



Takoma Park City Council Meeting – July 21, 2021 Agenda Item 4

Voting Session

First Reading Ordinance Amending Takoma Park Code, Title 7, Purchasing and Taxation, Chapters 7.04, 7.08, 7.12, 7.16, 7.32

Recommended Council Action

Review the ordinance at first reading.

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 & Minority/Women-Owned Businesses Considerations
 - Incorporating social equity factors as considerations for procurement specifications
 - Establishing clear goal for improving accessibility to minority and women-owned businesses in the purchasing process
- 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 were made based on feedback and direction from Council in the July 14 second work session. This is the first reading ordinance for Council’s voting consideration.

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 CITY OF TAKOMA PARK CODE, TITLE 7,**
9 **PURCHASING AND TAXATION, CHAPTER 7.04 GENERAL**
10 **PROVISIONS, CHAPTER 7.08 SOURCE SELECTION AND CONTRACT**
11 **FORMATION, CHAPTER 7.16 REAL AND PERSONAL PROPERTY, AND**
12 **CHAPTER 7.32 ADMISSIONS AND AMUSEMENT TAX.**

13
14 **WHEREAS,** the Maryland Code, Local Government Article, Section 5–202, as amended,
15 authorizes the legislative body of each municipal corporation in the State of
16 Maryland to pass ordinances that such legislative body deems necessary to assure
17 the good government of the municipality, to protect and preserve the
18 municipality’s rights, property and privileges, to preserve peace and good order,
19 to secure persons and property from danger and destruction, and to protect the
20 health, comfort, and convenience of the citizens of the municipality;

21
22 **WHEREAS,** Section 401(a) of the City Charter states that the Council has the power to pass
23 all such ordinances not contrary to the Constitution and laws of the State of
24 Maryland as it may deem necessary for the good government of the City, for the
25 protection and preservation of the City’s property, rights, and privileges, for the
26 preservation of peace and good order, for securing persons and property from
27 violence, danger or destruction, and for the protection and promotion of the
28 health, safety, comfort, convenience, welfare, and happiness of the residents of
29 and visitors in the City;

30
31 **WHEREAS,** Section 812 of the City Charter subjects all real property located within the City’s
32 corporate limits to taxation for municipal purposes;

33
34 **WHEREAS,** Section 401(b)(20) of the City Charter authorizes the Council to levy, assess and
35 collect taxes, fees, assessments, and charges against property;

36
37 **WHEREAS,** Section 826(a) of the City Charter empowers the City Council to establish, by
38 ordinance, rules and regulations regarding purchases and contracts for the City;

39
40 **WHEREAS,** Title 7 of the City Code has not been revised in more than twenty years, contains
41 outdated references to Prince George’s County and former versions of the
42 Annotated Code of Maryland, and the threshold dollar amounts that trigger more
43 stringent and time-consuming source selection procedures set forth therein, are
44 outdated and have not kept pace with inflation;

1 **WHEREAS,** it is a priority for the City to affirmatively expand its efforts to include M/WBE
2 participation in City contracts and ensure that M/WBEs are afforded fair and
3 equitable opportunities to compete for City contracts and do not face unfair
4 barriers when seeking and performing on City contracts and Council, has
5 determined that modernization of the procurement provisions of 5 Title 7 of the
6 Takoma Park Code is necessary to expand these efforts;

7
8 **WHEREAS,** the Council, has determined that modernization of the procurement provisions of
9 Title 7 of the Takoma Park Code is necessary to improve the efficiency of the
10 City's procurement of goods and services, the City's ability to make more timely
11 purchases, and to ensure the appropriate and orderly assessment and collection of
12 taxes within the City; and

13
14 **WHEREAS,** the Council has placed certain reporting requirements in the revisions to the City's
15 procurement provisions, but would like City staff to eventually provide more
16 frequent reports to Council and move to greater transparency in contracting by
17 publishing City contracts on the City's website.

18
19 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
20 **TAKOMA PARK, MARYLAND, THAT** Title 7, Purchasing and Taxation of the Takoma Park
21 Code is hereby amended as follows:

22
23 **Division 1. Purchasing**
24
25 **Chapter 7.04**
26 **GENERAL PROVISIONS**
27

28 Sections:

- 29
30 7.04.010 Purpose.
31 7.04.015 Sustainability and Social Equity Factors
32 7.04.020 Scope.
33 7.04.030 Administration.
34 7.04.040 Definitions.
35 7.04.050 Expenditure of City funds.
36 7.04.060 Powers and duties of City Council and Administrator.

37
38 **7.04.010 Purpose.**
39

40 The purposes of this division are:

- 41
42 A. To provide for fair and equitable treatment of all persons involved in public purchasing by
43 the City;
44

1 B. To provide for an efficient, cost-effective, environmentally sustainable, and equitable
2 system of public procurement and to ensure the maximum purchasing value of public funds in
3 procurement; and

4
5 C. To provide safeguards for maintaining a procurement and disposition system of quality and
6 integrity. (Prior code § 9A-1)

7
8 **7.04.015 Sustainability and Social Equity Considerations.**

9
10 A. The City will incorporate the following factors when writing specifications for procuring
11 materials, products or services:

12
13 1. Environmental factors to be considered include, but are not limited to, the life cycle
14 assessment of:

15
16 a. Pollutant releases;

17
18 b. Toxicity, especially the use of persistent, bio-accumulative, and toxic (PBT)
19 chemicals;

20
21 c. Waste generation;

22
23 d. Greenhouse gas emissions;

24
25 e. Energy and water consumption;

26
27 f. Depletion of natural resources; and

28
29 g. Impacts on biodiversity.

30
31 2. Social equity factors to be considered include, but are not limited to:

32
33 a. Human health impacts;

34
35 b. Use of local businesses; and

36
37 c. Use of State of Maryland Minority, Women, and Emerging Small
38 Businesses.

39
40 B. While not all factors will be incorporated into every purchase, it is the intent of this policy
41 that the City will make a good faith effort to incorporate and balance these factors to the maximum
42 extent possible and as permitted by law.

43 C. To advance equity goals in City purchasing, City staff will put in place the following
44 practices and report back to Council annually its advances in these areas:

1 1. Affirmatively market all procurements to M/WBE firms;

2 2. Attend outreach events for existing and potential M/WBE firms and pursue
3 aggressive outreach strategies to sustain and improve M/WBE participation in City
4 contracts;

5 3. Improve and expand technical assistance, business development, training and
6 mentoring programs for M/WBE firms by greater coordination with organizations,
7 businesses and individuals and public agencies as well as other City departments and
8 offices;

9 4. Identify and implement a citywide method to track the number of City contracts
10 with M/WBE; and

11 5. Report to the Council annually on the City's efforts to advance equity in
12 purchasing.

13 **7.04.020 Scope.**

14
15 This division applies to every disposition for value or expenditure of public funds by the City for
16 public purchasing irrespective of its source. When the procurement or disposition involves Federal,
17 State or County assistance or contract funds or is subject to Federal, State or County laws or
18 regulations, the procurement or disposition shall be conducted in accordance with any applicable
19 mandatory Federal, State, or County laws and regulations which is-are not reflected in this division.
20 Nothing in this division shall be construed as prohibiting or limiting the City's right to employ its
21 own personnel for the construction or reconstruction of public improvements or any other purpose
22 without advertising for or receiving bids or proposals. (Prior code § 9A-2)

23
24 **7.04.030 Administration.**

25
26 The City ~~Administrator~~ Manager and the ~~Administrator's~~ Manager's designee shall have the
27 authority to adopt and enforce rules and regulations in accordance with the procedures set forth in
28 Chapter 2 of this Code, to promote the efficiency of operations and compliance with the provisions
29 of this division. (Prior code §9A-3)

30
31 **7.04.040 Definitions.**

32
33 The following terms shall have the following meanings when used in this division:

34
35 "Bid" means an offer, in writing, to furnish goods or services in conformity with the specifications,
36 delivery terms and conditions or other requirements included in the invitation for bids or an offer
37 to purchase property pursuant to Chapter 7.08, Article 4.

38
39 "Competitive sealed bid" means a method of procurement in which a good, service or construction
40 item is defined in a list of specifications: the specifications are included in an invitation for bids;

1 the bids are received by a specified time in sealed envelopes: an award is made to the responsive
2 and responsible bidder providing the lowest bid.

3
4 “Competitive sealed proposal” means a method of procurement in which a good, service or
5 construction item is defined in a list of specifications; the specifications are included in a request
6 for proposals; proposals are received by a specified time in sealed envelopes; and an award is made
7 to the proposer most closely meeting specifications as determined by an evaluation that uses a set
8 of evaluation criteria. Cost is one criterion, among others, all of which may be assigned specific
9 weights.

10
11 “Contract” means all types of City agreements, including purchase orders, regardless of what they
12 may be called, for the procurement or disposal of goods, services or construction.

13
14 “Contractor” means any person or business having a contract with the City.

15
16 “Cooperative purchasing” means procurement conducted by or on behalf of more than one
17 governmental unit.

18
19 “Department head” means one of the following: the City Clerk, the Chief of Police, the Director
20 of Public Works, the Library Director, the Director of Recreation, the Director of Housing and
21 Community Development or such other employees as the City ~~Administrator~~ Manager may
22 designate from time to time.

23
24 “Emergency” means any condition or unforeseen curtailment, diminution or termination of an
25 essential service which poses an immediate danger or threat to the public health, safety or welfare.

26
27 “Environmentally preferable products” means products that have a lesser or reduced adverse effect
28 on human health and the environment when compared with competing products that serve the
29 same purpose. This comparison may consider raw materials acquisition, production,
30 manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

31
32 “Formal contract” means a written contract for procurements exceeding \$30,000.00 in value that
33 must be signed by the City Manager.

34
35 “Goods” means supplies, materials, equipment and all tangible property, except real property.

36
37 “Indefinite quantities contract” means a contract whereby the City agrees to purchase and the
38 contractor agrees to provide the goods or construction of a designated type or unit which the City
39 may require, without specifying in the contract the exact quantity.

40
41 “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized
42 for soliciting bids.

43
44 “Life cycle costs” means specific and quantifiable costs associated with an item over its useful
45 life, including costs of disposal, in addition to the purchase price.

1
2 “Local business” is an independently owned and operated individual, business, or organization
3 located within 150 miles of the City that provides locally supplied products and goods.

4
5 “Locally supplied” means products and goods made or supplied, or services provided, from an
6 independently owned and operated individual, business, or organization located within 150 miles
7 of the City.

8
9 “Minority/Woman owned Business Enterprise” or “M/WBE” is a business that has received this
10 designation by another local government, the State of Maryland, or the United States of America.
11 Typically, a M/WBE is a business that is at least 51% owned and controlled by one or more
12 socially-and economically-disadvantaged individuals. An individual is presumed to be socially
13 and economically disadvantaged if that individual belongs to one of the following groups: African
14 Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Asian Americans, Native
15 Americans, and Women. Persons who own and control their business, but are not members of one
16 of the above groups, also may meet the M/WBE definition if they establish their social and
17 economic disadvantage. Disabled individuals may also meet the M/WBE definition.

18
19 “Percentage price preference” means the percent by which a bid from a responsible bidder or price
20 available from a vendor whose product contains recycled materials (or a greater use of recycled
21 material) may exceed the lowest responsive bid submitted by a responsible bidder whose product
22 does not contain recycled material (or a lesser use of recycled material).

23
24 “Post-consumer waste” means an item that has served its intended use, such as old newspapers or
25 magazines, and has been separated and diverted from the waste stream for the purposes of
26 collection and recycling. It does not include waste generated during production of an end product,
27 such as printer’s waste.

28
29 “Price preference” means a percentage of increase in price that the City may pay to obtain a
30 designated recycled or environmentally preferable product or service.

31
32 “Procurement” means buying, purchasing, renting, leasing or otherwise acquiring any goods,
33 services or construction. It also includes all functions that pertain to the obtaining of any good,
34 service or construction, including description of requirements, selection and solicitation of sources,
35 preparation and award of a contract and all phases of contract administration.

36
37 “Professional services” means personal services of members of a licensed or otherwise recognized
38 profession, including but not limited to accountants, architects, attorneys, auditors, engineers,
39 medical practitioners, surveyors and the like.

40
41 “Proposal” means an offer to supply goods or perform services or to purchase goods to be disposed
42 of in response to a request for proposals by the City where competitive sealed proposals or
43 negotiations will be used rather than the competitive sealed bid process.

1 “Recycled material” means material recovered from or otherwise diverted from the waste stream,
2 including recycled paper. It includes post-consumer waste; but does not include those materials
3 and by-products generated from and commonly reused during production of an end product.
4

5 “Recycled paper” means paper or a paper product that contains recycled materials with a total
6 gross content of post-consumer waste of at least 80%, or if such a paper product is unavailable or
7 otherwise impracticable to procure that the paper or paper product has been de-inked or contains
8 a level of post-consumer waste that exceeds the then-current minimum content standards of the
9 United States Environmental Protection Agency for paper and paper products containing recovered
10 materials (40 CFR 250), or if a paper or paper product meeting the requirements set out herein is
11 unavailable or otherwise impracticable to procure, that the paper or paper product conforms to the
12 then-current minimum content standards adopted by the United States Environmental Protection
13 Agency for paper and paper products containing recovered materials (40 CFR 250).
14

15 “Request for proposals” means all documents, whether attached or incorporated by reference, used
16 for soliciting proposals.
17

18 “Responsible bidder or offeror” means a person or entity who has the capability in all respects to
19 perform fully the contract requirements and the experience, integrity, reliability, capacity,
20 facilities, equipment and credit which will assure good faith performance. Any person who is in
21 default on the payment of taxes, licenses or other moneys due the City shall not be deemed
22 “responsible.”
23

24 “Responsive bidder” means a person or entity who has submitted a bid which conforms in all
25 material aspects to the invitation for bids.
26

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

33 “Specifications” means any description of the design or functional characteristics or of the nature
34 of a good, service or construction item. It may include a description of any requirement for
35 inspecting, testing or preparing a good, service or construction item. (Ord. 2014-41 § 2 (part),
36 2014/prior code § 9A-4)
37

38 **7.04.050 Expenditure of City funds.**
39

40 No City funds shall be expended unless:
41

42 A. The expenditure is authorized in the budget ordinance for the current year, previously
43 approved by ordinance or an ordinance revising it;
44

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

3
4 C. The contract or purchase order pursuant to which the expenditure is made has been
5 approved by the City Council or by the City ~~Administrator~~ Manager as required by this division.
6 (Prior code § 9A-5)
7

8 **7.04.060 Powers and duties of City Council and ~~Administrator~~ Manager.**
9

10 A. The City Council shall, by ordinance duly enacted, approve all expenditures exceeding ~~of~~
11 \$50,000.00 or more for professional services and all expenditures of \$10,000.00 or more for any
12 ~~other single purchase of goods or services other than professional services~~; provided, however,
13 that ordinances approving such expenditures may be enacted upon a single reading without being
14 read at 2 meetings of the City Council prior to adoption, if each such expenditure is specifically
15 authorized in the budget ordinance for the current year or an ordinance revising it and the cost of
16 the procurement is equal to or less than the budgeted amount.
17

18 If the project, goods or services were authorized in the budget ordinance but exceed the budgeted
19 amount, an ordinance approving such expenditure may be enacted upon a single reading without
20 being read at 2 meetings of the City Council prior to adoption; provided, however, that the City
21 ~~Administrator~~ Manager makes a determination, in writing, that funds are available to cover the
22 cost of the procurement.
23

24 B. Nothing in subsection (A) of this section shall prohibit the City Council from approving
25 the purchase of items not included in the City budget, upon receipt of a written justification and a
26 written determination by the City ~~Administrator~~ Manager that funds are available for the purchase.
27 City Council approval shall be accomplished by 2 readings of an ordinance.
28

29 C. The City ~~Administrator~~ Manager shall:
30

31 1. Approve all City expenditures for goods or services which are not required to be
32 approved by the City Council, whether made pursuant to contract or purchase order;
33

34 2. Be responsible for the administration of a centralized system of purchasing and
35 procurement of goods and services for the City and for effectuating the provisions of this
36 division.
37

38 3. Establish such rules and regulations as he or she may deem necessary in order to
39 carry out the provisions of this division.
40

41 D. The City ~~Administrator~~ Manager may delegate in writing ~~his or her~~ their powers and duties
42 under this division to a designated City employee. Any such designee may only approve
43 expenditures that are equal to or less than thirty-thousand dollars and zero cents (\$30,000.00).
44

1 E. The City ~~Administrator~~ Manager shall have the authority to enter into contracts on behalf
2 of the City for the purchase of goods and services once such purchases have been duly authorized
3 in accordance with this division and cooperative purchasing agreements as authorized in this
4 division. ~~The Mayor shall have the authority to enter into all other contracts and agreements on~~
5 ~~behalf of the City, including, but not limited to, agreements with other governmental entities and~~
6 ~~agreements concerning matters of City policy, subject to the approval of the Council. (Prior code~~
7 ~~§ 9A-6)~~
8

1 **Chapter 7.08**
2 **SOURCE SELECTION AND CONTRACT FORMATION**
3

4 Sections:

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 7.08.035 Records of procurement actions.
14

15 Article 2. Competitive Bidding and Source Selection
16 7.08.040 Conditions for use.
17 7.08.050 Competitive sealed bidding.
18 7.08.060 Competitive sealed proposals.
19

20 Article 3. Other Procurement Methods
21 7.08.070 Procurements exempt from competitive bidding.
22 7.08.080 Procedure for procurements exempt from competitive bidding.
23 7.08.090 Extensions.
24 ~~7.08.100 Records of procurement actions.~~
25 7.08.100 Compliance with Chapter 14.04.
26 ~~7.08.110 Purchase orders.~~
27 ~~7.08.120 Petty cash expenditures.~~
28 ~~7.08.130 Purchase of recycled products.~~
29 ~~7.08.140 Environmentally preferable purchasing.~~
30

31 ~~Article 54.~~ Living Wage Requirement
32 ~~7.08.150~~ Scope.
33 ~~7.08.160~~ Exemptions.
34 ~~7.08.170~~ Solicitation requirements.
35 ~~7.08.180~~ Living wage requirement.
36 ~~7.08.190~~ Notices.
37 ~~7.08.320200~~ Enforcement.
38 ~~7.08.24210~~ Review of living wage requirement.
39

40 Article 5. Bonds and Bid Security
41 7.08.220 Bid security
42 7.08.230 Contract performance and payment bonds
43 7.08.240 Additional bonds
44

45 ~~Article 64-~~ Disposition of Goods

- 1 ~~7.08.150250~~ Generally.
- 2 ~~7.08.160260~~ Methods of sale.
- 3 ~~7.08.170270~~ Worthless items.

4
5 **Article 1. General Provisions**

6
7 **7.08.010 Written contracts.**

8
9 A. All contracts involving more than ~~\$150,000.00~~ shall be awarded by the Council.

10
11 B. All contracts equal to or less than \$50,000.00 shall be awarded by the City Manager or
12 their designee, subject to the provisions of Section 7.04.060(D). ~~Written contracts signed by the~~
13 City Administrator or the Administrator's designee and the contractor shall be used for the
14 following types of procurements:

15
16 1. ~~Construction work exceeding \$10,000.00;~~

17
18 2. ~~Professional services exceeding \$5,000.00. (Prior code § 9A-7)~~

19
20 C. The City Manager may delegate, in writing, the authority to award contracts equal to or
21 less than \$30,000.00.

22
23 D. All procurements exceeding \$30,000.00 in value require a formal contract.

24
25 E. All procurements not exceeding \$30,000.000 in value must be supported by written
26 documentation.

27
28 **7.08.015 Contract modifications; change orders; price adjustments**

29
30 A. The following contract changes (including contract modifications, change orders, and price
31 adjustments) must be approved by ordinance which may be enacted upon a single reading pursuant
32 to Section 7.04.060(A):

33
34 1. Changes to any contract not originally awarded by the Council when the cumulative
35 value of the original contract and all changes to the contract exceed \$50,000.00;

36
37 2. Changes to any contract originally awarded, or any contract previously modified
38 by the Council when the cumulative value of all changes exceeds both:

39
40 a. \$50,000.00; and

41
42 b. 10% of the original contract.

43
44 B. Except as otherwise provided by applicable law, the City Manager shall approve all other
45 contract changes in writing.

1 **7.08.020 Voidable contracts.**
2

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

10 **7.08.025 Multi-term contracts.**
11

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

19 **7.08.026 Indefinite quantities contracts.**
20

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

33 **7.08.030 Validity of claims.**
34

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

39 **7.08.035 Records of procurement actions.**
40

41 A. Contents of Record. All determinations and other written records pertaining to any
42 solicitation, award or performance of a contract shall be maintained for the City in a contract file.
43 All records shall be maintained for such time as required by State law or regulation but for not less
44 than 3 years.
45

1 B. Submission to the City Council. A copy of such record shall be submitted to the City
2 Council upon request. Such record shall be available for public inspection. (Prior code § 9A-16)
3

4 C. Reporting to the City Council. The City Manager shall immediately report to the City
5 Council any emergency purchase exceeding \$30,000.00. The City Manager shall provide a report
6 to the City Council at least twice every fiscal year concerning:
7

8 1. All emergency procurements exceeding \$10,000.00 in value; and
9

10 2. All procurements between \$30,000.00 and \$50,000.00 in value.
11

12 (Prior code § 9A-16)
13

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

15 **7.08.040 Conditions for use.**

16 A. General. All City contracts shall be awarded by competitive sealed bidding or competitive
17 sealed proposals, except as otherwise provided in: Section 7.08.070.
18

19 1. ~~Section 7.08.070(A), Small purchases;~~
20

21 2. ~~Section 7.08.070(B), Professional services;~~
22

23 3. ~~Section 7.08.070(C), Emergency procurement;~~
24

25 4. ~~Section 7.08.070(D), Sole source procurement;~~
26

27 5. ~~Section 7.08.070(E), Cooperative purchasing.~~
28

29 B. City Vendors or Suppliers. The City ~~Administrator~~ Manager or designee shall take all
30 reasonable steps to assure that all qualified vendors or suppliers of goods or services residing or
31 having their principal offices in the City are made aware of the City's issuance of invitations for
32 bids or request for proposals and given an opportunity to submit bids or proposals in response
33 thereto. (Prior code § 9A-10)
34

35 **7.08.050 Competitive sealed bidding.**

36 A. Conditions for Use. Competitive sealed bidding shall be used when all of the following
37 circumstances apply:
38

39 1. Time permits the solicitation, submission and evaluation of sealed bids;
40

41 2. The award will be made on the basis of price and price-related factors;
42
43
44
45

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

3
4 4. There is reasonable expectation of receiving more than one bid.
5

6 B. Procedure. The following general procedures shall be followed for awarding contracts by
7 competitive sealed bidding.
8

9 1. Invitation for Bids. An invitation for bids shall be issued, which shall include
10 specifications and all contractual terms and conditions applicable to the procurement.
11

12 2. Public Notice. Public notice of the invitation for bids shall be given at a reasonable
13 time prior to the date set forth therein for the opening of bids. Such notice may include
14 publication in a newspaper of general circulation.
15

16 3. Opening of Bids. Bids shall be opened publicly in the presence of one or more
17 witnesses at the time and place designated in the invitation for bids. The amount of each
18 bid and such other relevant information as may be specified by regulation, together with
19 the name of each bidder, shall be recorded; the record and each bid shall be open to public
20 inspection.
21

22 4. Acceptance and Evaluation of Bids. Bids shall be evaluated based on the
23 requirements set forth in the invitation for bids. Those criteria that will affect the bid price
24 and be considered in evaluation for award shall be objectively measurable, such as, but not
25 limited to, discounts, transportation costs and total or life cycle costs. The invitation for
26 bids shall set forth the evaluation criteria to be used. No criteria may be used in bid
27 evaluation that are not set forth in the invitation for bid.
28

29 5. Correction or Withdrawal of Bids. Correction or withdrawal of inadvertently
30 erroneous bids before or after award or cancellation of awards or contracts based on bid
31 mistakes shall be permitted in accordance with such regulations as the City ~~Administrator~~
32 Manager may establish. After the opening of bids, no changes in bid prices or other
33 provisions of bids prejudicial to the interest of the City or fair competition shall be
34 permitted. Except as otherwise provided by regulation, all decisions to permit the
35 correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes
36 shall be supported by a written determination by the City ~~Administrator~~ Manager.
37

38 6. Award. The contract shall be awarded with reasonable promptness by written notice
39 to the most responsible and responsive bidder whose bid meets the requirements and
40 criteria set forth in the invitation for bids.
41

42 7. Multistep Sealed Bidding. When it is considered impractical to initially prepare a
43 purchase description to support an award based on price, an invitation for bids may be
44 issued requesting the submission of unpriced offers to be followed by an invitation for bids

1 limited to those bidders or offerors whose offers have been qualified under the criteria set
2 forth in the first solicitation.

3
4 C. Cancellation of Invitation for Bids. An invitation for bids, or other solicitations may be
5 canceled or any or all bids may be rejected, in whole or in part, as may be specified in the
6 solicitation when it is in the best interests of the City. (Prior code 9A-11)

7
8 **7.08.060 Competitive sealed proposals.**

9
10 A. Conditions for Use. A contract may be entered into by the use of competitive sealed
11 proposal method:

12
13 1. When the City ~~Administrator~~ Manager determines, in writing, that due to stated
14 circumstances, the use of competitive sealed bidding is either not practical or not
15 advantageous to the City; ~~or~~

16
17 2. For the procurement of professional services; or

18
19 3. Procurements exempt from competitive bidding requirements pursuant to Section
20 7.08.070.

21
22 B. Request for Proposals. Proposals shall be solicited through a request for proposals.

23
24 C. Public Notice. Adequate public notice of the request for proposals shall be given in the
25 same manner as provided in Section 7.08.050 (B)(2).

26
27 D. Receipt of Proposals. No proposals shall be handled so as to permit disclosure of the
28 identity of any offeror or the contents of any proposal to competing offerors during the evaluation
29 process. A register of proposals shall be prepared containing the name of each offeror, the number
30 of modifications received, if any, and a description sufficient to identify the item offered. The
31 register of proposals shall be open to public inspection only after contract award.

32
33 E. Evaluation Factors. The request for proposals shall state the relative importance of price
34 and other evaluation factors.

35
36 F. Discussion with Responsible Offeror and Revisions to Proposals. As provided in the
37 request for proposals, discussions may be conducted with responsible offerors who submit
38 proposals determined to be reasonably susceptible to being selected for award for the purpose of
39 clarification to assure full understanding of and conformance with the solicitation requirements.
40 Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion
41 and revision of proposal, and such revisions may be permitted after submissions and prior to award
42 for the purpose of obtaining best and final offers. In conducting discussions, there shall be no
43 discussion of the identity of competing offerors.

1 G. Award. Award shall be made to the responsible offeror whose proposal is determined to be
2 the most advantageous to the City, taking into consideration price and evaluation factors set forth
3 in the request for proposals. The contract file shall contain the basis on which the award is made.
4

5 H. Cancellation of Request for Proposals. A request for proposals or other solicitations may
6 be canceled or any or all proposals may be rejected, in whole or in part, as may be specified in the
7 solicitation when it is in the best interests of the City. (Prior code 9A-12)
8

9 **Article 3. Other Procurement Methods**

10 **7.08.070 Procurements exempt from competitive bidding.**

11 A. ~~Small Purchases~~ under \$30,000.00. Any procurement of goods not exceeding the amount
12 of ~~\$130,000.00~~ \$30,000.00 may be made without the requirement of competitive bidding; provided, however,
13 that procurement requirements shall not be artificially divided so as to constitute a small purchase
14 under this section.
15
16

17 B. Professional Services. Any procurement of or contract for professional services may be
18 made without the requirement of competitive bidding. The City ~~Administrator~~ Manager may, by
19 regulations, establish competitive negotiation or selection procedures for professional service
20 contracts or classes of professional service contracts.
21

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

35 D. Sole Source Procurement. A contract for procurements not exceeding \$50,000.00 in value
36 may be awarded for a good, service or construction item without the requirement of competitive
37 bidding when, under such regulations as the City ~~Administrator~~ Manager may establish, the City
38 ~~Administrator~~ Manager determines, in writing, that there is only one available source for the good,
39 service or construction item or if a specific manufacturer's product is required to ensure
40 compatibility with existing installed equipment and so notifies the City Council. The City
41 ~~Administrator~~ Manager's determination shall be subject to review and approval by the City
42 Council by resolution.
43

44 E. Cooperative Purchasing. The City ~~Administrator~~ Manager may enter into contracts or
45 agreements for cooperative purchasing, as defined in Section 7.04.040 (~~F~~) of this eChapter, without

1 the requirement of competitive bidding by the City, provided that such cooperative purchasing
2 meets all of the requirements of this division and Chapter 8A of this Code and is consistent with
3 their provisions in every respect and that the cooperative purchasing agreement is subject to review
4 and approval by the City Council by resolution prior to any actual purchase or purchases being
5 made thereunder. ~~(Prior code § 9A-13)~~
6

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

14 G. Rider contracts. The City Manager may use rider contracts, without the requirements of
15 competitive bidding by the City, if the contract was established in a manner consistent with the
16 purposes of this Title and:
17

- 18 1. The vendor provides to the City Manager, in writing, a statement extending the
19 terms of the contract to the City; and
20
- 21 2. The City Manager obtains copies of the solicitation document, scoring sheets and/or
22 bid tabulation, evidence of contract award and the underlying executed contract, or
23 explains in writing to the Mayor and City Council why the rider contract is
24 recommended in the absence of some or all of the documentation identified in this
25 subparagraph.
26

27 The quantity and dollar value of rider contracts may be amended; however, the scope and
28 specifications of goods and services must match the underlying contract.
29

30 H. In addition, the following types of transactions are exempt from competitive procurement:
31

- 32 1. Purchases for water, sewer, electric, postage, or other utility services;
33
- 34 2. Sales, rentals, or purchases of land and rights-of-way;
35
- 36 3. Employment contracts and employee relocation costs;
37
- 38 4. Temporary labor agreements;
39
- 40 5. Goods purchased from a public auction sale, including an internet auction, provided
41 that a written determination is made in advance by the City Manager that such a purchase
42 is in the best interest of the City;
43
- 44 6. Expenditures for travel, subscriptions, courses, seminars, and conventions,
45 membership dues and subscription fees;

1
2 7. Acquisition of works of art for public display; and

3
4 8. Procurement of instructional or educational services for City officials, staff, or
5 residents, or for social, cultural, or recreational programs or events offered or sponsored by
6 the City.

7
8 **7.08.080 Procedure for procurements exempt from competitive bidding.**

9
10 A. Procurements equal to or exceeding \$10,000.00. Insofar as it is practical, in all
11 procurements ~~exempt from the requirement of competitive bidding equal to or exceeding~~
12 \$10,000.00 in value, with the exception of sole source procurement, ~~and~~ cooperative purchasing,
13 products or services immediately available, and riders, proposals for ~~the~~ goods or services required
14 shall be solicited from at least three (3) qualified sources. In the event that three (3) qualified
15 sources do not exist, the City ~~Administrator~~ Manager or ~~his or her~~ their designee shall make a
16 written determination of that fact and report that determination to the City Council. (Prior code §
17 9A-14)

18
19 B. Procurements Less than \$10,000.00. For expenditures less than \$10,000.00, a reasonable
20 effort shall be made to obtain goods or services at the lowest cost.

21
22 **7.08.090 Extensions.**

23
24 A. An extension of a contract may be awarded without competition when the City
25 ~~Administrator~~ Manager finds, in writing, that circumstances warrant the extension of an existing
26 contract at the same unit price, provided that the extension occurs within 12 months of the date of
27 the execution of the original contract ~~and does not exceed 25% of the total original price.~~

28
29 B. For multi-year contracts, executed in accordance with Section 7.08.025, an initial extension
30 under this Subsection may be made for a period of one year and approved by the City Manager.
31 Any subsequent extensions must be approved by the City Council. When funds are not
32 appropriated or otherwise made available to support continuation of performance in a subsequent
33 fiscal period, the contract shall be canceled with no penalty to the City. (Prior code § 9A-15)

34
35 ~~**7.08.100 Records of procurement actions.**~~

36
37 ~~A. Contents of Record. All determinations and other written records pertaining to any~~
38 ~~solicitation, award or performance of a contract shall be maintained for the City in a contract file.~~
39 ~~All records shall be maintained for such time as required by State law or regulation but for not less~~
40 ~~than 3 years.~~

41
42 ~~B. Submission to the City Council. A copy of such record shall be submitted to the City~~
43 ~~Council upon request. Such record shall be available for public inspection. (Prior code § 9A-16)~~

44
45 **7.08.100 Compliance with Chapter 14.04.**

1
2 Notwithstanding any other provision of this division, all procurement actions shall comply in every
3 respect with all the provisions of Chapter 14.04 of this Code, known as the “Takoma Park Nuclear-
4 Free Zone Act.” (Prior code § 9A-17)

5
6 **7.08.1210 Purchase orders.**

7
8 A. City purchases shall be memorialized by a written contract or a purchase order signed in
9 accordance with this eChapter, except as specified in 7.08.100(D). Purchase orders shall be
10 consecutively numbered from the start of each fiscal year. Purchase orders shall be signed by the
11 City ~~Administrator~~ Manager or ~~his or her~~ their designee.

12
13 B. No department head shall make any purchase on behalf of or chargeable to the City except
14 by means of a purchase order signed in accordance with subsection (A) of this section; provided,
15 however, that this subsection (B) shall not apply to expenditures made in advance of a purchase in
16 emergencies as defined in and subject to the regulations that may be established by the City
17 ~~Administrator~~ Manager; provided, however, that in the case of emergency expenditures, a purchase
18 order must be obtained from the City ~~Administrator~~ Manager or designee within 72 hours of the
19 purchase.

20
21 C. No person employed by the City or providing services to the City as an independent
22 contractor shall purchase or cause to be purchased through or from the City any item for ~~his or her~~
23 their personal use. Without limitation on any other legal actions or remedies available, violations
24 of this section shall be sufficient cause for dismissal, suspension or termination of employment or
25 of any contract for services, as the City Council may determine. A violation of this section shall
26 be a Class A offense.

27
28 D. No department head shall order and obtain goods or services exceeding \$10,000.00 in value
29 shall without first securing a purchase order. (Prior code § 9A-18)

30
31 **7.08.1320 Petty cash expenditures.**

32
33 The City ~~Administrator~~ Manager shall have the authority to establish procedures for petty cash
34 expenditures. Such procedures may provide for departmental petty cash levels of up to \$200.00
35 for expenditures made by or with the approval of department heads. Such petty cash expenditures
36 shall be made after such price shopping as the department head deems appropriate or is otherwise
37 established by the City ~~Administrator~~ Manager. (Prior code § 9A-19)

38
39 **7.08.1430 Purchase of recycled products.**

40
41 A. General Preference. The City shall purchase recycled products whenever sufficient
42 quantities are readily available and meet the City’s specifications. The City shall purchase recycled
43 products that contain the highest percentage of recovered material and are produced to the greater
44 extent with post-consumer materials.

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

3
4 C. Purchase of Certain Specified Products and Services. Notwithstanding any other provision
5 of this division, all procurement actions shall comply with the following provisions:

6
7 1. All City stationery and envelopes with the City return address shall be made of
8 recycled paper.

9
10 2. The City newsletter shall be produced on recycled content newsprint.

11
12 3. When the City is using an outside printer, the City must obtain both a price quote
13 for recycled and nonrecycled paper and shall require that the job be done using recycled
14 paper if there is a price differential of 15% or less.

15
16 4. All copiers and laser printers purchased by the City after the effective date of this
17 legislation shall be able to use recycled paper, and all copiers shall be able to perform 2-
18 sided copying as an automatic function.

19
20 D. Product Specifications. All departments of the City shall review and revise product
21 specifications so as to conform to the following guidelines:

22
23 1. Specifications shall not require the use of products made from virgin materials.

24
25 2. Specifications shall not exclude the use of recycled products.

26
27 3. A minimum percentage of recovered material content shall be incorporated into
28 each specification when it is known that there are sufficient and readily available supplies
29 of a particular recycled product.

30
31 E. Practicability of Procurement. In an assessment of the practicability of procurement of
32 goods containing recycled materials, the City shall consider, among other relevant factors, product
33 availability, product suitability for intended use, including whether the product meets established
34 performance standards and will not negatively impact the health and safety of employees and
35 residents, and cost.

36
37 F. Certification of Recycled Content. The City shall require the seller to certify in writing that
38 any recycled product sold to the City by competitive bid contract or cooperative purchase contains
39 the minimum percentage of recovered materials set forth in the City's product specification and
40 shall also specify the percentage of post-consumer materials contained in the product.

41
42 G. Labeling of Recycled Products. To the extent practical, all products purchased by the City
43 made from recycled materials shall be labeled as such. City stationery, envelopes with the City
44 return address and the City newsletter shall be labeled as being printed on recycled paper. (Prior
45 code § 9A-19.1)

1 **7.08.1450 Environmentally preferable purchasing.**

2
3 A. General Preferences. Environmental and energy considerations shall become part of the
4 City's normal purchasing and procurement decisions, with the goals of justifying environmental
5 and energy costs of City decisions and choosing minimal-effect options, consistent with such
6 traditional factors as safety, price, performance, and availability. The City also prefers to do
7 business with vendors and contractors that are locally owned, use and sell environmentally
8 preferable products or services, produce minimal waste, and use recycled products and
9 environmentally preferable purchasing practices, as services provided by local suppliers reduce
10 environmental impact due to transportation and keep municipal funds in the community. To the
11 greatest extent practicable, the City shall purchase environmentally and energy preferable products
12 and services that:

- 13
- 14 1. Use recycled materials.
- 15
- 16 2. Generate minimal waste in manufacturing or use.
- 17
- 18 3. Are durable, longer lasting, reusable, refillable or compostable.
- 19
- 20 4. Use minimal energy and water.
- 21
- 22 5. Involve minimal use of toxic and hazardous materials.
- 23
- 24 6. Minimize production of greenhouse gases.
- 25
- 26 7. Minimize production of environmental pollutants including ozone precursors.
- 27
- 28 8. Are locally supplied or produced.
- 29

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

33
34 C. Locality Preference. The City may give preference in purchasing products and services to
35 locally supplied products, goods, and services, Montgomery County green certified businesses,
36 and State of Maryland certified small businesses.

37
38 D. Purchase of Certain Specified Products and Services. City procurement actions shall
39 comply with the following provisions:

- 40
- 41 1. Energy and Water Savings. Where applicable, energy-efficient equipment shall be
42 purchased with the most up-to-date energy efficiency functions. This includes, but is not
43 limited to, high efficiency space heating systems and high efficiency space cooling
44 equipment.
- 45

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

7
8 3. Recycled Content Products. All products for which the U.S. EPA has established
9 minimum recycled content standard guidelines, such as those for printing paper, office
10 paper, janitorial paper, construction, landscaping, parks and recreation, transportation,
11 vehicles, miscellaneous, and nonpaper office products, shall contain the highest post-
12 consumer content practicable, but no less than the minimum recycled content standards
13 established by U.S. EPA Guidelines. These standards are described at www.epa.gov/cpg.

14
15 4. Remanufactured Products. The City shall purchase remanufactured products such
16 as laser toner cartridges, tires, furniture, equipment, and automotive parts whenever
17 practicable, but without reducing safety, quality, or effectiveness.

18
19 5. Ozone Depleting Compounds. The use of refrigerants, solvents and other products
20 shown to deplete stratospheric ozone shall be phased out and new purchases shall not
21 contain them.

22
23 6. Pollutants. All detergents shall be readily biodegradable and, where practicable,
24 shall not contain phosphates.

25
26 E. Product Specifications. All departments of the City shall review and revise product
27 specifications so as to conform to the following guidelines, to the extent practicable:

28
29 1. Specifications shall not require the use of products made from virgin materials.

30
31 2. Specifications shall not exclude the use of recycled or remanufactured products.

32
33 3. A minimum percentage of recovered material content shall be incorporated into
34 each specification when it is known that there are sufficient and readily available supplies
35 of a particular recycled product.

36
37 4. Cleaning or disinfecting products (i.e., for janitorial or automotive use) shall not
38 contain ingredients that are carcinogens, mutagens, or teratogens. These include chemicals
39 listed by the U.S. EPA or the National Institute for Occupational Safety and Health on the
40 Toxics Release Inventory.

41
42 5. Wherever practicable, products and materials shall use and meet the following
43 federal standards where applicable:

44
45 a. U.S. EPA Energy Star (energy efficient products);

- b. U.S. EPA WaterSense (water efficient products);
- c. U.S. EPA guidelines (various other products at www.epa.gov/cpg);
- d. U.S. Green Building Council LEED standards.

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

- a. Responsible Purchasing Network (various products);
- b. EcoLogo (various products), Green Seal (various products);
- c. Greenguard Environmental Institute (various products);
- d. CFPA (chlorine free paper);
- e. EPEAT (electronics);
- f. Forest Stewardship Council (paper products);
- g. Resilient Floor Covering Institute (flooring products);
- h. Carpet and Rug Institute (carpets).

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

Article 4 5. Living Wage Requirement

7.08.18050 Scope.

Every City contract for the provision of services, awarded after a competitive bid or proposal process, shall require the contractor and any subcontractor to pay each employee assigned to perform services under the City contract a living wage. As used in this article, “covered employer”

1 refers to any contractor or subcontractor who is subject to the City's living wage requirement.
2 (Ord. 2013-26 § 1, 2013/Ord. 2007-55 § 1 (part), 2007)

3
4 **7.08.19060 Exemptions.**

5
6 The provisions of this article do not apply to the following:

- 7
8 A. A contract for services valued at less than \$20,000.00.
9
10 B. A contract:
11
12 1. With a public entity.
13
14 2. With a nonprofit organization that has qualified for an exemption from Federal
15 income taxes under Section 501(c)(3) of the Internal Revenue Code.
16
17 3. Procured through an emergency procurement, sole source procurement, or
18 cooperative purchase procurement.
19
20 4. For electricity, telephone, cable television, water, sewer, or similar service
21 delivered by a regulated public utility.
22
23 5. For the purchase or lease of goods, equipment or vehicles.
24
25 C. If the City Manager makes a written determination that application of this article would
26 conflict with an applicable Federal, State or County program, contract, or grant requirement, then
27 the living wage requirements of this article shall not apply to the contract or program. (Ord. 2013-
28 26 § 1, 2013/Ord. 2007-55 § 1 (part), 2007)

29
30 **7.08.200170 Solicitation requirements.**

- 31
32 A. The City's living wage requirement shall be identified and set forth in all non-exempt
33 procurement solicitations for the contract.
34
35 B. Each response to a bid or proposal to provide services to the City and each City contract
36 for services must include a certification that the contractor and each subcontractor shall comply
37 with the City's living wage requirements or a certification by the contractor or subcontractor
38 setting forth the applicable exemption from the living wage requirement, along with supporting
39 documentation for the exemption. Any contractor or subcontractor who knowingly makes a false
40 statement in such certification, or who fails to comply with the living wage requirement during
41 performance of a City contract for services, shall be subject to loss of the contract and
42 disqualification from future City contracts.
43

1 C. A contractor must not split or subdivide a contract, pay an employee through a third party,
2 or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any
3 requirement under this article.
4

5 D. If a contractor or subcontractor commits in its bid or proposal to provide health insurance
6 to any employee who provides services to the City under a City contract, the contractor or
7 subcontractor may:
8

9 1. Certify in its bid or proposal the per-employee hourly cost of the employer's share
10 of the premium for that insurance; and
11

12 2. Reduce the wage paid under Section 7.08.210 to any employee covered by the
13 health insurance by all or part of the per-employee hourly cost of the employer's share of
14 the health insurance premium. (Ord. 2007-55 § 1 (part), 2007)
15

16 **7.08.210180 Living wage requirement.**
17

18 A. Except as permitted under Section 7.08.200(D), each covered employer must pay each
19 employee who is not exempt under subsection (F) of this section no less than the City's living
20 wage rate.
21

22 B. The City's living wage rate shall be equal to the Montgomery County living wage rate
23 established and published by Montgomery County pursuant to Section 11B-33A of the
24 Montgomery County Code and any applicable regulations, as amended and in effect from time-to-
25 time.
26

27 C. The City's living wage rate shall be adjusted as of July 1st of each year to reflect the most
28 current Montgomery County living wage rate and shall be applicable to any contract awarded
29 thereafter until the date of the next adjustment; provided, however, that the wage rates in effect at
30 the time a contract is awarded to a covered employer by the City shall remain in effect under such
31 contract during its original term. At the time of the exercise of any renewal option under a City
32 contract with a covered employer, the required wage rate shall be adjusted as provided above, and
33 as adjusted, shall remain in effect during the renewal term.
34

35 D. The City Manager shall establish the applicable living wage rate by April 1st of each year
36 and cause such rate to be published in English and Spanish on the City's web site. Notice of the
37 required living wage rate also shall be stated in procurement solicitations, as required by Section
38 7.08.200(A).
39

40 E. Each covered employer must include the living wage requirements of this article in every
41 subcontract so that the provisions of this article will be binding upon each subcontractor.
42

43 F. The living wage requirements of this section do not apply to any employee:
44

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

1
2 2. Who participates in a government-operated or government-sponsored program that
3 restricts the earnings of or wages paid to employees to a level below the wage required
4 under this section;

5
6 3. Who participates for no longer than 120 days in any calendar year in a government-
7 operated or government-sponsored summer youth employment program; or
8

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

11
12 G. If any Federal, State, or City law or regulation requires payment of a higher wage, that law
13 or regulation controls. If any applicable collective bargaining agreement requires payment of a
14 higher wage, that agreement controls. (Ord. 2007-55 § 1 (part), 2007)
15

16 **7.08.220190 Notices.**

17
18 A. Each covered employer shall conspicuously post notice of the required City living wage
19 rate, in English and Spanish, on such form as shall be provided by the City.
20

21 B. Within 3 days of an employee's request, a covered employer shall provide to such
22 employee a written statement in English and Spanish, on such form as shall be provided by the
23 City, of the then required living wage rate. (Ord. 2007-55 § 1 (part), 2007)
24

25 **7.08.230200 Enforcement.**

26
27 A. During the term of the City contract and for a period of 3 years after the expiration or earlier
28 termination of the City contract, each contractor and subcontractor subject to the provisions of this
29 article, shall keep and preserve records which show the wages provided by such contractor and its
30 subcontractors to each employee who provided services under the City contract. The City
31 Manager, or designee, shall have the power to examine such records at reasonable times during
32 normal business hours for the purpose of administering and enforcing the provisions of this article,
33 and to make copies of all or any parts thereof.
34

35 B. As an additional term of the City contract, no covered employer shall discharge, reduce the
36 compensation of, or otherwise retaliate against an employee for asserting any right under this
37 article, filing a complaint of violation, or taking any other action to enforce the requirements of
38 this article. Any retaliation is subject to all sanctions for noncompliance with this article.
39

40 C. City contracts may specify that liquidated damages for any noncompliance with this article
41 include the amount of any unpaid wages, with interest at the judgment rate from the date originally
42 due and less any deductions required or permitted by law, and that the contractor is jointly and
43 severally liable for any noncompliance by a subcontractor.
44

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

8
9 **7.08.240210 Review of living wage requirement.**

10
11 The City Council shall review the living wage requirement, including the exemptions set forth in
12 Section 7.08.190, every 3 years following the effective date of this article. Subsequent to such
13 review, the City Council shall determine whether to continue or modify the City's living wage
14 requirement. The Council's failure to conduct such review shall have no effect on the validity of
15 the living wage requirement set forth in this article. (Ord. 2007-55 § 1 (part), 2007)

16
17 **Article 5. Bonds and Bid Security**

18
19 **7.08.220 Bid Security**

20
21 **A. Requirement for bid security.**

22
23 1. Bid security shall be required for all construction contracts where performance
24 security is required.

25
26 2. At the discretion of the City Manager, bid security may be required for other
27 contracts.

28
29 3. Where bid security is required, a successful bidder shall forfeit such security upon
30 failure to enter into a contract within the time specified in the Invitation for Bids or contract
31 award.

32
33 **B. Form of security. Bid security shall be in the form of a bond provided by a surety company**
34 **authorized to do business in this State, or the equivalent in cash, letter of credit, or in such other**
35 **form satisfactory to the City.**

36
37 **C. Amount of bid security. Bid security for a construction contract shall be in an amount equal**
38 **to at least five percent (5%) of the amount of the bid. Bid security for other than a construction**
39 **contract shall be in such amount as is determined by the City Manager to sufficiently guarantee**
40 **that the bidder to whom the contract is awarded will enter into the contract for the work described**
41 **in the bid.**

42
43 **D. Rejection of bids for noncompliance with bid security requirements. When the invitation**
44 **for bids requires security, noncompliance requires that the bid be rejected, unless it is determined**
45 **in writing that such noncompliance is insubstantial.**

1
2 E. Withdrawal of bids. If a bidder is permitted to withdraw a bid before award, or is excluded
3 from the competition prior to award, no action shall be taken against the bidder or the bid security.
4

5 **7.08.230 Contract performance and payment bonds**
6

7 A. When required and amounts. When a construction contract is awarded, the following
8 bonds or other security, in a form satisfactory to the City, shall be delivered to the City and shall
9 become binding on the parties upon the execution of the contract:
10

11 1. A performance bond payable to the City, executed by a surety company authorized
12 to do business in the State, or the equivalent in cash or other security, conditioned upon the
13 faithful performance of the contract, including all warranties and guarantees. The bond or
14 other security shall be in an amount equal to one hundred percent (100%) of the price
15 specified in the contract; and
16

17 2. A payment bond, executed by a surety company authorized to do business in the
18 State, or the equivalent in cash, letter of credit, or other security deemed satisfactory to the
19 City, for the protection of all persons supplying labor and materials, including lessors of
20 equipment to the extent of the fair rental value thereof, to the contractor or its
21 subcontractors for the performance of the work provided for in the contract.
22

23 a. For a contract exceeding one hundred thousand dollars (\$100,000.00) the
24 bond or other security shall be in an amount equal to 100% of the price specified in
25 the contract.
26

27 b. For a contract exceeding \$25,000.00 but not exceeding \$100,000.00, the
28 bond or other security shall be in an amount equal to 50% of the price specified in
29 the contract.
30

31 c. No payment bond is required for a contract not exceeding \$25,000.00,
32 unless a written determination is made that a payment bond is appropriate under
33 the circumstances. Such a bond shall be in an amount not to exceed 50% of the
34 contract price.
35

36 B. Certification of payments. Any contractor, prior to receiving a progress or final payment
37 under a contract covered hereunder, shall certify in writing that such contractor has made payment
38 from the proceeds of prior payments, and that such contractor will make timely payments from the
39 proceeds of the progress or final payment then due such contractor, to such contractor's
40 subcontractors and suppliers in accordance with such contractor's contractual arrangement with
41 them.
42

43 C. Waiver or reduction of requirement for bonds. The City Manager may waive or reduce, in
44 writing, the requirement for performance bonds for construction contracts under twenty-five
45 thousand dollars (\$25,000.00).

1
2 D. Maintenance bond. Contract specifications may require security in an amount determined
3 by the City Manager to adequately cover reasonable maintenance, repair, or replacement costs
4 during the contract warranty or guarantee period.

5
6 **7.08.240 Additional bonds**

7
8 Nothing in this article shall be construed to limit the authority of the City to require any additional
9 bonds or other security in addition to, or in cases other than those specified in this article.

10
11 **Article 6 4. Disposition of Goods**

12
13 **7.08.150250 Generally.**

14
15 A. All departments, at such times and in such form as may be prescribed, shall submit to the
16 City ~~Administrator~~ Manager reports listing stocks of all articles which are no longer used, which
17 have become obsolete or which are surplus to the needs of the department. The City ~~Administrator~~
18 Manager shall transfer serviceable surplus goods between using departments in lieu of filling
19 requisitions for the purchase of new or additional stock of the same or similar articles, unless such
20 transfer is contrary to the best interests of the City as determined by the City ~~Administrator~~
21 Manager.

22
23 B. The City ~~Administrator~~ Manager shall provide a report on disposed equipment/goods to
24 the Council on a quarterly basis. (Prior code § 9A-20)

25
26 **7.08.160260 Methods of sale.**

27
28 A. Except as provided in this article, all goods which have become surplus, obsolete or
29 unusable and whose current estimated value is \$10,000.00 or more shall be sold to the highest
30 responsible bidder by the competitive bid or proposal procedures prescribed in Article 2 of this
31 ~~e~~Chapter, except that the goal shall be to obtain the highest price from prospective purchasers. The
32 City ~~Administrator~~ Manager may waive the competitive bid or proposal procedures and sell such
33 property by auction or by private sale after reasonable public notice when the return to the City is
34 expected to be increased or the nature of the goods is such as to make competitive bid or proposal
35 procedures impractical.

36
37 B. Goods which have been found by the City ~~Administrator~~ Manager to have become surplus,
38 obsolete or unusable, and whose current value is estimated to be less than \$10,000.00, may be
39 disposed of by the methods described in regulations the City ~~Administrator~~ Manager may
40 establish. Such dispositions shall, wherever feasible, be based on competitive price quotations and
41 shall be made to a responsible purchaser offering the highest price. The City ~~Administrator~~
42 Manager is authorized to sell by auction such property to the highest responsible bidder, after
43 public notice, when, in the City ~~Administrator~~ Manager's opinion, the return to the City is expected
44 to increase by this procedure. In order to produce the highest return for the disposition of such
45 personal property, the City ~~Administrator~~ Manager may select from the following disposition

1 methods the method which will yield the greatest return under the circumstances of each
2 disposition:

- 3
- 4 1. Competitive sealed bids;
- 5
- 6 2. Competitive sealed proposals;
- 7
- 8 3. Competitive auction sale;
- 9
- 10 4. Trade-in or exchange for goods which are of current need;
- 11
- 12 5. Competitive negotiation. (Prior code § 9A-21)
- 13

14 **7.08.170270** ~~Worthless items.~~

15
16 In the event that the City ~~Administrator~~ Manager or their designee determines that the goods
17 offered for disposal have no real or scrap value, they may be disposed of as refuse. (Prior code §
18 9A-22)

19
20
21 **Chapter 7.16**
22 **REAL AND PERSONAL PROPERTY**

23
24 Sections:

- 25
- 26 7.16.010 Definitions.
 - 27 7.16.020 Annual tax levy on real and personal property.
 - 28 7.16.030 Property tax credit.

29
30 **7.16.010** **Definitions.**

31
32 The terms used in this chapter shall have the following meanings:

33
34 “Adjusted assessed value” means the assessed value of any real or personal property, as determined
35 by the State Department of Assessments and Taxation, divided by 100 and rounded off to the
36 nearest hundredth.

37
38 “Assessable and taxable base” means the assessed value of all real and personal property subject
39 to the tax called for which is located in ~~one particular county~~ and the City, as such value is
40 determined by the State of Maryland Department of Assessments and Taxation and reported
41 annually to the City.

42
43 “~~Situs County~~” means ~~the County in which the property subject to the tax called for is located in~~
44 ~~whole or in part~~ Montgomery County, Maryland.

1 “~~Situs~~ County payment” means any payment made by ~~Prince George’s County, Maryland, or~~
2 Montgomery County, Maryland; to the City in accordance with Section 6-305 of the Tax-Property
3 Article of the Annotated Code of Maryland. (Prior code § 11A-1)
4

5 **7.16.020 Annual tax levy on real and personal property.**
6

7 Effective July 1, 2020~~1~~, all real and personal property which is subject to taxation by the City shall
8 be subject to a tax on the assessed value of such real and personal property as such value is
9 determined by the State Department of Assessments and Taxation, at the rate of:
10

Real Property	<u>Tax Rate</u>
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

11
12 (Ord. 2020-9 § 1, 2020/Ord. 2019-11 § 1, 2019/Ord. 2018-16 § 1, 2018/Ord. 2017-19 § 1,
13 2017/Ord. 2016-17 § 1, 2016/Ord. 2015-19 § 1, 2015/Ord. 2014-27 § 1, 2014/Ord. 2013-16 § 1,
14 2013/Ord. 2012-21 § 1, 2012/Ord. 2010-22 § 1, 2010/Ord. 2009-26 § 1, 2009/Ord. 2008-24, § 1,
15 6-9-08/Ord. 2007-29 § 1, 2007: prior code § 11A-2)
16

17 **7.16.030 Property tax credit.**
18

19 A. Double Taxation Credit. Effective July 1, 1987, each taxpayer shall be entitled to a credit
20 against the tax which would otherwise be due and payable to the City of equal to an amount
21 determined by:
22

- 23 1. Dividing the ~~Situs~~ County payment actually made in the fiscal year in which a tax
24 credit is to be determined by the assessable and taxable base of the ~~Situs~~ County; and
25
- 26 2. Multiplying the result by each taxable property’s adjusted assessed value.
27

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

3
4 ~~C. Credit for Bi-County Property. In the event that any real or personal property is located in~~
5 ~~both Prince George's and Montgomery Counties, any double taxation credit shall be allowed in~~
6 ~~the same proportion as County property taxes are imposed. (Prior code § 11A-3)~~
7

8 **Chapter 7.32**
9 **ADMISSIONS AND AMUSEMENT TAX**

10
11 Sections:

- 12
13 7.32.010 Definitions.
14 7.32.020 Admissions and amusement tax levy.
15 7.32.030 Additional tax for reduced charge or free admission.
16 7.32.040 Exemptions.

17
18 **7.32.010 Definitions.**

19
20 The term “admission and amusement charge”, unless expressly provided otherwise, means a
21 charge for:

- 22
23 A. Admission to a place, including any additional separate charge for admission within an
24 enclosure;
25
26 B. Use of a game of entertainment;
27
28 C. Use of a recreational or sports facility;
29
30 D. Use or rental of recreational or sports equipment; and
31
32 E. Merchandise, refreshments or a service sold or served in connection with entertainment at
33 a nightclub or room in a hotel, restaurant, hall, or other place where dancing privileges, music or
34 other entertainment is provided. (Prior code § 11A-11)

35
36 **7.32.020 Admissions and amusement tax levy.**

- 37
38 A. There is levied a tax at the rate of 10% of gross receipts derived from any admission and
39 amusement charge in the City.
40
41 B. If gross receipts subject to the admissions and amusement tax are also subject to the State
42 of Maryland sales and use tax, the total combined admission and amusement tax and sales and use
43 tax shall not exceed 10% of the gross receipts.
44

1 C. The admissions and amusements tax levied by this chapter shall be collected by the
2 Comptroller of the State of Maryland. (Prior code § 11A-12)

3
4 **7.32.030 Additional tax for reduced charge or free admission.**

5
6 A. There is levied an admission and amusement tax on a reduced charge or free admission at
7 the following rates:

- 8
9 1. \$0.05, if the charge for any other admission is \$0.50 or less;
10
11 2. \$0.10, if the charge for any other admission is more than \$0.50, but does not exceed
12 \$1.00; and
13
14 3. \$0.15, if the charge for any other admission is more than \$1.00.

15
16 B. The additional tax levied by this section shall be collected by the Comptroller of the State
17 of Maryland. (Prior code § 11A-13)

18
19 **7.32.040 Exemptions.**

20
21 No admissions and amusement tax shall be levied or collected on gross receipts:

22
23 A. Derived from any charge for merchandise, refreshments or a service sold or served at a
24 place where dancing is prohibited and the only entertainment provided is mechanical music, radio
25 or television;

26
27 B. Derived from any charge for admission to a live boxing or wrestling match; or a concert or
28 theatrical event presented or offered by a nonprofit group that is organized and operated to present
29 or offer an annual series of scheduled musical concerts or is organized and operated for a cultural
30 purpose and receives a grant directly or indirectly from the Maryland State Arts Council;

31
32 C. Derived from any charge for admission to or use of:

- 33
34 1. A facility or equipment in connection with a bingo game that is operated in
35 accordance with ~~Article 27, Sections 255 and 255B, Section 13-1803 of the Criminal Law~~
36 Article of the Annotated Code of Maryland;
37
38 2. A bowling alley or lane; or
39
40 3. A charter fishing boat;

41
42 D. Derived from any charge for admission or for merchandise, refreshments or a service, if
43 the gross receipts are used exclusively for:

- 44
45 1. A charitable, educational or religious purpose;

- 1
2 2. A volunteer fire company or nonprofit rescue squad;
3
4 3. A fraternal, service or veterans' organization chartered by a grant of Congress; or
5
6 4. The improvement, maintenance, or operation of an agricultural fair, if no net
7 earnings inure to the benefit of any stockholder or member of the association that conducts
8 the fair;

9
10 E. Derived from any charge for admission or for merchandise, refreshments or a service, if
11 the gross receipts are used exclusively for community or civic improvement by a nonprofit
12 community association that is organized and operated to promote the general welfare of the
13 community that the association serves and the net earnings of which do not inure to the benefit of
14 any stockholder or member of the association;

15
16 F. Derived from any charge for admission to a concert or theatrical event of a nonprofit
17 organization that is organized to present or offer any of the performing arts. (Prior code § 11A-14)

18
19 THIS ORDINANCE IS ADOPTED BY THE COUNCIL OF THE CITY OF TAKOMA PARK,
20 MARYLAND, THIS ____ DAY O July, 2021, AND SHALL BE EFFECTIVE BEGINNING ON
21 THE 90TH DAY FOLLOWING ITS ENACTMENT, BY ROLL-CALL VOTE AS FOLLOWS:

22
23 AYE:

24 NAY:

25 ABSTAIN:

26 ABSENT:

27
28
29 **Explanatory Note:**

- 30
31 1. Underlining indicates language being added to the Code.
32 2. ~~Strikethrough~~ indicates language being deleted from the Code.