~

36
37 b. ~~The City Administrator or his or her designee shall notify the Nuclear-Free~~
38 ~~Takoma Park Committee of the Mayor and Council's intent to consider a waiver~~
39 ~~resolution 30 days prior to the formal consideration of such a resolution and that~~
40 ~~the Committee, upon receipt of such notice, shall provide the City Council with its~~
41 ~~considered advice; provided, however, that failure to provide such advice shall not~~
42 ~~prohibit the City Council from taking appropriate action after the 30 day~~
43 ~~notification period; and~~

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

4
5 ~~2. The reasonableness of an alternative source shall be determined upon the~~
6 ~~consideration of the following factors:~~

7
8 ~~a. The intent and purpose of this chapter;~~

9
10 ~~b. Documented evidence establishing that the necessary good or service is~~
11 ~~vital to the health or safety of the residents or employees of the City, with the~~
12 ~~understanding that the absence of such evidence shall diminish the necessity for~~
13 ~~waiver;~~

14
15 ~~c. The recommendations of the City Administrator and the Nuclear Free~~
16 ~~Takoma Park Committee;~~

17
18 ~~d. The availability of goods or services from a non-nuclear weapons' producer~~
19 ~~reasonably meeting the specification or requirements of the necessary good or~~
20 ~~service;~~

21
22 ~~e. Quantifiable substantial additional costs that would result from the use of a~~
23 ~~good or service of a non-nuclear weapons' producer, provided that this factor shall~~
24 ~~not become the sole consideration. (Prior code § 8A-6)~~

25
26 **14.04.07060 Exclusions.**

27
28 A. Nothing in this chapter shall be construed to prohibit or regulate the research and
29 application of nuclear medicine or the use of fissionable materials for smoke detectors, light-
30 emitting watches and clocks and other applications where the purpose is unrelated to the
31 production of nuclear weapons. Nothing in this chapter shall be interpreted to infringe upon the
32 rights guaranteed by the first amendment to the United States Constitution nor upon the power of
33 Congress to provide for the common defense.

34
35 B. Nothing in this chapter shall be interpreted, construed or applied to prevent the Mayor and
36 Council or the City ~~Administrator~~ Manager or ~~his or her~~ their designee of the City, from acting to
37 remedy, ameliorate or prevent an emergency situation presenting a clear and present danger to the
38 public health, safety and general welfare, as defined in Section 2-6.1 of this Code, provided that
39 should any such emergency situation require the purchase of products or services from or entry
40 into a contract with a nuclear weapons producer, then the City ~~Administrator~~ Manager or ~~his or~~
41 ~~her~~ their designee shall notify the Chairperson or ~~his or her~~ their designee of the Nuclear-Free
42 Takoma Park Committee within 3 working days of the City's actions.

43
44 C. Nothing in this chapter shall be interpreted, construed or applied to supersede or bypass
45 any procurement regulations, whether those regulations are legislative or administratively

1 promulgated; provided, however, that no procurement regulations pertaining to the granting of any
2 award, contract or purchase order shall alter or abrogate the intent or requirements of this chapter.
3 (Prior code § 8A-7)
4

5 **14.04.08070 Violations and penalties—Other remedies.**
6

7 A. Any violation of this chapter shall be a Class B offense.
8

9 B. Without limitation or election against any other available remedy, the City or any of its
10 citizens of any other aggrieved party may apply to a court of competent jurisdiction for an
11 injunction enjoining any violation of this chapter. The court shall award attorney’s fees and costs
12 to any party who succeeds in obtaining an injunction hereunder. (Prior code § 8A-8)
13

14 **14.04.09080 Definitions.**
15

16 As used in this chapter, the following terms shall have the meanings indicated:
17

18 “Component of a nuclear weapon” is any device, radioactive substance or nonradioactive
19 substance designed knowingly and intentionally to contribute to the operation, launch, guidance,
20 delivery or detonation of a nuclear weapon.
21

22 “Nuclear weapon” is any device the sole purpose of which is the destruction of human life and
23 property by an explosion resulting from the energy released by a fission or fusion reaction
24 involving atomic nuclei.
25

26 “Nuclear weapons producer” is any person, firm, corporation, institution, facility, parent or
27 subsidiary thereof or agency of the Federal government engaged in the production of nuclear
28 weapons or their components.
29

30 “Production of nuclear weapons” includes the knowing or intentional research, design,
31 development, testing, manufacture, evaluation, maintenance, storage, transportation or disposal of
32 nuclear weapons or their components.
33

34 A “product produced by a nuclear weapons producer” is any product which is made wholly or
35 primarily by a nuclear weapons’ producer, except that products which, prior to their intended
36 purchase by the City, have been previously owned and used by an entity other than the
37 manufacturer or distributor; such products shall not be considered produced by a nuclear weapons’
38 producer if, prior to their purchase by the City, more than 25% of the useful life of such product
39 has been used or consumed, or within one year after it has been put into service by the previous
40 nonmanufacturer owner. The “useful life of a product” shall be defined, where possible, by the
41 applicable rules, regulations or guidelines of the United States Internal Revenue Service. (Prior
42 code § 8A-9)
43
44
45

1 **14.04.10090 Notification.**
2

3 A. Upon adoption of this chapter and annually thereafter, the Mayor and Council shall present
4 a true copy of this chapter to the President of the United States, ~~to the Premier of the Union of~~
5 ~~Soviet Socialist Republics~~ President of Russia, to the ambassadors of all nations at that time
6 possessing nuclear weapons, to the Secretary-General of the United Nations and to the Director of
7 the International Atomic Agency.
8

9 B. In addition, true copies of this chapter shall be sent to the Governor of the State of
10 Maryland, to the United States Senators from Maryland, to the United States Representatives
11 representing Takoma Park, to our State Delegates and Senators, to the County Executives of
12 ~~Montgomery and Prince George's Counties~~ County and to the Councilmembers of ~~the respective~~
13 ~~Counties~~ Montgomery County.
14

15 C. The Mayor and Council of Takoma Park, Maryland, shall choose a Town or City of
16 approximately 17,000 inhabitants within 20 miles of Moscow or some other City or Town in ~~the~~
17 ~~Union of Soviet Socialist Republics~~ Russia, as the Mayor and Council may deem appropriate, and
18 shall send a true copy of this Takoma Park chapter and a letter urging the chosen Town to take
19 similar action. (Prior code § 8A-10)
20

21 **14.04.1100 Nuclear-Free Takoma Park Committee.**
22

23 A. Within 60 days of the effective date of this chapter, the Mayor shall appoint, with the
24 approval of the City Council, a nonpartisan Nuclear-Free Takoma Park Committee to oversee
25 implementation of and adherence to this Act. The Committee shall consist of seven Takoma Park
26 residents, with staffing to be provided by the City ~~Administrator~~ Manager. Committee members
27 shall have collective experience in the areas of science, research, finance, law, peace and ethics.
28

29 B. Residents appointed to the Committee shall serve 2-year terms, except that 3 of the initial
30 appointees as designated by the Mayor and Council shall serve one-year terms. The terms shall
31 begin on April 1st and end on March 31st. The Committee shall appoint its own chair and establish
32 its own bylaws, both subject to approval by the Mayor and Council.
33

34 C. The Committee shall have the following duties and responsibilities:
35

36 1. The Committee may review any work within the City which it has reason to believe
37 is not in compliance with Section 14.04.040 of this Act. The Committee shall inform
38 appropriate legal authorities of suspected violation of this Act.
39

40 2. The Committee shall review existing City contracts, awards, purchase orders and
41 investments and may review proposed contracts, awards, purchase orders and investments
42 to assure compliance with Sections 14.04.050 and 14.04.060 of this Act. If the Committee
43 finds any contracts, awards, purchase orders or investments in violation of this Act, it shall,
44 in conjunction with the City ~~Administrator~~ Manager, make recommendations to the Mayor
45 and Council regarding the existence of reasonable alternatives.

1
2 3. The Committee, in conjunction with the City ~~Administrator~~ Manager, shall propose
3 a socially responsible investment policy and implementation plan as specified in Section
4 14.04.050 and, upon the adoption of the policy and plan, shall annually thereafter review
5 the investment policy to ensure its conformity to this Act.
6

7 4. The Committee shall, through the collection of materials, newsletter articles, cable
8 television programming, public forums and other means, provide public education and
9 information on issues related to the intent and purpose of this Act. In performing this task,
10 the Committee shall cooperate with City staff, the Nuclear Freeze Task Force and other
11 interested community groups and individuals.
12

13 5. The Committee shall maintain a collection of current materials concerning the
14 production of nuclear weapons and the components thereof and the transportation of high-
15 level nuclear waste resulting from the production of nuclear weapons and nuclear energy.
16 From this information and from consultations with individuals and organizations involved
17 in the nuclear weapons and nuclear energy debate, the Committee shall annually prepare
18 and report to the City Council a list of nuclear weapons producers to guide the City, its
19 officials, staff and agents in the implementation of Sections 14.04.050 and 14.04.060 of
20 this Act. The Committee shall also make recommendations to the City Council from this
21 information and from consultations with individuals and organizations involved in the
22 transportation of high-level nuclear waste on how best to promote the safety and welfare
23 of the City from harmful exposure to high-level nuclear waste.
24

25 6. Before a waiver of the provisions of Sections 14.04.060(A), (B) or (C) above
26 pursuant to Section 14.04.060(F) may be sought, the Committee, in conjunction with the
27 City ~~Administrator~~ Manager or ~~his or her~~ their designee, shall conduct a diligent search to
28 determine the availability of reasonable alternative sources for a necessary product or
29 service, except, however, the City ~~Administrator~~ Manager or ~~his or her~~ their designee
30 and/or the Committee's unwillingness or inability to conduct such a search shall not
31 preclude actions by the Mayor and Council pursuant to Section 14.04.060(F). (Ord. 2005-
32 29 (part), 2005/prior code § 8A-12)
33

34 THIS ORDINANCE IS ADOPTED BY THE COUNCIL OF THE CITY OF TAKOMA PARK,
35 MARYLAND, THIS ____ DAY OF _____, 2021, AND SHALL BE EFFECTIVE
36 BEGINNING ON THE 90TH DAY FOLLOWING ITS ENACTMENT, BY ROLL-CALL VOTE
37 AS FOLLOWS:
38

39 AYE:

40 NAY:

41 ABSTAIN:

42 ABSENT:
43
44
45

1
2
3
4
5
6

Explanatory Note:

1. Underlining indicates language being added to the Code.
2. ~~Strikethrough~~ indicates language being deleted from the Code.