

## **ORDINANCE NO. 18-04**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AMENDING CHAPTER 3.06 OF THE LAGUNA WOODS MUNICIPAL CODE RELATED TO PURCHASING AND PROCUREMENT BY THE CITY

**WHEREAS**, purchasing and procurement regulations are codified at Chapter 3.06 of the Laguna Woods Municipal Code; and

**WHEREAS**, to help ensure the efficient, effective, and economical conduct of City business, staff has recommended amendments to the existing purchasing and procurement regulations, as set forth in the attached Exhibit A to this Ordinance (the “Code Amendments”); and

**WHEREAS**, on January 17, 2018, the City Council held a duly noticed public hearing on the proposed Code Amendments at which it considered all of the information, evidence, and testimony presented, both written and oral.

**THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. The City Council hereby finds and determines that (i) each of the recitals to this Ordinance are true and correct, and are adopted herein as findings; (ii) the Code Amendments comply with all applicable requirements of state law; (iii) the Code Amendments will not adversely affect the health, safety, or welfare of the residents within the community; (iv) the Code Amendments are in the public interest of the City of Laguna Woods; and, (v) the Code Amendments are consistent with the Laguna Woods General Plan and its various elements.

SECTION 2. After reviewing the entire project record, the City Council hereby determines and certifies that it can be seen with certainty that this project has no possibility of having a significant effect on the environment. Therefore, the adoption of this Ordinance is not a project subject to the California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

SECTION 3. Chapter 3.06 of the Laguna Woods Municipal Code is hereby amended to read as set forth in Exhibit A, attached to this Ordinance and incorporated herein by this reference.

SECTION 4. This Ordinance shall take effect and be in full force and operation thirty (30) days after adoption.

SECTION 5. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity of effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs sentences, clauses, or phrases are declared unconstitutional, invalid, or ineffective.

SECTION 6. The Deputy City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

SECTION 7. All of the above-referenced documents and information have been and are on file with the City Clerk of the City.

PASSED, APPROVED AND ADOPTED this 21<sup>st</sup> day of February 2018.

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CAROL MOORE, Mayor

ATTEST:

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YOLIE TRIPPY, Deputy City Clerk

APPROVED AS TO FORM:

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DAVID B. COSGROVE, City Attorney

STATE OF CALIFORNIA       )  
COUNTY OF ORANGE       ) ss.  
CITY OF LAGUNA WOODS    )

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do  
HEREBY CERTIFY that the foregoing **Ordinance No. 18-04** was duly introduced  
and placed upon its first reading at a regular meeting of the City Council on the 17<sup>th</sup>  
day of January 2018, and that thereafter, said Ordinance was duly adopted and  
passed at a regular meeting of the City Council on the 21<sup>st</sup> day of February 2018 by  
the following vote to wit:

AYES:       COUNCILMEMBERS: Conners, Hatch, Horne, Moore, Rainey  
NOES:       COUNCILMEMBERS: -  
ABSENT:    COUNCILMEMBERS: -

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YOLIE TRIPPY, Deputy City Clerk

## **EXHIBIT A CODE AMENDMENTS**

***Chapter 3.06 (“Purchasing”) of Title 3 (“Revenue and Finance”) of the Laguna Woods Municipal Code is repealed in its entirety and replaced with the following:***

### **CHAPTER 3.06. - PURCHASING AND PROCUREMENT**

#### **Sec. 3.06.010. - Purpose and intent.**

The purpose and intent of this chapter is to establish efficient, economical, and accountable policies and procedures related to the purchase of goods and the procurement of services.

#### **Sec. 3.06.020. - Definitions.**

The following definitions shall govern the meaning of words and phrases used in this chapter:

- (a) *Department head* shall mean the City Manager or the person who is designated by the City Manager as being responsible for each particular City department.
- (b) *Director of Emergency Services* shall mean the person so designated in accordance with Chapter 7.04 of this Code.
- (c) *Environmentally preferable products* shall mean products that have a lesser impact on human health and the environment when compared with competing products. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, and/or disposal of the product.
- (d) *Maintenance services* shall mean services related to the maintenance of public property that are not subject to the bidding requirements set forth in Section 20162 of the California Public Contracts Code, as may be amended from time to time.
- (e) *Professional services* shall mean services provided by any specially trained and experienced person or firm in the areas of accounting,

administration, analysis, architecture, economics, engineering, finance, inspection, law, planning, public safety, radius addressing, surveying, transcription, or other matters involving specialized training or expertise, with the exception of maintenance services.

(f) *Public project* shall have the same meaning as set forth in Section 20161 of the California Public Contracts Code, as may be amended from time to time.

(g) *Purchasing officer* shall mean the person designated by the City Manager for the delegation of the duties and responsibilities imposed by this chapter on the purchasing officer.

(h) *Recycled products* shall mean products manufactured with waste material that has been recovered or diverted from the waste stream. Recycled material may be derived from post-consumer waste, industrial scrap, manufacturing waste, and/or other waste that otherwise would not have been utilized.

#### **Sec. 3.06.030. - Authority and responsibility.**

(a) The authority and responsibility for the purchase of goods and the procurement of services is vested in the City Manager.

(b) The City Manager may designate a person to serve as the purchasing officer and delegate to that person all or a portion of the duties and responsibilities imposed by this chapter on the purchasing officer.

(c) The City Manager may request City Council approval of any purchase of goods or procurement of services, regardless of value.

(d) The City Manager may establish additional purchasing and procurement policies and procedures that are consistent with the provisions of this chapter.

#### **Sec. 3.06.040. - Purchasing limitations.**

Purchases of goods may be made by the persons designated in this section, subject to compliance with the provisions of this chapter.

(1) For purchases of less than \$1,000.00, the applicable department head must approve the purchase, subject to purchasing policies and procedures established by the City Manager. It is not required that bids be obtained for such purchases.

(2) For purchases that are equal to or exceed \$1,000.00 but are less than \$2,500.00, the City Manager or purchasing officer must approve and execute the purchase order or contract for the purchase. It is not required that bids be obtained for such purchases.

(3) For purchases that are equal to or exceed \$2,500.00 but are less than \$25,000.00, the City Manager or purchasing officer must approve and execute the purchase order or contract for the purchase. Prior to making a purchase, three bids must be obtained.

(4) For purchases that are equal to or exceed \$25,000.00, the City Council must approve the purchase order or contract for the purchase. Prior to City Council approval, three bids must be obtained. The City Council may authorize that such purchase orders or contracts be executed by the Mayor, City Manager, purchasing officer, or other designee.

#### **Sec. 3.06.050. - Purchasing considerations.**

(a) *Competitive bidding consideration.* Purchases for which bidding is required shall be made from the lowest cost responsible bidder, consistent with quality (including, but not limited to, performance, durability, and reparability), quantity, delivery, and payment requirements. The lowest cost responsible bidder shall be determined by factors including, but not limited to, cost, ability, qualifications, and willingness to comply with the City's purchasing terms.

(b) *Environmental purchasing consideration.* City staff shall consider the purchase of environmentally preferable products and recycled products, whenever practicable and cost effective.

(c) *Local purchasing consideration.* City staff shall consider purchases from vendors located in the city, whenever practicable and cost effective. For purposes of bid comparison, bids submitted by local vendors shall be reduced by one percent for the portion of the purchase upon which the City

would pay sales tax. The one-percent reduction is afforded to local vendors to recognize the sales tax reimbursement to the City on such purchases.

**Sec. 3.06.060. - Public projects.**

(a) Awards for the performance of public projects shall be made in a manner that complies with all applicable requirements of the California Public Contracts Code.

(b) Plans and specifications for public projects shall allow for the use or substitution of environmentally preferable products and recycled products, whenever practicable and cost effective.

**Sec. 3.06.070. - Maintenance and professional services.**

(a) Awards for the performance of maintenance services and professional services shall be made on the basis of the demonstrated competence of the vendor, the vendor's professional qualifications necessary for the satisfactory performance of the services required, the fairness and reasonableness of the cost of the services to the City, the willingness of the vendor to comply with the City's procurement terms, and other factors determined to be relevant, rather than solely on the basis of cost. The provisions set forth in sections 3.06.040 and 3.06.050 of this Code are not applicable to the procurement of services.

(b) Subject to compliance with the provisions of this chapter, the City Manager or purchasing officer may enter into and execute purchase orders or contracts for maintenance services and professional services when the cost of such services is less than \$50,000.00 over the term of the agreement. City Council approval is required for all purchase orders or contracts when the cost of the services is \$50,000.00 or more over the term of the agreement. The City Council may authorize that such purchase orders and contracts be executed by the Mayor, City Manager, purchasing officer, or other designee.

(c) Notwithstanding the above provisions of this section, all purchase orders or contracts for maintenance services and professional services for which the estimated cost of services is \$25,000.00 or more over the term of the agreement shall be competitively bid by obtaining at least three bids for providing the required services, evaluating the bids pursuant to the criteria set forth in subsection (a), and making the award based on the best bid.

(d) Notwithstanding the above provisions of this section, all single- or multi-year contracts for the performance of the annual independent audit of the City's financial statements shall be competitively bid by obtaining at least three bids for providing the required services, evaluating the bids pursuant to the criteria set forth in subsection (a), and making the award based on the best bid. Further, the award of all such annual independent audit contracts, regardless of cost, shall be approved by the City Council. The City Council may authorize that such annual independent audit contracts be executed by the Mayor, City Manager, purchasing officer, or other designee.

(e) Bid solicitations for maintenance services and professional services shall allow for the use or substitution of environmentally preferable products and recycled products, whenever practicable and cost effective.

**Sec. 3.06.080. - Cooperative agreements.**

The City Council, City Manager, or purchasing officer may approve the purchase of goods or the procurement of services for which the City would normally follow its own bid procedures from a vendor who has been awarded a contract for the purchase of the same goods or the procurement of the same services by another public agency, if said public agency utilized bid procedures substantially similar to those normally utilized by the City. The amount of said purchase or procurement shall be based upon the cost bid for said public agency.

**Sec. 3.06.090. - Bidding rejections and exemptions.**

(a) Except when precluded by applicable law, the City Council, City Manager, or purchasing officer may reject any bid received by the City.

(b) Except when precluded by applicable law, the provisions of this chapter may be waived at the discretion of the City Council.

(c) Except when precluded by applicable law, and provided the purchase of goods is less than \$25,000.00, or the procurement of services is less than \$50,000.00 over the term of the agreement, the provisions set forth in sections 3.06.040, 3.06.050, and 3.06.070(a)(c)(e) of this Code may be waived, at the discretion of the City Manager, when any of the following is applicable:



- (1) After a reasonable attempt has been made to obtain the required number of bids, it has been determined that no additional bidders can be located or no additional bidders can be located in a timely manner. This includes, but is not limited to, instances in which competitive bidding yields an insufficient number of satisfactory bids.
  - (2) Due to time sensitivities or other extraordinary conditions, it has been determined that normal bidding requirements would not be in the City's best interest.
  - (3) The purchase or procurement is proprietary or can only be obtained from one vendor. This includes, but is not limited to, purchases where a specific brand name, make, or model is necessary to match existing equipment or facilitate effective maintenance and support.
  - (4) The purchase or procurement is made through a cooperative agreement in accordance with Section 3.06.080 of this Code.
  - (5) The purchase or procurement is or is related to an inter-governmental contract or partnership.
- (d) The following purchases of goods and procurements of services, regardless of value, are exempt from the provisions set forth in sections 3.06.040, 3.06.050, and 3.06.070 of this Code and may be approved by the City Manager or purchasing officer provided that sufficient funds are available in adopted budgets:
- (1) The purchase of professional memberships and trainings.
  - (2) The purchase of or subscription to newspapers and periodicals.
  - (3) The purchase of or subscription to governmental and governmental-related resources and reference materials.
  - (4) The purchase of security and safety alarms and monitors, and the procurement of related services.
  - (5) The procurement of data and website hosting and security services.

- (6) The procurement of appraisal services.
  - (7) The procurement of election services.
  - (8) The procurement of entertainment services.
  - (9) The procurement of graphic design services.
  - (10) The procurement of legal services, professional and other expert witness services, and special research and investigative services, if the purpose of such services is to provide for assistance or testimony related to an existing or potential administrative or judicial proceeding in which the City is or may become a party.
  - (11) The procurement of utility and television services.
  - (12) The publication of advertisements and legal notices.
  - (13) The payment of fees and charges required by governmental and quasi-governmental agencies.
  - (14) Purchases and procurements that are necessary for the immediate protection of public health, safety, or welfare or public property, or to prevent the immediate interruption of City services related to the same.
- (e) The following purchases and procurements are exempt from the provisions of this chapter, with the exception of sections 3.06.060 and 3.06.110 of this Code:
- (1) Purchases and procurements of and related to employee compensation and benefit programs approved by the City Council.
  - (2) Purchases and procurements of and related to insurance and workers' compensation coverage approved by the City Council.
  - (3) Purchases and procurements of and related to inter-governmental contracts and partnerships approved by the City

Council. This includes, but is not limited to, contracts for animal control and shelter services and law enforcement services.

- (4) Purchases and procurements of and related to franchise agreements awarded by the City Council.
- (5) Purchases, leases, and rentals of real property approved by the City Council.
- (6) Purchases of investment instruments and procurements of banking and investment-related services that are governed by the City's investment policy or other City Council direction.

**Sec. 3.06.100. - Suspension during emergencies.**

Except when prohibited by applicable law, for the effective duration of a proclamation of a local emergency, state of emergency, or state of war emergency, as defined in California Government Code Section 8558, which affects the City, this chapter shall be automatically suspended for the purpose of allowing the Director of Emergency Services to obtain vital services, supplies, equipment, and such other properties found lacking and needed for the protection of life and property, and to bind the City for the fair value thereof.

**Sec. 3.06.110. - Prohibited activity.**

- (a) The City's elected and appointed officers, officials, and employees are prohibited from engaging in any unlawful activity related to purchasing and procurement, including, but not limited to, receipt of rebates, kickbacks, or other unlawful consideration.
- (b) The City's elected and appointed officers, officials, and employees are prohibited from participating in a purchasing or procurement process when those persons have a financial interest therein as proscribed in California Government Code sections 1090 et seq. or 87100 et seq.