



**CLARKSVILLE CITY COUNCIL
SPECIAL SESSION
JUNE 28, 2018, 4:30 P.M.**

**COUNCIL CHAMBERS
106 PUBLIC SQUARE
CLARKSVILLE, TENNESSEE**

AGENDA

1) CALL TO ORDER

2) PRAYER: *Councilman Richard Garrett*

PLEDGE OF ALLEGIANCE: *Councilman Mike Alexander*

3) ATTENDANCE

4) PURCHASING CODE AMENDMENT

1. **ORDINANCE 80-2017-18** (Second Reading) Amending the Official Code relative to purchasing

5) ADJOURNMENT

ORDINANCE 80-2017-18

AN ORDINANCE AMENDING THE OFFICIAL CODE PERTAINING TO PURCHASING AND COMPETITIVE BIDDING

WHEREAS, pursuant to Tennessee Code Annotated §6-56-302, the City is authorized to establish, by ordinance, purchasing, contracting, and competitive bidding and public advertisement legal requirements; and

WHEREAS, the City has previously enacted a purchasing ordinance, codified at Section 6-102 of the City Code, pertaining to legal requirements for purchasing, contracting, competitive bidding and public advertisement, and the securing and opening of bids; and

WHEREAS, the City Council finds that the best interests of the City and its residents will be served by amending said code section to account for inflation, changes in the law, and to more clearly and accurately state the legal requirements by which the City shall conduct activities and operations pertaining to purchasing, contracting, competitive bidding and public advertisement, and the securing and opening of bids.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:

(1) That the Official Code of the City of Clarksville, Title 6 (Finance and Taxation), Chapter 1 (Miscellaneous), Section 6-102 (Purchasing), is hereby amended by deleting same in its entirety, and substituting therefore the following as a new Section 6-102:

Sec. 6-102. - Purchasing.

(a) Purchases of \$25,000.00 or more. All purchases, leases, and lease-purchases of twenty-five thousand dollars (\$25,000.00) or more, purchased either singly or in the aggregate, for like items purchased in lots of two (2) or more, shall be competitively bid or sealed proposals solicited, prior to the purchase. Purchases of like items shall be aggregated for purposes of the bid threshold. All such purchases competitively bid shall be awarded to the lowest and best bidder unless otherwise provided for herein. All invitations to bid or requests for proposals in an amount of twenty-five thousand dollars (\$25,000.00) or more shall be publicly advertised no less than five days prior to the bid or proposal opening. "Publicly advertised" or "public advertising" shall mean the following methods of conveyance to the public of notice of the city's intention to purchase: newspaper or

magazine advertisement, billboard, poster, radio announcement, internet or website listing, email, or letter notice sent to interested or potentially interested parties, contractors, vendors, bidders and proposers by United States mail or commercial carrier. All awarded bids or proposals shall be reported to the Finance and Administration Committee of the City Council. The Purchasing Director, or his/her authorized designee, prior to purchase, shall approve all such purchases to be awarded pursuant to this subsection. All specifications drafted shall provide for the competitive procurement of goods and services, except as may otherwise be provided herein. All bids and proposals submitted in accordance with this subsection shall be sealed. Bid and proposal submittals received after the stated opening time shall be returned to the bidder or proposer.

- (b) Purchases of \$3,000.00 to \$24,999.99. All purchases of three thousand dollars (\$3,000.00), but less than twenty-five thousand dollars (\$25,000.00) purchased either singly or in the aggregate, for like items purchased in lots of two (2) or more, shall require the solicitation of three (3) or more competitive bids (written quotes) prior to purchase, except in instances where three (3) bids (written quotes) cannot be obtained due to lack of availability of providers / suppliers for the items to be acquired, but need not be publicly advertised. Purchases of like items shall be aggregated for purposes of the quote threshold. All such purchases for which bids (written quotes) are received shall be awarded to the lowest and best bidder unless otherwise provided for herein. Purchases to be awarded pursuant to this subsection may be approved at the department level if all supporting documentation is provided. Such documentation (bid / quote) may be in the form of a letter, fax, or email, or other written or printed document, stating:

- (1) The vendor's / contractor's / company's name, address, phone number;
- (2) The person's name and title or position giving the quote
- (3) The price, including delivery; and
- (4) A complete description of the product or service provided.

- (c) Records retention. All formal competitive bids or proposals of twenty-five thousand dollars (\$25,000.00) or more received shall be recorded and maintained for a minimum of seven (7) years after the fiscal year in which the purchase occurred, or as may be otherwise required pursuant to the City Records Retention Policy / Ordinance, or state law of general application. The Purchasing Director shall be the custodian for all bids, proposals, and quotes. Copies of all bids, proposals, and quotes over three thousand dollars (\$3,000.00) shall be provided to the Purchasing Director.

- (d) Funding. All purchases, leases and lease purchases shall be made within the limits of the then current approved budget, from appropriated funds approved by the City Council.

(e) Reserved.

(f) Exemption from competitive procurement process. The following purchases, leases and lease purchases shall be exempt from the foregoing competitive procurement process. The Purchasing Director, or his/her authorized designee, prior to purchase, shall approve all such purchases to be awarded pursuant to any of the exceptions in this subsection, except as may otherwise be provided herein pertaining to emergency purchases.

(1) Sole source. Sole source of supply, or proprietary products, as determined after a thorough search for suppliers for the goods or services by the director / department head concerned, under the direction and in consultation with the Purchasing Director.

(2) Emergency purchases. Emergency purchases with the subsequent approval by one of the following: (1) the Purchasing Director, or (2) the Mayor. All such emergency purchases shall be reported in writing to the Finance and Administration Committee at their next regularly scheduled meeting. If the financial resources of the City, or its' physical plant, or the public welfare of the City's citizens, is jeopardized by the continued existence of the emergency and the continued delay in obtaining the appropriate approval, the director / department head involved in the emergency may complete the emergency purchase prior to reporting the purchase to, and obtaining the approval of, the Purchasing Director or Mayor. A written report must be filed with the Purchasing Director within three (3) workdays after the emergency purchase detailing the emergency and explaining why the normal competitive purchasing procedures could not be followed. Any employee, supervisor, department head, or official abusing the emergency procedures of this section shall be subject to disciplinary action, to include termination.

(3) Purchases from government instrumentalities. Purchases from instrumentalities created by two (2) or more cooperating governments.

(4) Purchases from nonprofit corporations. Purchases from nonprofit corporations whose purpose, or one of whose purposes, of which is to provide goods or services specifically to municipalities.

(5) Reserved.

- (6) Purchases from governmental agencies. Purchases, leases, and lease-purchases from any federal, state, or local governmental unit or agency.
- (7) Purchases from other governmental units. Purchases through other units of governments as authorized by the Municipal Purchasing Law of 1983 as amended.
- (8) Tennessee State Industries. Purchases from Tennessee State Industries shall be exempt.
- (9) Professional services. Purchases and contracts for legal services, fiscal agent, financial advisor services, accounting services, training services, architects, engineers, surveyors, property appraisers, construction contract management services, property and liability insurance advisor services, medical or health insurance advisor services, or retirement / pension, or other employee benefit advisor services, information management services, and similar services by licensed or professional persons or groups of high ethical standards shall be made pursuant to the provisions of state law of general application, to include Tennessee Code Annotated (TCA) § 12-3-1209, and §12-4-107, as may be amended.
- (10) Liens. The payoff of liens/purchase of confiscated vehicles when the market value exceeds the payoff of the lien or purchase price of the confiscated vehicles. The City Chief of Police shall obtain from the City Fleet Manager a written estimate of the vehicle's value, which shall include the mileage and a description of the vehicle's condition and, if possible, one additional estimate from an auto dealership not involved in the transaction. The purchase or payoff of a lien shall be approved by the Purchasing Director upon the recommendation of the Chief of Police if the payoff is less than the value of the vehicle as determined by the Fleet Manager.
- (11) Repairs. For repair services or parts for damaged, inoperable, or less than fully operable equipment, three (3) or more written quotes (estimates) shall be required. If the actual cost of the repairs exceeds the lowest quote (estimate) due to unanticipated repairs that could not have been reasonably foreseen, the additional cost above the quote (estimate) shall be approved on an emergency purchase basis.
- (12) Fuels. The purchase of fuels, fuel products, or perishable commodities.

- (13) Resale items. The purchase of items by the Parks and Recreation Department (to include municipal golf courses) purchased for resale to the public.
 - (14) Used or secondhand articles. Purchases of used or secondhand articles shall be in accordance with state law of general application, to include TCA § 12-3-1202 as may be amended.
 - (15) Change orders. Change orders to existing construction or improvement contracts within established budgetary limits.
- (g) Reserved.
- (h) Disposal of City surplus personal property. The Purchasing Director, or his/her designee, shall be authorized to dispose of and/or transfer title to City surplus personal property for the proper conduct of the City's business in a manner determined by them to be in the best interest of the City, and shall report same to the Finance and Administration Committee.
- (i) Disposal of City surplus real property. The Purchasing Director, or his/her designee, with such assistance as may be required from the City Attorney, or his / her designee, upon resolution approved by a majority of the full membership of the City Council, and upon such terms as the City Council may determine to be in the best interest of the City, shall be authorized to dispose of and transfer all surplus real property, together with all improvements thereon, at public auction, or as otherwise directed by the City Council.
- (j) Authority of Purchasing Director. The Purchasing Director, or his/her designee, is authorized to adopt, implement, and enforce all purchasing policies, regulations, and procedures necessary to implement the provisions of this section.
- (k) Violations of purchasing policies. Any employee, supervisor, department head, or appointed official that willfully violates or causes another person to willfully violate the provisions herein are subject to disciplinary action.
- (l) Construction projects. City construction or renovation projects shall comply with state law of general application, to include the provisions of T.C.A. § 62-2-107 as may be amended.
- (m) Reserved.

- (n) Notwithstanding the provisions of subsection (g), the Clarksville Transit System shall adhere to all Federal Transportation Administration and otherwise applicable federal procurement laws and regulations regarding procurement of goods and services.
 - (o) All City officials, employees, and / or agents, and City contractors, vendors and suppliers of goods and services, shall comply with state and federal law of general application as may be applicable to the City pertaining to procurement and / or public contracting, to include, but not limited to, conflicts of interest (TCA §6-54-107 as may be amended), the City ethics code, and employment of illegal aliens (TCA §12-4-124 as may be amended).
 - (p) The provisions of the Section are intended to comply with the provisions of TCA §6-56-302 authorizing the City to enact an ordinance pertaining to competitive bidding and public advertising, and exempting the City from application of the Municipal Purchasing Law of 1983.
- (2) That the Official Code of the City of Clarksville, Title 6 (Finance and Taxation), Chapter 1 (Miscellaneous), is hereby amended by adding a new Section 6-106 (Purchase or acquisition of real property) as set forth below:

Section 6-106. Purchase or acquisition of real property.

- (a) The following procedures shall apply to the purchase or acquisition of real property, or any right or interest in real property, by the City.
- (b) The Mayor, any City Council member, or any interested City director / department head, may initiate a request for the City to purchase or acquire real property, or any right or interest in real property, for any municipal purpose, by submitting a request in writing, for consideration of same, first to the Finance and Administration Committee (F&A Committee) of the City Council, through the City Clerk. The written request shall contain, as a minimum, at least the following information:
 - (1) A legal description of the real property to be acquired, at least by reference to a tax map and parcel number, or to a recorded deed by book and page number, and the acreage amount; and
 - (2) A listing of the current owner or owners of the property or properties requested to be purchased or acquired by the City; and
 - (3) A justification, reason, or statement of municipal purpose, regarding the need for the City to purchase or acquire the property or properties; and

- (4) If only a portion of the property or properties is requested to be purchased or acquired, the written request shall also describe what portion or portions is sought to be acquired, at least in general terms and providing an approximate or estimated amount of acreage involved; and
 - (5) A proposed purchase price for the property or properties, or portion of property, or portions of properties, requested to be purchased or acquired, and attaching to the request, for any property whose reported value is TEN THOUSAND DOLLARS (\$10,000.00) or greater, an appraisal for same, issued by a state certified property appraiser, and dated within one year from the date the written request is submitted to the City Clerk.
- (c) Upon receipt of the written request by the City Clerk, the City Clerk shall place the request upon the agenda for the next regularly scheduled or special called meeting of the F&A Committee, for which public notice has not yet been issued. If public notice of the agenda for the F&A Committee has already been issued for the next regularly scheduled or special called meeting of the F&A Committee, then the City Clerk shall cause the written request to be placed on the agenda for the following regularly scheduled or special called meeting of the F&A Committee for which public notice has not yet been issued. The agenda item pertaining to the written request shall be in the form of an ordinance, approved as to form by the City Attorney. The written request with all the required information set forth above, shall be included with the public notice and shall be attached to the proposed ordinance.
- (d) At the next regularly scheduled or special called meeting of the F&A Committee, for which there has been public notice, containing the agenda item pertaining to the written request / ordinance for the proposed real property purchase or acquisition, the F&A Committee shall consider the written request / ordinance, and shall vote to recommend approval or disapproval of the purchase or acquisition.
- (e) Thereafter, the City Clerk shall cause the written request / ordinance to be placed on the agenda for the next executive session and regularly scheduled session of the City Council, or upon any lawfully called special session, and shall note on the agenda the recommendation of the F&A Committee. At such regularly scheduled or lawfully called special session, for which there has been public notice, containing the agenda item pertaining to the written request / ordinance for the proposed real property purchase or acquisition, the City Council shall vote to approve or disapprove the written request / ordinance pertaining to the requested purchase or acquisition. A majority vote of the full membership of the City Council shall decide the question, and the City Council may amend the ordinance in the same manner as prescribed by the City Code for other

ordinances, except that any approval for the purchase of real property for an amount in excess of the appraised amount (plus an additional amount, not to exceed FIVE THOUSAND DOLLARS (\$5,000.00) to account for closing costs, and / or expert witness fees should condemnation become necessary), shall require a two-thirds majority vote of the entire membership of the City Council.

- (f) If the City Council votes to approve the purchase or acquisition of the property or properties, or portion or portions thereof, then the Mayor or his / her designee, or the City Attorney, or the involved director / department head in consultation with the City Attorney, shall be authorized to make a written offer to the owner or owners to purchase such real property, for the amount approved by the City Council, and upon such other terms and conditions as the City Council may specify in the ordinance.
- (g) The City Council may also, as part of the original ordinance, authorize the Mayor or his / her designee, or the City Attorney, or the involved director / department head in consultation with the City Attorney, to negotiate a purchase price with the owner or owners, should the owner or owners not accept the City's original written offer to purchase the subject property or properties, or portion or portions thereof, but any such negotiations resulting in a proposed purchase price for any amount in excess of the amount approved by the City Council, shall first be re-submitted to the City Council for a vote of approval or disapproval.
- (h) The City Council may also, as part of the original ordinance, or through a separate ordinance, authorize the City Attorney to file and pursue a condemnation lawsuit to acquire the subject property or properties, or portion or portions thereof, should the owner or owners not accept the City's offer to purchase the subject property or properties, or portion or portions thereof.
- (i) Notwithstanding the forgoing, utility and drainage easements, and / or rights-of-way, to include but not limited to temporary construction easements and slope easements, in an amount of TEN THOUSAND DOLLARS (\$10,000.00) or less per parcel or tract, or per project, may be negotiated and purchased by the City, by and through the interested or affected department with the owner or owners of affected property or properties, by the director / department head, or his or her designee, and same shall be reported to the appropriate City Council committee having reporting oversight authority for that department.

- (j) No contract, oral or written, or promise or representation made by any City official, employee, or agent, made for or pertaining to the purchase by the City of any real property, or any interest or right in same, shall be binding upon the City without having been reduced to a written instrument executed by the Mayor.

FIRST READING: June 21, 2018

SECOND READING:

EFFECTIVE DATE: