

**ORDINANCE NO. \_\_\_\_\_**

**Ordinance Of The City Council Of The City Of Emeryville Amending Chapter 6 (“Purchasing System”) Of Title 3 (“Finance”) And Chapter 9 (“Informal Bidding Procedures”) Of Title 7 (“Public Works”) Of The Emeryville Municipal Code To Make Updates For Consistency With State Law (CEQA Determination: Not A Project And Exempt Pursuant To CEQA Guidelines Sections 15378(b)(5) And 15061(b)(3))**

**WHEREAS**, in 1985, the City of Emeryville adopted a purchasing system, codified in Chapter 6 (“Purchasing System”) of Title 3 (“Finance”) of the Emeryville Municipal Code; and

**WHEREAS**, in 2003, the City of Emeryville elected to become subject to the uniform public construction cost accounting procedures set forth in the Uniform Public Construction Cost Accounting Act (Public Contract Code § 22000 et seq.) (the “Act”) and enacted an informal bidding ordinance, as required by the Act, codified in Chapter 9 (“Informal Bidding Procedures”) of Title 7 (“Public Works”) of the Emeryville Municipal Code; and

**WHEREAS**, minor updates to Chapter 6 (“Purchasing System”) of Title 3 (“Finance”) of the Emeryville Municipal Code are necessary for consistency with the Act, as set forth in this Ordinance; and

**WHEREAS**, minor updates to Chapter 9 (“Informal Bidding Procedures”) of Title 7 (“Public Works”) of the Emeryville Municipal Code are necessary for consistency with the informal bidding procedures under the Act, as set forth in this Ordinance; and

**WHEREAS**, on June 3, 2025, the Emeryville City Council held a duly and properly noticed public hearing on the proposed Ordinance; and

**WHEREAS**, the City Council has reviewed and considered the staff report and attachments thereto, all public comments, and the proposed amendments to Chapter 6 of Title 3 and Chapter 9 of Title 7 of the Emeryville Municipal Code, as set forth below; and

**NOW THEREFORE THE CITY COUNCIL OF THE CITY OF EMERYVILLE HEREBY ORDAINS AS FOLLOWS:**

**SECTION ONE. PURPOSE AND INTENT.**

The purpose and intent of this Ordinance is to update Chapter 6 of Title 3 and Chapter 9 of Title 7 of the Emeryville Municipal Code for consistency with state law.

**SECTION TWO. AMENDING CHAPTER 6 OF TITLE 3 OF EMERYVILLE MUNICIPAL CODE.**

Chapter 6 of Title 3 of the Emeryville Municipal Code is hereby amended to read as follows, with additions in underline text and deletions in ~~strikeout~~ text:

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### **3-6.01 Adoption of Purchasing System.**

In order to establish efficient procedures for the purchase of supplies, materials, and equipment, to secure for the City supplies, materials, and equipment at the lowest possible cost commensurate with 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.

### **3-6.02 Exemptions.**

The policies and procedures established by this chapter shall govern the purchase of supplies, materials and equipment and are adopted pursuant to Government Code Section 54201, et seq. As used in this chapter, the term “purchase” includes leases and lease purchases. For the purpose of determining the application of the monetary limits of this chapter to leases and lease purchases, the expenditure under a lease or lease purchase shall be the amount of the annual rental. Such policies and procedures shall not apply to the following:

(a) Contracts for services and advice such as Code codification, financial, economic, accounting, legal, engineering, personnel, labor negotiation, investigation and administrative services;

(b) ~~Contracts for public projects, as defined under Public Contract Code Section 22002. where the expenditure exceeds five thousand dollars (\$5,000.00). The term “public project” shall have the same meaning as that term is defined in Government Code Section 37901 as the same now reads or is hereafter amended. Public projects shall be advertised, let and contracted for~~ procured in accordance with Public Contract Code Section 22000 ~~Government Code Section 37901~~, et seq.;

(c) Purchase of supplies, materials, and equipment shall be exempt from the procedures of this chapter in the following cases:

(1) The purchase is made through the Department of General Services of the State,

(2) The purchase is combined with that of another public agency of the State, provided such public agency followed the competitive bidding practices which comply with the legal requirements applicable to such agency,

(3) The supplies, materials, and equipment are only available from a single source,

(4) In the event of an emergency situation, such as an extraordinary fire, flood, storm, epidemic, or other disaster, or if it is necessary to do emergency work to prepare for national or local defense, the purchasing officer may expend any sum required in the emergency without complying with the procedures called for in this chapter.

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### **3-6.03 Centralized Purchasing Department.**

There is created a Centralized Purchasing Department in which is vested authority for the purchase of supplies, materials and equipment.

### **3-6.04 Purchasing Officer.**

The Purchasing Officer shall be the head, and have general supervision of the Purchasing Department. The duties of the Purchasing Officer may be combined with those of any other office or position. Unless and until changed by an amendment, the City Manager shall serve as Purchasing Officer. The Purchasing Officer shall have authority to:

- (a) Purchase or contract for supplies, materials, and equipment required by all City departments. All such purchases and contracts shall be made in accordance with purchasing procedures prescribed by this chapter, such administrative regulations as the Purchasing Officer shall adopt for the internal management and operation of the Purchasing Department, and such other rules and regulations as shall be prescribed by the City Council;
- (b) Negotiate and execute contracts for the purchase of supplies, materials and equipment;
- (c) Act to procure for the City the needed quality in supplies, materials, and equipment at least expense to the City;
- (d) Discourage collusive bidding and endeavor to obtain as full and open competition as possible on all purchases;
- (e) Establish rules governing the purchase of supplies, materials, and equipment for the City, and revise and amend such rules;
- (f) Keep informed of current developments in the field of purchasing, prices, market conditions and new products;
- (g) Prescribe and maintain such forms as reasonably necessary to the operations of this chapter and other rules and regulations, including the use of consecutively numbered purchase orders;
- (h) Supervise the inspection of all supplies, materials, and equipment purchased to insure conformance with specifications;
- (i) Recommend the transfer of surplus or unused supplies and equipment between departments as needed, and the sale of all supplies and equipment which cannot be used by any agency or which have become unsuitable for City use.

### **3-6.05 Exemptions from Centralized Purchasing.**

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The Purchasing Officer may authorize any City department to purchase or contract for specified supplies, materials and equipment independently of the Purchasing Department, provided that such purchases or contracts be made in conformity with the procedures established by this chapter.

### **3-6.06 Purchase Procedure.**

Where an expenditure for the purchase of supplies, materials, or equipment exceeds ~~two~~ five thousand dollars (\$~~25,000.00~~), ~~or where the expenditure for a public project is greater than two thousand dollars (\$2,000.00) but less than five thousand dollars (\$5,000.00)~~, the Purchasing Officer shall contract for or purchase the same upon the open market in accordance with the procedures established in this section.

(a) Invitation for Bids. The Purchasing Officer shall solicit bids by written request, by telephone or by public notice on a public bulletin board.

(b) Minimum Number of Bids. Open market purchases shall, whenever practicable, be based on at least three (3) bids.

(c) Award. Contracts shall be awarded to the lowest responsible bidder. If two (2) or more bids received are for the same total amount or unit price, the Purchasing Officer may negotiate a price with either or both of the low bidders or award the contract by lot.

(d) Performance Bonds. The Purchasing Officer shall have the authority to require a performance bond before entering a contract where reasonably necessary to protect the best interests of the City. If the Purchasing Officer requires a performance bond, the form and amount of the bond shall be included in the invitation for bids.

(e) Trade-in. In the event any purchase of equipment involves a credit for City-owned equipment being traded, for the purpose of establishing the monetary limit of such purchase, the amount shall be the full amount of the purchase price.

### **3-6.07 Inspection and Testing of Supplies, Materials, and Equipment Purchases.**

The Purchasing Officer or designee shall inspect supplies, materials and equipment delivered, and contractual services performed, to determine their conformance with the specifications set forth in the order or contract. The Purchasing Officer shall have the authority to require chemical and physical tests of samples submitted with bids and sample deliveries which are necessary to determine their quality and conformance with specifications.

### **3-6.08 Encumbrance of Funds.**

Except in cases of emergency, or by order of the City Council, the Purchasing Officer shall not issue any purchase order for supplies, materials and equipment unless there exists an unencumbered appropriation in the department budget against which said purchase is to be charged.

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### **3-6.09 Unlawful Purchases or Contracts.**

If any officer or employee purchases or contracts for any supplies, materials, equipment or contractual services contrary to the provisions of this chapter, such purchase order or contract shall be void and of no effect. The officer or employee making such purchase or contract shall be personally liable for the amount of such purchase or contract, and if already paid for out of City funds, the amount thereof may be recovered in the name of the City in an appropriate action therefor.

## **SECTION THREE. AMENDING CHAPTER 9 OF TITLE 7 OF EMERYVILLE MUNICIPAL CODE.**

Chapter 9 of Title 7 of the Emeryville Municipal Code is hereby amended to read as follows, with additions in underline text and deletions in ~~strikeout~~ text:

### **7-9.01 Informal Bid Procedures.**

Public projects, as defined by Section ~~20164~~22002 of the California Public Contract Code, and in accordance with the limits listed in Section 22032 of the Public Contract Code, may be let to contract by the informal procedures set forth in Section 22032, et seq. of the Public Contract Code.

### **7-9.02 Contractors' List.**

The Public Works Director shall develop and maintain a list of contractors in accordance with the provisions of Public Contract Code Section 22034 and the criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission ("Commission").

### **7-9.03 Notice Inviting Informal Bids.**

(a) If a public project subject to the provisions of this chapter is to be performed, a notice inviting informal bids shall be mailed, faxed, or emailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with Section 7-9.02, and to all construction trade journals as specified by the Commission in accordance with Section 22036 of the Public Contract Code. Additional contractors and/or construction trade journals may be notified at the discretion of the department soliciting bids, provided, however:

~~(1) If there is no list of qualified contractors maintained by the City for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the Commission; and~~

~~(12) If the product~~The project or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors. ~~The, the~~ notice inviting informal bids may ~~then~~ be sent exclusively to such contractor or contractors.

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(b) All mailing of notices to contractors and construction trade journals pursuant to this section shall be completed not less than ten (10) calendar days before bids are due.

(c) The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time and place for the submission of bids.

#### **7-9.04 Award of contracts.**

The City Manager or his or her designee shall make recommendations to the City Council for purposes of award of contracts under this chapter.

#### **SECTION FOUR. CEQA DETERMINATION**

The City Council finds that adoption of this Ordinance is not a project as defined by the California Environmental Quality Act ("CEQA") because it is an organizational or administrative activity that will not result in direct or indirect physical changes to the environment pursuant to CEQA Guidelines 15378(b)(5) and 15061(b)(3).

#### **SECTION FIVE. SEVERABILITY.**

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses, or phrases.

#### **SECTION SIX. EFFECTIVE DATE.**

This Ordinance shall take effect thirty (30) days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

#### **SECTION SEVEN. CODIFICATION.**

Sections Two and Three of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Four, Five, Six, and Seven shall not be so codified.

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This Ordinance was **INTRODUCED AND FIRST READ** by the City Council of the City of Emeryville at a regular meeting held Tuesday, June 3, 2025, and **PASSED AND ADOPTED** by the City Council of the City of Emeryville at a regular meeting held Tuesday, June 17, 2025, by the following vote:

AYES:	_____	_____
NOES:	_____	_____
ABSTAIN:	_____	_____
ABSENT:	_____	_____

ATTEST:

\_\_\_\_\_

CITY CLERK

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

DocuSigned by:

*John Kennedy*

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CITY ATTORNEY