

ORDINANCE NO. 5612

AN ORDINANCE REPEALING ALBANY MUNICIPAL CODE CHAPTER "2.64 PURCHASING", AND ESTABLISHING ALBANY MUNICIPAL CODE CHAPTER "2.66 PROCUREMENT", BY ADOPTING THE PROVISIONS OF OREGON REVISED STATUTES CHAPTER 279A, 279B, AND 279C; AND DECLARING AN EMERGENCY.

WHEREAS, the state of Oregon has revised the procurement/purchasing law; and

WHEREAS, the new Oregon Revised Statutes become effective on March 1, 2005; and

WHEREAS, Oregon Revised Statutes Chapter 279A.065(4) requires local governing bodies to adopt rules of procedure for public procurement and purchasing by either adopting the Department of Justice rules or by creating their own rules (279A.065(5)) by March 1, 2005; and

WHEREAS, current Albany Municipal Code "2.64 Purchasing" no longer complies with Oregon Revised Statutes; and

WHEREAS, it is the desire of the City of Albany to utilize the model rules of procedure adopted by the Oregon Department of Justice except to the extent that those rules are supplemented or modified by this ordinance and any amendments, modifications, or revisions thereto.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1 Albany Municipal Code Chapter 2.64, Purchasing, is hereby repealed.

Section 2 Albany Municipal Code Chapter 2.66, Procurement, is hereby established.

Chapter 2.66
Procurement

2.66.010 Title.

This ordinance shall be known and may be cited as the Procurement Ordinance of the City of Albany.

2.66.020 Authority.

- (1) Except as provided herein, or by subsequent Ordinance or Resolution, the Model Rules, Division 46, 47, 48 and 49, adopted by the Attorney General under ORS 279A, 279B and 279C as they now exist, and as they may be amended in the future, and in the Albany Municipal Code, are hereby adopted as the City's Public Contracting Rules. Words and phrases used by these rules that are defined in ORS subchapters 279A, 279B and 279C and in the Model Rules have the same meaning as defined in ORS subchapters 279A, 279B and 279C and the Model Rules. In the event that rules adopted by the Local Contract Review Board do not address a particular situation, the Model Rules apply. The terms of this chapter shall supplement the Model Rules. In the event of a conflict between this chapter and the Model Rules, this chapter shall control.
- (2) Except as provided herein the Model Rules adopted by the Attorney General under ORS 279A, 279B and 279C (the "Model Rules") do not apply.
- (3) Sections 2.66.030 through 2.66.080 are adopted as the City's Public Contracting Rules.

2.66.030 Local Contract Review Board/Contracting Agency

The City Council of the City of Albany is designated and shall continue as the local Contract Review Board under the State of Oregon Public Contracting Code. The Contract Review Board may, from time to time, delegate its powers and responsibilities consistent with the Oregon Public Contracting Code, the Model Rules, or the Albany Municipal Code. Except as may be specified in Albany Municipal Code Sections 2.66.030 through 2.66.080 the City Manager is designated as the City's "Contracting Agency" as that term is defined in ORS 279 A.010 (1b). With the authorization of the City Manager, the Chief Financial Officer/Assistant City Manager or any other Department Director may be delegated the power and authority of the "Contracting Agency" for purposes of contracting powers and duties assigned to the City of Albany as a "Contracting Agency" under the State of Oregon Public Contracting Code or the Model Rules. Except as otherwise provided in these rules, the powers and duties of the local Contract Review Board, under the Public Contracting Code, shall be exercised and performed by the City Council of the City of Albany and all powers and duties given or assigned to Contracting Agencies by the Public Contracting Code shall be exercised or performed by the City Manager or his/her designee.

2.66.040 Contracts that Require City Council Approval

Notwithstanding any other provision of this ordinance, large procurements, as defined herein, require City Council approval prior to execution. Large procurements mean procurements of goods, services, or public improvements with a value in excess of \$150,000 and change orders or amendments to such contracts which in the aggregate exceed 10% of the original amount except for the personal services contract with the City Attorney, which shall be executed by the City Manager. The City Council will also approve the contract with the Municipal Judge.

2.66.050 Interpretation of Public Contracting Rules

In furtherance of the goals of promoting fair, efficient, and cost effective purchasing and contracting, the Contracting Agency may interpret all public contracting rules and regulations so as to provide the City of Albany with the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B, 279C.

2.66.060 Exempt Contracts

Except as may be modified by Albany Municipal Code 2.66.030 through 2.66.080 the following classes of public contracts are hereby exempted from competitive procurement and may be awarded in any manner which the City Manager deems appropriate including direct appointment or purchase:

- (1) Any contract exempted by the state of Oregon Public Contracting Code or Model Rules including the following classes of contracts specifically exempted by the State of Oregon Public Contracting Code or Model Rules: ORS 279A.025, "Application of Public Contracting Code; ORS 279A.180, "Purchases Through Federal Programs;" ORS 279A.190, OAR 137-046-0130, "Transfers of Fire Protection Equipment Between Fire Departments;" ORS 279A.200 et seq., "Cooperative Procurement;" and, ORS 279A.220; "Interstate Cooperative Procurements;"
- (2) Any Agreement or Condition of Approval entered into with or required by the City of Albany for carrying out conditions of approval of a land use decision of the City of Albany. The term "Land Use Decision" has the meaning provided by ORS 197.015.
- (3) In the event of an emergency involving an immediate hazard to the public health, safety, or welfare, the City Manager, Chief Finance Officer, or Public Works Director may secure necessary goods and/or services without a formal competitive selection process. For any emergency contract in excess of \$150,000 the local Contract Review Board at a regularly scheduled meeting, within 30 days of the procurement, will be furnished with a full report of the circumstances and costs of the materials and/or

services secured, and the method used for the selection of the particular contractor.

- (4) Contracts for the purchase of copyrighted materials where there is only one supplier available within a reasonable purchase area for such goods.
- (5) Contracts for the purchase of advertising, including that intended for the purpose of giving public or legal notice.
- (6) Contracts for the purchase of services, equipment or supplies for maintenance, repair or conversion of existing equipment if required for efficient utilization of such equipment.
- (7) Contracts for the purpose of investment of public funds or the borrowing of funds.
- (8) Purchases of goods or services pursuant to a requirements contract which was established by a formal competitive selection process. Purchases may also be made at prices established by a requirement contract or other agreement between another public body and a contractor if the requirements contract was established by a formal competitive selection process.
- (9) Contracts for purchase or sale of services, materials or products traditionally provided by the City.
- (10) Contracts for the purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state or local regulating authority.
- (11) Any other contract (including brand name specification contracts) where the public interest would be promoted by exempting the contract from the competitive bidding process, provided that the Contract Review Board adheres to the Public Contracting Code and the Model Rules in making the exemption.

2.66.070 Personal Services Contracts

Except for architect, engineers, land surveyors, and related service providers, whose appointment shall be governed by the Model Rules, the City Manager or his/her designee may determine the procedures to be employed in the selection of personal service contractors. These procedures may include any of the procedures authorized for the procurement of goods and services under the Model Code including direct appointment. The City Manager may promulgate policies and procedures, which shall provide guidance concerning selection procedures to be employed for certain contracts or classes of contracts. Any policies and procedures adopted by the City Manager as provided above are for internal City purposes only and do not limit or proscribe the authority of the City Manager or his/her designate regarding any particular contract.

2.66.080 Disposition of Surplus Property.

The Contracting Agency shall have the authority to dispose of surplus property by any means determined to be in the best interest of the City with due regard for the value the City will receive from the disposal of the surplus property including but not limited to:

- (1) Sale to the highest qualified buyer meeting the sale terms and the sale has been advertised at least once in a newspaper of general circulation in the Albany area not less than one week prior to the sale;
- (2) Traded in on the purchase of replacement equipment or supplies;
- (3) Sold at public auction advertised at least once in a newspaper of general circulation in the City of Albany not less than one week prior to the auction. The published notice shall specify the time, place and terms upon which the personal property shall be offered and a general description of the personal property to be sold;
- (4) Sold at a fixed price retail sale;
- (5) Donated to a unit of government or non-profit organization that will be expected to utilize it for the public benefit;

- (6) Recycle, destroy, or otherwise dispose of the property when it is determined that the value and the condition of the property does not warrant the cost of sale;
- (7) All personal property sold pursuant to this section shall be sold as-is without any warranty, either express or implied, of any kind;
- (8) Sales of surplus personal property may be conducted electronically.

Section 3: Severability: If any phrase, clause, or other part or parts of this ordinance is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses and other part or parts shall remain in full force and effect.

Section 4: Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health, and safety of the citizens of the City of Albany, an emergency is hereby declared to exist. This ordinance will be in full force and effect immediately upon its passage by the Council and approval by the Mayor.

Passed by Council: February 23, 2005


Approved by Mayor: February 23, 2005

Effective Date: February 23, 2005



Mayor

ATTEST:



City Clerk