

ORDINANCE NO. 864**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, AMENDING CHAPTER 2.36 OF THE DUARTE MUNICIPAL CODE, RELATING TO PURCHASE OF SUPPLIES, EQUIPMENT, AND SERVICES**

WHEREAS the City of Duarte has long had a provision within its Municipal Code under Title 2, Administration and Personnel, relating to various policies regarding the purchasing and acquisition of supplies, equipment, and services; and

WHEREAS the City believes it is beneficial and prudent to review periodically the policies, procedures, regulations, and standards regarding the purchase of supplies, equipment and services; and

WHEREAS City Staff has reviewed its experience in applying previously existing standards relating to purchase of supplies, equipment, and services, and has identified areas in which various revisions and updates are appropriate; and

WHEREAS the City of Duarte remains committed to pursuing policies, practices and procedures in the purchase of supplies, equipment, and services that maximize clarity and efficiency, provide fairness for vendors and providers of professional and other services, comply with applicable legal requirements, and allow for thorough and responsible participation by competing vendors and providers of services where appropriate, in order to assure the greatest degree of responsible stewardship of public funds utilized in securing supplies, equipment, and services;

NOW THEREFORE, The City Council of the City of Duarte does ordain as follows:

SECTION 1: Existing Chapter 2.36 of the Duarte Municipal Code is hereby repealed, in its entirety.

SECTION 2: A new Chapter 2.36 is hereby added to the Duarte Municipal Code, replacing former Chapter 2.36, the new Chapter to read as follows:

Chapter 2.36**PURCHASES OF SUPPLIES, EQUIPMENT, AND SERVICES****2.36.010 Adoption**

In order to establish efficient procedures for the purchase of supplies, services and equipment at the lowest possible cost commensurate with the quality needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function and to assure the quality of purchases, a purchasing system is adopted.

2.36.020 Purchasing Officer – Duties

There is created the position of Purchasing Officer. The Purchasing Officer shall be appointed by the City Manager, and shall have responsibility for the supervision of the City's purchasing functions. The duties of the Purchasing Officer may be combined with those of any other city office or position. Subject to the supervision of the City Manager, the Purchasing Officer shall have the authority to:

(a) Prepare, distribute and maintain rules, regulations and procedures to implement the provisions of this chapter, in order to provide for the effective administration of the City's purchasing system and the sale of surplus property;

(b) Purchase or contract the highest quality of supplies, services and equipment needed by the City, in accordance with the purchasing rules, regulations and procedures provided for in

this chapter, and such other rules and regulations as the Purchasing Officer shall prescribe, at the least expense to the City of Duarte;

(c) Discourage uniform bidding and to endeavor to obtain as full and open competition as possible on all purchases and sales;

(d) Keep informed of current developments in the field of purchasing, prices, market conditions and new products;

(e) Provide for the inspection of all supplies and equipment purchased to insure conformance with specification and adherence to standards of quality;

(f) Direct the transfer of surplus or unused supplies and equipment among departments as needed;

(g) Sell or otherwise dispose of all supplies, equipment and other property of the City that is determined to be surplus or has become unsuitable for City use;

(h) Maintain financial and other records as necessary for the efficient operation of the purchasing system;

(i) Prescribe and maintain such forms as are necessary for the administration of the purchasing system;

(j) Maintain bidder's list and vendor's files as needed for the efficient operation of the purchasing system, and:

(k) Adopt administrative regulations, from time to time, governing the purchase of supplies and equipment for the City that addresses the following areas.

2.36.030 Exemption from Centralized Purchasing

The Purchasing Officer may grant authority to any department head to purchase or contract for specific supplies, services or equipment, independent of the purchasing division; but, shall require that such purchases be made in conformity with purchasing procedures established by this chapter. The Purchasing Officer may further require periodic reports from such departments regarding the purchases made under such authorization.

2.36.040 Purchasing Requirements

The following procedures will be used for the purchase of supplies, services and equipment, except as otherwise provided for in this chapter:

(a) Formal bidding procedures will be used for the purchase of supplies, services or equipment with an estimated value greater than twenty-five thousand (\$25,000.00) dollars;

(b) Formal bids or written quotations will be obtained for the purchase of supplies, services or equipment with an estimated value of twenty-five thousand (\$25,000.00) dollars or less, but greater than fifteen thousand dollars;

(c) Formal bids, written quotations or verbal quotations will be obtained for the purchase of supplies, services or equipment with an estimated value of fifteen thousand (\$15,000.00) dollars or less, but greater than three thousand dollars;

(d) The Purchasing Officer may dispense with the requirement of this section for the purchase of supplies, services or equipment with an estimated value of three thousand (\$3,000.00) dollars or less;

(e) No purchase of supplies, services or equipment shall be subdivided for the purpose of avoiding the requirements of this section;

(f) Whenever possible, all open market purchases shall be based on at least three competitive bids or quotes;

(g) Whenever possible, goods shall be purchased that contain, or consist entirely of recycled materials, and;

(h) Whenever practicable, goods shall be purchased from local vendors.

2.36.050 Exemptions from Purchasing Requirements

The following conditions and situations are exempt from the purchasing requirements of Section 2.36.040.

(a) The provisions of the California Public Contracts Code shall govern contracts for public works projects;

(b) Where state or federal laws require a different procedure;

(c) Where the City Council or Purchasing Officer determines that public interests will be best served by using the request for proposal process as set forth in Section 2.36.070;

(d) For the purchase of professional services as set forth in Section 2.36.080;

(e) When an emergency exists that requires purchases to be made from the most immediately available source of supply. The Purchasing Officer or designee may make emergency purchases, not to exceed twenty-five thousand (\$25,000.00) dollars, free of the provisions of this chapter upon a showing by any department that the purchase required is for the immediate protection of life, health or property and there is a present, immediate and existing emergency which could not reasonably be foreseen. The City Council may authorize emergency purchases, exceeding twenty-five thousand (\$25,000.00) dollars, free of the provision of this chapter upon a showing that the purchase required is for the immediate protection of life, health or property and there is a present, immediate and existing emergency which could not reasonably be foreseen;

(f) When there is only one vendor;

(g) For the lease or purchase of land or any interest therein;

(h) For hiring or contracting for personnel, whether as temporary, seasonal or permanent employees, agents or independent contractors;

(i) For the purchase of utilities, including but not limited to telephone service, gas, electricity or water;

(j) For the purchase of insurance;

(k) For franchises, rights, privileges, licenses and permits granted by the City;

(l) Where it is advantageous to combine purchases with those of another governmental entity and the governmental entity employs purchasing procedures adequate to insure effective competition among responsible vendors;

(m) Where the City Council finds that the purchasing requirements are unreasonably difficult or expensive to use, or are not suitable for the item(s) being procured, and;

(n) Contracting for conduit professional services are exempt from this chapter, when an applicant deposits one hundred percent of the costs of such service and agrees to replenish a deposit account for any additional costs incurred under the professional service agreement. The professional services to be contracted shall be contractually obligated to the City for purposes of oversight and supervision, not the applicant, and no public funds will be a source of payment to the service provider under that specific contract.

2.36.060 Formal Bidding Procedures

Formal bidding shall be conducted according to the following procedures:

(a) Notices inviting bids shall be issued at least ten (10) days prior to the bid opening. At minimum, the notice shall include a general description of the items to be purchased, state where bid blanks and specification may be obtained, and specify the time and place for bid opening. Notices shall be issued in accordance with applicable state and federal statutes. The means of issuing notices shall be determined by the Purchasing Officer, and may include, but not be limited to, the following:

1) Published Notice - Notices inviting bids may be published in a newspaper of general circulation within the city;

2) Bidders List – The Purchasing Officer may solicit bids from all responsible prospective suppliers whose name are on a City bidder's list or who have requested their names be added thereto;

3) Bulletin Board - The Purchasing Officer may also advertise pending purchases by posting a notice on a public bulletin board at City Hall, and;

4) City Web Site - The Purchasing Officer may advertise pending purchases by publishing a notice on the City website.

(b) Sealed bids shall be submitted to the City Clerk's office and shall be identified as bids on the envelope. The bids shall be opened in public at the time and place stated in the notice. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty calendar days after the opening;

(c) When deemed necessary by the Purchasing Officer, a bidder's security may be prescribed in the bid specifications and in the public notice. Bidders shall be entitled to the return of bid security, except that a successful bidder shall forfeit its bid security upon refusal or failure to execute a contract within ten (10) days after the notice of award has been mailed, unless the City is solely responsible for the delay;

(d) The City Council may reject any and all bids, may waive any irregularities in any bid, and may re-advertise for bids. When formal bidding procedures are used for purchases with an estimated value of less than twenty-five thousand (\$25,000.00) dollars, this authority shall be vested in the Purchasing Officer;

(e) The department seeking the materials, supplies or equipment will make a recommendation to the City Council regarding the award of a contract based upon the department and Purchasing Officer evaluation;

(f) If the City does not receive any bids, the City Council may:

1) Abandon the purchase;

2) Authorize rebidding the purchase on an informal basis, or,

3) Authorize purchasing the materials, supplies or equipment on a direct negotiated contract.

(g) If a successful bidder refuses to comply with, or fails to execute a contract issued by the City within ten (10) days after being awarded the contract, the City may cancel the award and retain any bid security. Compliance with contract requirements includes, without limitation, submission of insurance documentation. Should this occur, the City Council may award the contract to the next lowest responsible bidder.

2.36.070 Request for Proposals

The City Council and Purchasing Officer shall have the option of procuring supplies, services and equipment through a request for proposal process. This process shall follow the procedures as set forth in Section 2.36.060 for formal bidding, except as follows:

(a) There shall be no public opening of proposals as required for formal bids. A tabulation of all proposals received shall be prepared, but will be made available for public inspection only after a contract or purchase order has been awarded.

(b) Negotiations may be conducted with vendors that have submitted proposals that are determined to have a reasonable potential of being selected for award. Negotiations may be used for the purpose of clarification to assure a full understanding of, and conformance with, the solicitation requirements. Negotiations may also be used for the purpose of encouraging revisions to proposals so that the City obtains each vendor's best and final offer. Negotiations shall be conducted in a manner that offers vendors having a reasonable potential of being selected an equal opportunity for discussion and revision of their proposals.

(c) No proposal shall be handled so as to permit disclosure of the identity of any vendor or the contents of any proposal during the process of negotiation.

2.36.080 Purchase of Professional Services

The purchase of professional services shall be exempt from the purchasing requirement as set forth in Section 2.36.040. The selection of a firm for professional services will be made by qualification-based selection. Professional services shall include, but not be limited to, persons or firms providing special services or advice in financial, economic, accounting, engineering, legal, health or administrative matters.

2.36.090 Award of Contracts and Purchase Orders

The purchase of supplies, services or equipment with a value greater than three thousand (\$3,000.00) dollars shall be made only by written contract or written purchase order. See Section 2.36.120 for requisition and purchase order process. The following procedures shall apply:

(a) The award of contracts and purchase orders with a value of twenty-five thousand (\$25,000.00) dollars or more shall be made by the City Council. The Mayor shall execute such contracts and purchase orders unless otherwise provided for by the City Council. The City Manager shall be responsible for the award and execution of contracts and purchase orders whose value is less than twenty five thousand (\$25,000.00) dollars.

(b) In all cases, purchases shall be awarded on the basis of the bid, proposal or quote found to be the most advantageous to the City. In determining whether a bid, proposal or quote is most advantageous to the City, may consider, but not be limited to, the following issues

- 1) Cost;
- 2) The quality, availability and adaptability of the supplies, services or equipment to the particular use required;
- 3) The ability, capacity and skill of the vendor in performing the service, or providing the product required;
- 4) Whether the vendor can perform the service, or provide the product promptly, or within the time specified, without delay or interference;
- 5) The character, integrity, reputation, judgment, experience and efficiency of the vendor;
- 6) The quality of the vendor's performance on previous contracts or purchase orders;

7) The sufficiency of financial resources and ability of the vendor to meet the requirements of the contract or purchase order;

8) The ability of the vendor to provide future maintenance and service for the product or service offered, and;

9) The number and scope of conditions attached to the vendors bid, quote or proposal.

(c) The City Council or City Manager may, on refusal or failure of a selected vendor to execute a contract or fulfill a purchase order, make an award to the vendor with the bid, quote or request for proposal determined to be the next most advantageous to the City;

(d) If two or more bids, proposals or quotes are received for the same total amount or unit price, quality and service being equal, and if the public interest would not be promoted by repeating the procurement process, the City Council or the City Manager may accept the bid, proposal or quote it chooses, or accept one based on lowest cost after negotiations with the tied vendors. In the case of a tie, preference shall be given to Duarte-based vendors, and;

(e) The City Council and City Manager shall have the authority to require a performance deposit or bond to insure satisfactory completion of a contract. The amount of such deposit or bond shall be based on what is reasonably necessary to protect the interests of the City. Vendors shall be liable for any damages caused by their failure to faithfully perform the terms of the contract.

2.36.100 Extension of Service Contracts

The City Council or City Manager may authorize extension of existing contracts for services, without following the formal bid, quote or request for proposal requirements of this chapter, if such contracts were originally entered into in accordance with such requirements and a determination is made that the contract extension is in the best interests of the public.

2.36.110 Local Vendor

The City has established a local vendor preference program to be applied to the procurement of supplies and equipment.

(a) Local vendor qualifications:

1) It has fixed facilities with employees located within the City limits.

2) It has a business street address (PO Box or residential address shall not suffice to establish local presence in the City limits).

3) It has a current business license.

(b) Bids or quotes for goods or services are subject to the application of a local vendor preference. The preference to a local vendor shall be one percent.

(c) As detailed in Section 2.36.090, price alone shall not be the sole determining factor in vendor selection.

2.36.120 Sole Source Procurement

A sole source procurement is any transaction in which the services and/or supplies can be obtained only from one source. Justification may be based, but is not limited to the following: The contractor or supplier is the sole provider of the required service or supply, because of the manufacturer's agreement with the contractor or supplier as sole representative in a certain geographical area, limited by a single patented article or process, including, but not limited to: upgrades, alterations, additions, deletions to an existing proprietary article or process, or in which a warranty, guarantee or other assurances could be voided.

The department manager shall prepare and sign a memorandum justifying a sole source procurement, describing in general terms, the reasons for making the sole source purchase and shall submit the memorandum to the Purchasing Officer for approval prior to execution of the agreement.

2.36.130 Requisition Process

When required for creation of a Purchase Order, or desired by the department or vendor, the initiating department will be responsible for the issuance of a purchasing requisition.

(a) Each department shall utilize the form of requisition prescribed by the Purchasing Officer. No purchasing requisitions shall be initiated unless the department has a sufficient unencumbered balance in excess of all unpaid obligations in the department budget where the purchase is to be charged;

(b) A clear description of the item(s) and/or service(s) required. Include required delivery dates for products and effective dates for contracts;

(c) Delivery instructions identifying the exact location for delivery;

(d) Precise information regarding the delivery method, charges and applicable rates;

(e) Account number to be charged and project number, if desired;

(f) Attach appropriate documentations (quotations, bids, etc.) to support the values placed on the requisition. Only the data from the selected vendor should be attached to the requisition. The department should retain all appropriate documentation to support the selected vendor. This information may be required in future audits;

(g) Initiating department's Director must approve the electronic requisition utilizing the electronic approval process;

(h) Initiating department's Director or designee will notify Administrative Services Division of the approved requisition and the desired form of the Purchase Order document delivery (paper or electronic);

(i) Administrative Services Division will convert the requisition into a Purchase Order and return the appropriate version to the initiating department for transmission to the vendor. Creation of the Purchase Order encumbers the funds on the appropriate account;

(j) Initiating department is responsible for distribution of the Purchase Order to the vendor, and;

(k) When the products/services have been delivered and accepted, an approved invoice should be forwarded to Administrative Services Division, including a reference to the Purchase Order number, for further processing and payment.

(l) Petty cash funds may be used for purchase of items costing fifty (\$50.00) or less.

2.36.140 – Unencumbered Funds

Except in cases of emergency, no contract or purchase order for supplies, services or equipment shall be issued unless an unencumbered appropriation exists within a department budget for the City's general fund or the total budget for all other City funds.

2.36.150 - Inspection and Testing

The Purchasing Officer shall inspect supplies and equipment delivered, and services performed, to determine their conformance with the specifications set forth in the purchase order or contract. The Purchasing Officer shall have authority to require chemical, physical and other

tests of supplies, services or equipment offered or delivered by vendors to determine their quality and conformance to specifications.

2.36.160 – Records

The Purchasing Officer shall maintain records of all transactions based on the City of Duarte, Finance Division, Records Retention Schedule. These records shall be open for public inspection, except for vendor proprietary data, including, but not limited to, confidential financial information. Notwithstanding the foregoing exception, the provision of records for public inspections shall conform to Section 6250 et seq. of the California Government Code.

2.36.170 – Surplus Supplies and Equipment

All operating departments shall submit to the Purchasing Officer, at such time and in such form as the Purchasing Officer shall prescribe, reports identifying supplies and equipment that are not in use, have become obsolete, or are worn out. The Purchasing Officer shall have authority to exchange surplus supplies and equipment for new supplies and equipment. The Purchasing Officer shall also be authorized to dispose of surplus supplies and equipment by auction, bid, or sale. In the event that the Purchasing Officer determines that supplies or equipment have not salvage value, the Purchasing Officer, with City Manager Approval, may dispose of them as appropriate.

2.36.180 – Harmless Error or Omission

No transaction covered by this chapter shall be invalidated by reason of oversight, mistake or excusable neglect in conforming to its requirements, unless it is determined by the City Council in its discretion that the condition was prejudicial to the complaining party and that, as a direct result of the condition, the complaining party suffered substantial injury. There shall be no presumption that an oversight, mistake or excusable neglect is prejudicial, or that an injury has been done.

SECTION 3: Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared unconstitutional.

SECTION 4: Effective Date. This Ordinance shall become effective thirty (30) days after its passage and adoption. Within fifteen (15) days of the date of adoption of this Ordinance, the City Clerk shall post a copy of said Ordinance in places designated for such posting and shall certify to the same. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be published as required by law.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Duarte this 14th day of June, 2016.

/s/ Samuel Kang
Mayor Samuel Kang

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF DUARTE)

I, Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attests to the above signature and certify that Ordinance No. 864 was adopted by the City Council of said City of Duarte at a regular meeting of said Council held on the 14th day of June, 2016, by the following Roll Call vote:

AYES: Councilmembers: Fasana, Finlay, Paras-Caracci, Reilly, Kang
NOES: Councilmembers: None
ABSENT: Councilmembers: None

/s/ Marla Akana
City Clerk Marla Akana
City of Duarte, California