



# Council Business Meeting

x

**March 5, 2024**

<b>Agenda Item</b>	Second Reading – Revisions for Chapter 2.50 Public Contracting and Purchasing – Addendum – Draft Ordinance 3230	
<b>From</b>	Mariane Berry	Finance Director
<b>Contact</b>	<a href="mailto:Mariane.Berry@ashland.or.us">Mariane.Berry@ashland.or.us</a>	
<b>Item Type</b>	Requested by Council <input type="checkbox"/> Update <input type="checkbox"/> Request for Direction x Presentation <input type="checkbox"/>	

## **SUMMARY**

This serves as the Second Reading of a proposed ordinance to revise Chapter 2.50 Public Contracting and Purchasing in the Ashland Municipal Code (AMC).

## **POLICIES, PLANS & GOALS SUPPORTED**

Excellence in governance and city services; Sustainability through creativity, affordability and rightsized service delivery.

Further, this assists in implementing greater efficiencies city-wide, creating an environment that is less paper-intensive, reducing staff time on unnecessary and redundant tasks, all the while reducing overall costs and improving productivity.

## **BACKGROUND AND ADDITIONAL INFORMATION**

As a review, the AMC Procurement Chapter 2.50 has not been substantively updated since 2010. The proposed revisions are intended to align the AMC with Oregon Revised Statutes and Oregon Administrative Rules, such that when the State makes changes to Public Procurement Law, the City of Ashland will automatically update, ensuring that our code is kept up to date.

This is part of a larger effort to not only bring our Code to current times, but also streamline contract and procurement processes city-wide using available technology, best practices and a more integrative approach. City Staff recognize that the function of Contracts & Procurement under Public Procurement Law is a critical function that operationally impacts each department. It can also exist to be strategic and efficient. Ordinance 3230 was developed with that in mind.

The following attachments highlight additional background on the draft ordinance and the process by which it was developed. It was a collaboration with, and was reviewed extensively by our Public Procurement consultant Jodie Fulton, Public Works Director Scott Fleury and our City Attorney's office.

The City Council unanimously moved to forward the First Reading of Draft Ordinance 3230 in the Regular Business Meeting on February 20, 2024 to the Second Reading.

## **FISCAL IMPACTS**

It would take some time to fully quantify the cost-savings across the organization, but it is substantial. From the formal processes of competitive bidding and proposals to the informal processes of small and intermediate procurements. It affects all departments, especially Public Works and Fire. Accounting/Procurement will also be substantially impacted by improved efficiencies, reduction of paper, and an upgraded document storage





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system. The fiscal impact will not only be in staff time, reduction in materials, but establishing a more streamlined environment will lend itself to increasing cost oversight and strategic value.

## **SUGGESTED NEXT STEPS**

Staff proposes City Council approve the Second Reading of the AMC Chapter 2.50 amendments.

## **ACTIONS, OPTIONS, & POTENTIAL MOTIONS**

I move to approve the Second Reading of the amended Ashland Municipal Chapter 2.50 Procurement Procedures.

## **REFERENCES & ATTACHMENTS**

Attachment 1: Council Communication dated February 20, 2024 with Power Point Presentation, which also included Council Communication dated February 6 and August 14, 2023, and the Draft Ordinance 3230 Amending AMC 2.50 Rules for Public Contracting



## Council Business Meeting

February 20, 2024

<b>Agenda Item</b>	First Reading – Revisions for Chapter 2.50 Public Contracting and Purchasing - Addendum	
<b>From</b>	Mariane Berry	Finance Director
<b>Contact</b>	<a href="mailto:Mariane.Berry@ashland.or.us">Mariane.Berry@ashland.or.us</a>	
<b>Item Type</b>	Requested by Council <input checked="" type="checkbox"/> Update <input type="checkbox"/> Request for Direction <input type="checkbox"/> Presentation <input type="checkbox"/>	

### **SUMMARY**

This serves as addendum to the Staff Report dated February 6, 2024, which was submitted to Council for review of the First Reading of the AMC Procurement Chapter.

This agenda item was pushed to the next council meeting on February 20, 2024.

### **POLICIES, PLANS & GOALS SUPPORTED**

Excellence in governance and city services; Sustainability through creativity, affordability and rightsized service delivery.

Further, this assists in implementing greater efficiencies city-wide, creating an environment that is less paper-intensive, reducing staff time on unnecessary and redundant tasks, all the while reducing overall costs and improving productivity.

### **BACKGROUND AND ADDITIONAL INFORMATION**

The First Reading of Ordinance 3230 which revises the Ashland Municipal Code Procurement Chapter was largely prepared in the latter half of 2023, and as such had included the State thresholds reported then. Effective January 1, 2024, Oregon Revised Statutes had been updated again. Small Procurements are now \$25,000 or less, and Intermediate Procurements are \$250,000 or less.

These updates were to be shared in the Feb 6 meeting. Since this item was rescheduled, this addendum provides these updates now in advance of the regular meeting, and also attaches the PowerPoint slide presentation that will be reviewed during the next meeting.

Finally, a slight revision to page 5 of the Draft Ordinance, Section 2.50.060, was made by Legal, changing it from "It shall approve the award..." to "It shall have the authority to approve the award...".

All else in the Draft Ordinance remains the same. It was a collaboration with, and reviewed extensively by our Public Procurement consultant Jodie Fulton, Public Works Director Scott Fleury and our City of City Attorney's office.

### **FISCAL IMPACTS**

Please see Staff Report dated February 6, 2024 on same topic.

### **SUGGESTED NEXT STEPS**

Please see Staff Report dated February 6, 2024 on same topic.

### **ACTIONS, OPTIONS, & POTENTIAL MOTIONS**

Please see Staff Report dated February 6, 2024 on same topic.





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## **REFERENCES & ATTACHMENTS**

Attachment 1: Council Communication dated February 6, 2024, which included Council Communication from August 14, 2023 and the Draft Ordinance 3230 Amending AMC 2.50 Rules for Public Contracting

Attachment 2: Power Point Slide Presentation



# Contracting & Procurement

February 6, 2024

## Contracting & Procurement

### Applicable Law:

- State Public Procurement Code
  - Oregon Revised Statutes 279A, 279B, 279C, and the Model Rules, Oregon Administrative Rules Chapter 137, Division 46, 47, 48, 49
- Ashland Municipal Code Chapter 2.50 (AMC)

### AMC Procurement Code and City Process:

- Written over 23 years ago, with last major update over 13 years ago
- Not kept up with numerous ORS updates
- Workflow procedures very paper intensive; lacks strategic initiative and integration





# Main Components of Contract & Procurement

## 1. When to go out for Formal Solicitation

- Request for Proposal of Information (RFP/Information), Invitation to Bid
  - Small Procurements => Direct Appointment
  - Intermediate Procurements => Informal Solicitations
  - Everything else (some exceptions) => Formal Solicitations

## 2. Procurement Authority

- City Council (Local Contract Review Board)
- City Manager – up to Intermediate Procurement threshold
- Department Heads – currently up to \$35K

### Role & Responsibilities of Local Contract Review Board (City Council)

- By resolution/ord., adopt rules pertaining to purchasing as identified in State law
- Delegate powers & duties to the Public Contracting Officer (City Manager)
- Review and approve contracts beyond Intermediate Procurement thresholds
- Cannot “un-approve” already authorized/appropriated budgeted expenditures



# Objectives of Public Procurement Law\*

- **Compliance** with applicable law
- Provide operating departments with **goods/services** they need
- **Reduce risks** facing organization
- Promote **fairness** and provide opportunity for vendors to **compete**
- Maintain **public trust** that funds are spent prudently
- Help promote overall goals of organization

\* Source: Govt Finance Officers Assoc (GFOA) & Institute for Public Procurement (NIGP)

## Essentially...

Ensure that goods and services are procured using competitive processes that result in *the best overall quality and cost* to the City

Per GFOA:

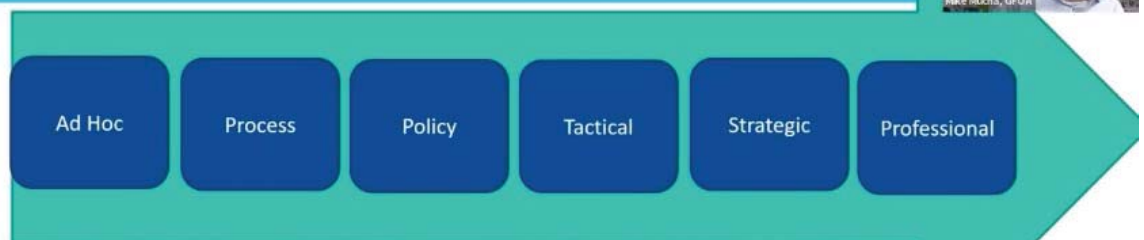
*"Procurement requires finding the right balance"*

Rule Enforcer  Trusted Partner



## Best Practice Progression of a Professional Procurement Dept

### Procurement Maturity Model



- No planning, policies or procedures
- Departments "buy"
- Suppliers dictate
- Clerical focus

- Policies exist
- Procurement as regulated activity
- Procurement department exists

- Organizational training
- Cross functional cooperation
- Well planned
- Finance and procurement integrated

- Procurement process
- No consistent policies
- No structure
- Minor element of Finance

- Organizational process
- Reduce non-compliance
- Policies understood
- Role in budget control

- Innovative
- Value add to strategic initiatives
- Measurement and Analytic



\* Source GFOA



## Best Practice Progression of a Professional Procurement Dept

### Procurement Maturity Model



## ORS & AMC Revision 2024

- The State recognized the need to balance all these objectives in order to be tactical, strategic and value-add
  - *By appropriately increasing small and intermediate thresholds allowing cities/agencies to be more effective in their process flow*
- AMC is catching up and aligning with State code
- COA Procurement is working to *automate, integrate and educate* departments in contract and procurement procedures







## Primary Differences with AMC revisions

- Added Ethics section
- Matched State's thresholds as of **Jan 1<sup>st</sup>, 2024**:
  - Small Procurement <\$25K
  - Intermediate Procurement <\$250K
  - Personal Services definition per ORS
- Removed process redundancies and inconsistent items referenced elsewhere in Code
- Added Legal clarification on templated contracts



## Note about process

Post-pandemic brought many new cases that cities had to grapple with

- **Supply chain constraints** pushing delivery times beyond biennium
- **Inflationary pressures** driving costs up
- Challenges finding suitable or **available equipment** for our operational needs *when* needed
  - *Example – fire truck, no contract, intent to purchase beyond the biennium, already appropriated through Equipment Fund*
- A clear and updated Code allows for greater strategic response, timeliness and less redundancy



## Note about process

### *AMC Revisions DO NOT:*

- Does not reduce controls
  - Must still abide by ORS formal solicitation process and proper authorities
- Does not remove limitations on spending
  - Must still only spend what is appropriated/approved

### *Compliance over internal controls must still exist*

- City is audited annually to ensure compliance over federal and state regulations, including procurement law



## Note about process

### *AMC Revisions & Process Improvements DO :*

- ✓ Remove cumbersome and *redundant burdens* on departments
- ✓ Substantial staff *time savings*, including Council time
- ✓ Utilizes technology to *ensure proper controls, limitations, and effective contract and PO storage*
- ✓ Creates and establishes interdepartmental *partnerships* for overall procurement goals
- ✓ *Reduces paper* substantially
- ✓ Provides more *robust audit trail*



QUESTIONS?



First Reading  
Draft Ordinance 3230

Staff recommends Council:  
*Approve the first reading of the  
amended Ashland Municipal Chapter  
2.50 Procurement Procedures,  
and move forward with the Second  
Reading.*





# Council Business Meeting

February 6, 2024

<b>Agenda Item</b>	First Reading – Revisions for Chapter 2.50 Public Contracting and Purchasing		
<b>From</b>	Mariane Berry	Finance Director	
<b>Contact</b>	<a href="mailto:Mariane.Berry@ashland.or.us">Mariane.Berry@ashland.or.us</a>		
<b>Item Type</b>	Requested by Council <input checked="" type="checkbox"/> Update <input type="checkbox"/> Request for Direction <input type="checkbox"/> Presentation <input type="checkbox"/>		

## **SUMMARY**

In 2023, the State of Oregon amended elements of its Public Contracting & Procurement Code, increasing limits for small and intermediate procurements, among other items, to reflect overall cost increases in the market for purchasing goods and services.

Ashland Municipal Code (AMC) Chapter 2.50, Rules for Public Contracting, has not been updated since 2010. As such, procurement thresholds for municipalities in the State have increased while the City of Ashland’s dollar thresholds have remained the same for over 13 years. In a recent review of the City’s current contracting and purchasing practices and aligning with best practices as published by the Government Finance Officer’s Association (GFOA) and the Institute for Public Procurement (NGIP), the City of Ashland seeks to amend its Contracting and Procurement Code to better align with Oregon Revised Statutes, ORS 279A, 279B and 279C.

The following is a proposed amendment to the procurement process under the AMC.

## **POLICIES, PLANS & GOALS SUPPORTED**

Excellence in governance and city services; Sustainability through creativity, affordability and rightsized service delivery.

Further, this assists in implementing greater efficiencies city-wide, creating an environment that is less paper-intensive, reducing staff time on unnecessary and redundant tasks, all the while reducing overall costs and improving productivity.

## **BACKGROUND AND ADDITIONAL INFORMATION**

On August 14, 2023, Staff provided Council a presentation on the City’s current procurement practices in which it was summarized that duplicative procedures, inefficiencies, bottlenecks, and delays in the normal course of operations exist in a considerable way, in large part due to procedures that have not been updated in over a decade. As background, the council communication from that Study Session is included.

The primary objectives of contracting and procurement code and the related City policies is multi-pronged: to ensure compliance with applicable law, provide guidelines for operating departments to procure the goods and services needed, reduce risks, promote fairness and competition, maintain public trust that funds are spent prudently and without corruption, and to help promote the overall goals of the City.

This requires finding the appropriate balance, merging strong policies with tactical and strategic initiatives that are measurable and analytical. Establishing strong policies does not necessarily mean limiting the guard rails, but rather making them appropriate to do business effectively. Integrating a tactical and strategic response in the City’s procurement procedures does not only mean high tech automation, but it also requires departmental collaboration and being a partner in procurement goals.





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This amendment is part of the larger effort to update and streamline an essential and crucial operation for the City. It works to refresh and align our code to current times, but more importantly, to the updated Oregon Revised Statutes Chapter 279. It ensures that as the ORS changes, that our code keeps up.

Staff worked with a subject matter expert who is versed in Public Contracting, is certified as a Public Procurement Officer (CPPPO) and a Professional Public Buyer (CPPB), and has received a specialization in construction procurement from the NIGP, National Institute of Government Procurement. With valuable input from Public Works Director Scott Fleury, the Consultant and the City Attorney, we submit the attached revised Ashland Municipal Code Chapter 2.50 – Rules of Procedure for Public Contracting and Purchasing.

The primary changes are as follows:

- Added an Ethical Code of Conduct for public purchasing
- Attached the City to the ORS limits and procedural updates. Specifically, it changes small procurement limits (\$5K to \$10K), intermediate procurement limits (\$100K to \$150K), equates the definition of Personal Services Contracts to the ORS, which removes a previous opt-out clause that should not have been possible in the first place.
- Added legal clarification on standard contracts “Approved as to Form”
- Added the ability to receive bids and proposals electronically so that we can begin to use technological applications that will streamline the Competitive Sealed Bidding and Proposal processes.
- Removed process redundancies and paper intensity that result in bottlenecks within the process, thereby utilizing our system software to automate the purchasing process.
- Removed redundant or inconsistent items in Code that were defined, described and/or referenced separately in the chapter.

## **FISCAL IMPACTS**

It would take some time to fully quantify the cost-savings across the organization, but it is substantial. From the formal processes of competitive bidding and proposals to the informal processes of small and intermediate procurements. It affects all departments, especially Public Works and Fire. Accounting/Procurement will also be substantially impacted by improved efficiencies, reduction of paper, and an upgraded document storage system. The fiscal impact will not only be in staff time, reduction in materials, but establishing a more streamlined environment will lend itself to increasing cost oversight and strategic value.

## **SUGGESTED NEXT STEPS**

Staff proposes City Council approve the First Reading of the AMC Chapter 2.50 amendment and move forward with the Second Reading.

## **ACTIONS, OPTIONS, & POTENTIAL MOTIONS**

I move to approve the First Reading of the amended Ashland Municipal Chapter 2.50 Procurement Procedures, and move forward with the Second Reading.

## **REFERENCES & ATTACHMENTS**

Attachment 1: August 14, 2023, Council Communication for Study Session on Procurement Process

Attachment 2: Draft Ordinance 3230 Amending AMC 2.50 Rules for Public Contracting



# Council Study Session

August 14, 2023

<b>Agenda Item</b>	Procurement and Contracting Process	
<b>From</b>	Mariane Berry; Finance Director	Scott Fleury, Public Works Director
<b>Contact</b>	<a href="mailto:Mariane.Berry@ashland.or.us">Mariane.Berry@ashland.or.us</a> ; <a href="mailto:Scott.Fleury@ashland.or.us">Scott.Fleury@ashland.or.us</a>	
<b>Item Type</b>	Requested by Council <input type="checkbox"/> Update <input checked="" type="checkbox"/> Request for Direction <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Public Hearing <input type="checkbox"/> New Business <input type="checkbox"/> Old Business <input type="checkbox"/>	

## **SUMMARY**

In a continued effort to streamline and improve operational procedures while maintaining the necessary internal controls, best practices and adherence to local and state laws, Staff seeks to update Council on the City’s current Purchasing process as it applies to the Ashland Municipal Code (AMC) Chapter 2.50 and the Oregon Public Contracting Code, specifically Oregon Revised Statutes (ORS) Chapters 279A, 279B and 279C. In doing so, we hope to provide Council with a more comprehensive understanding of the City’s current operational workflow for Contracting and Purchasing and make Council aware of Staff’s intent to amend parts of the AMC Public Contracting chapter through a proposed ordinance in the near term.

## **POLICIES, PLANS & GOALS SUPPORTED**

This supports the Council Value Statements: Excellence in governance and city services; Sustainability through creativity, affordability and rightsized service delivery.

Specifically, this assists in implementing greater efficiencies city-wide, creating an environment that is less paper-intensive, reducing staff time on unnecessary and redundant tasks, all the while reducing overall costs and improving productivity.

## **BACKGROUND AND ADDITIONAL INFORMATION**

The current Ashland Municipal Code Chapter 2.50 for Public Contracting Rules of Procedure, which has not substantively been amended since 2010, lags behind the State’s contracting code in these key areas:

	<u>AMC</u>	<u>Oregon</u>
• Small Procurement Limit:	\$5,000	\$10,000
• Intermediate Procurement Limit: (for goods and services)	\$100,000	\$150,000

While the differences may at first glance seem immaterial, the City’s volume of expenditures between \$5-10K that necessitates the formal competitive bidding process has created a considerable drain on staffing resources. Many of the City’s small procurements are in this dollar range. Facilities is a prime example, however it has consequentially impacted all City departments. A typical workflow is as such: Department arranges 3 quotes from different contractors/vendors, may include site visits, creates, reviews and awards the contract, acquires legal review and approval to form, obtains insurance per the contract, completes internal forms and routes it throughout the city for signatures. This is simply to start the purchase order process in Finance.





# Council Study Session

Further the AMC's Intermediate Procurement limit for goods and services that the Public Contracting Officer/City Manager may approve is \$100,000. This requires staff to submit to Council contracts over \$100,000 but less than the state's limit of \$150,000, for expenditures that are part of the normal course of city business, such as chemicals for the treatment plants or enterprise software. It should be noted that these expenses have already been appropriated during the budget process, and therefore approved by both Council and the Citizen's Budget Committee.

## *Operational Update*

The City's current Purchasing process is very paper-intensive, as well as process-intensive due to the AMC limits. We have plans to automate the process in conjunction with our next Accounting ERP (Tyler Munis) upgrade in the Fall. At that time, we also hope to implement best practices such as the use of electronic document signing, routing and storage. There are other procedural aspects we are evaluating that will create additional efficiencies.

In the near term, we intend to bring to Council a request to consider an ordinance that will address all the above. Particularly, we suggest aligning the AMC to our current operational realities which would also parallel the State code as it relates to contracting and procurement limits.

## **FISCAL IMPACTS**

The fiscal impact of reviewing and eventually updating the current AMC Chapter 2.50 is ultimately a financial savings in staff time and resources. While it is challenging and time-consuming to quantify, it can be said that every department will benefit from it immediately, and thereby will increase productivity in a meaningful way. Procurement is a daily process for every City department, so the impact will be significant.

The system upgrade in Tyler Munis has been a plan for some time and does not have an additional cost attached to it. At the date of this council communication, there are no costs associated with adding the Purchase Order process into the accounting system as it is a module that is already part of our software.

With implementing best practices such as electronic document signing and routing, the impact will also again, improve staff time and dramatically reduce paper.

## **SUGGESTED NEXT STEPS**

Staff will work on drafting an ordinance that will amend the Ashland Municipal Code Chapter 2.50 on Public Contracting.

## **REFERENCES & ATTACHMENTS**

Ashland Municipal Code Chapter 2.50

Reference link for ORS 279 A/B/C: <https://www.oregon.gov/das/Procurement/Pages/Authlaw.aspx>

## ORDINANCE NO. 3230

### AN ORDINANCE AMENDING THE RULES OF PROCEDURE FOR PUBLIC CONTRACTING IN ASHLAND MUNICIPAL CODE CHAPTER 2.50

Annotated to show deletions and additions to the Ashland Municipal Code sections being modified. Deletions are ~~bold-lined through~~, and additions are **bold underlined**.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

#### **SECTION 1.**

#### **Chapter 2.50**

#### **RULES OF PROCEDURE FOR PUBLIC CONTRACTING AND PURCHASING**

Sections:

**2.50.010 ~~Short Title~~ Title and Purpose**

**2.50.020 ~~Purpose~~ Ethical Code of Conduct**

**2.50.030 Adoption of State Law**

**2.50.040 Definitions**

**2.50.050 Applicability**

**2.50.060 Local Contract Review Board Authority**

**2.50.070 Public Contracting Officer Authority**

**2.50.080 Formal Processes - Competitive Sealed Bidding and Proposals**

**2.50.090 Exemptions from Formal Competitive Selection Procedures**

**2.50.095 Additional Requirements for Exemptions Pursuant to 2.20.090(I)**

**2.50.100 Informal Process - ~~Process for Exempt~~ Small and Intermediate Procurements**

**~~2.50.110 Electronic Advertisement of Public Contracts~~**

**~~2.50.120 Personal Services Contracts~~**

**2.50.125 Cost and Feasibility Determinations**

**2.50.130 Record Keeping**

**2.50.140 Protests of Procurement Process and Solicitation Award**

#### **2.50.010**

#### **~~Short Title~~ Title and Purpose**

The provisions of this chapter and all rules adopted hereunder may be cited as the Ashland Public Contracting Code. **Chapter 2.50 shall be known as the “Ashland Public Contracting and Purchasing Code.” The term “code” used in this chapter shall mean the contracting and purchasing code unless context otherwise requires. This code establishes uniform, efficient and economical contracting and purchasing policies, procedures, rules and regulations for the City in accordance with the City Charter and Chapters 279A, 279B, 279C of the Oregon Revised Statutes.**



**The purpose of this code is to ensure that goods and services are procured using competitive processes that result in the best overall quality and cost to the City. This is achieved by:**

**A. Promoting open and transparent competition;**

**B. Using solicitation materials that contain clear specifications, requirements, and contract provisions;**

**C. Using procurement methods that follow ORS and OAR guidelines and meet the contracting needs of the City;**

**D. Providing direction to City staff regarding purchasing practices and purchasing authority that result in a systematic and uniform administration of public contracts.**

**The City shall endeavor to utilize local suppliers of materials and services whenever practical and feasible while seeking to obtain the best overall cost through responsible and responsive quotations and/or ~~or~~ proposal.**

(Ord. 3013, added, 05/18/2010; Ord. 2934, replaced, 11/21/2006; Ord. 2917, amended, 03/01/2005; Ord. 2857, amended, 06/20/2000)

## **2.50.020**

### **Purpose-Ethical Code of Conduct**

The purpose of the ~~Ashland Public Contracting Code~~ is to utilize public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by:

~~A. Promoting open and impartial competition;~~

~~B. Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements;~~

~~C. Taking full advantage of evolving procurement methods that suit the contracting needs of the City; and~~

~~D. Providing direction to city staff regarding purchasing practices and purchasing authority those results in a systematic and uniform administration of public contracts.~~

~~The City shall endeavor to utilize local suppliers of materials and services whenever practical and feasible while seeking to obtain the lowest and best responsible bid, quotation or proposal.~~

**All purchasing shall be conducted in compliance with the code of ethics set forth in AMC 2.010.080, Code of Ethics, and ORS Chapter 244, Government Ethics.**

**ORS Chapter 244, Oregon Government Ethics Law establishes the minimum standard of ethical conduct and behavior for elected officials, public employees (public officials), members of county and municipal advisory boards and judicial bodies. City employees as**

**defined in ORS 244.020 are considered public officials and responsible for following the Ashland Public Contracting and Purchasing Code in a responsible and ethical manner.**

**Further, conflicts of interest shall be avoided. A conflict of interest may include any private or professional activity that would create the appearance of impropriety such as, but not limited to:**

- A. Accepting money, loans, credits or prejudicial discounts, gifts, gratuities, favors, or entertainment from present or potential suppliers which might influence or appear to influence a procurement decision/process**
- B. Allowing suppliers to pay to be included on an approved or preferred supplier list;**
- C. Requesting donations of goods or services from suppliers;**
- D. The use of arbitrary or unfair purchasing leverage or influence when dealing with suppliers;**
- E. Exertion of undue influence or abuses of purchasing power;**
- F. Accepting paid meals or other hospitality with suppliers**

(Ord. 3013, added, 05/18/2010; Ord. 2934, replaced, 11/21/2006; Ord. 2917, amended, 03/01/2005; Ord. 2857, amended, 06/20/2000)

### **2.50.030**

#### **Adoption of State Law**

Except as specifically provided herein, or by subsequent ordinance or resolution, the Model Rules, Oregon Administrative Rules (OAR) Chapter 137, Divisions 46, 47, ~~48~~ and 49, adopted by the Attorney General under ORS Chapters 279A, 279B, and 279C, as they now exist, are hereby adopted as the City of Ashland's Public Contracting Code. A copy of the Oregon Public Contracting Code and Model Rules shall be maintained in the City Records Office. Words and phrases used in these rules that are defined in Oregon Revised Statutes (ORS) Chapters 279A, 279B, 279C, and in the Model Rules shall have the same meaning as in those statutes and rules, except as may be provided for herein. In the event that the rules adopted by the local contract review board do not address a particular situation, the Model Rules apply. (Ord. 3013, added, 05/18/2010)

### **2.50.040**

#### **Definitions**

Words and phrases that are used and defined in the Model Rules and the Oregon Public Contracting Code shall have the same meaning as in those statutes and rules, except for the following:

A. "City Attorney" shall mean the Ashland City Attorney or his/her designee as specified by written order.

B. "Department" shall mean City of Ashland instead of Oregon Department of Administrative Services.

~~C. "Director" shall mean Public Contracting Officer as defined in this section instead of the Director of Administrative Services.~~

CD. "Findings" are the statements of fact that provide justification for a determination. Findings may include, but are not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in public contracts; quality and aesthetic considerations; value engineering; specialized expertise needed; public safety; market conditions; technical complexity; availability; performance; and funding sources.

DE. "Finance Director" shall mean the Director of the City's Finance Department or his/her designee as specified by written order.

EF. "Local Contract Review Board" shall mean the Ashland City Council.

FG. "Public Contracting Officer" means the City Manager or his/her designee as specified by written order.

GH. "Model Rules" means the public contracting rules adopted by the Attorney General pursuant to ORS 279A.065.

HI. "Oregon Public Contracting Code" means ORS Chapters 279A, 279B and 279C.

IJ. ~~"Personal services contract" means a contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, land surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. The Public Contracting Officer shall have discretion to determine whether additional types of services not specifically mentioned in this definition fit within the definition of personal services.~~ **"Personal Services" and "Personal Services Contract" shall have the same meaning as put forth in the Model Rules 137-046-0110(24) and Model Rules 137-046-0110(25), respectively.** (Ord. 3192 § 35, amended, 11/17/2020; Ord. 3013, added, 05/18/2010)

## 2.50.050

### Applicability

The Ashland Public Contracting **and Purchasing** Code shall apply to procurements by all City departments and divisions, including Ashland Parks and Recreation. (Ord. 3013, added, 05/18/2010)

## 2.50.060

### Local Contract Review Board Authority

The Local Contract Review Board shall have all the duties and authority of a contracting agency that are granted under state and local law. **It shall have the authority to approve the award of those contracts for which the Ashland Municipal Code or the Oregon Public Contracting Code require formal competitive solicitations or formal competitive bids.** The Local Contract Review Board may delegate its powers and responsibilities by ordinance, resolution, or board order consistent with the Model Rules and the Oregon Public Contracting Code. (Ord. 3013, added, 05/18/2010)

## 2.50.070

### Public Contracting Officer Authority

A. Except as otherwise provided by this code, the Public Contracting Officer shall have authority to:

1. Purchase and contract for all materials, supplies, equipment, services and public improvements for which funds have been appropriated by the City Council **up to the higher amount stated in ORS 279B.070, Intermediate Procurements;** ~~and the contract price does not exceed \$100,000;~~
2. Contract for all personal services, **excluding architectural, engineering and related services as defined by ORS 279A.055 up to the higher amount stated in ORS 279B.070;** ~~as long as the contract price does not exceed \$75,000; and~~
3. **Contract for architectural, engineering, and land surveying services and related services as defined in ORS 279C.100 and outlined in OAR Model Rules Chapter 137 Division 48;**
4. Sell or dispose of all personal property of the City in accordance with AMC 2.54.
5. Enter into any intergovernmental agreement as long as the annual cost to the City does not exceed ~~\$25,000~~ **the Public Contracting Officer's authority herein,** ~~and the agreement does not create a new intergovernmental entity.~~
6. **Purchase and contract for equipment that is scheduled to be replaced in the City's fleet inventory and has been appropriated by the City Council in the adopted budget using appropriate procurement practices.**

Contracts approved under this section require no further approvals by the Local Contract Review Board.

B. Except when this Chapter, or the Oregon Public Contracting Code and Model Rules, specifically requires the Local Contract Review Board to take action or exercise its discretion and delegation is not allowed, any act required or permitted to be performed by an "agency," "head of a contracting agency," "local contract review board" or the "director" under the Model Rules or Oregon Public Contracting Code shall be performed by the Public Contracting Officer.

C. The Public Contracting Officer may develop such forms that are convenient to the administration of the City's contracts and may promulgate procedures reasonably necessary to accomplish the purposes of this Chapter, the Model Rules, and the Oregon Public Contracting Code. The City Attorney may promulgate standard forms for use by the Public Contracting Officer. (Ord. 3136, amended, 2017; Ord. 3013, added, 05/18/2010; Ord. 2934, replaced, 11/21/2006; Ord. 2917, amended, 03/01/2005; Ord. 2857, amended, 06/20/2000)

## 2.50.080

### Formal Processes - Competitive Sealed Bidding and Proposals

Except as otherwise expressly provided herein, in addition to the requirements of the Model Rules and the Oregon Public Contracting Code:

A. The Finance Director must sign off that there are appropriate funds for the project before the project is **advertised or solicited** ~~put out for bids~~.

B. The City Attorney must determine that the contract is ~~appropriate as to form~~ **Approved as to Form, or AATF**, before the project is **solicited** ~~put out for bids~~. **AATF from the City Attorney ensures the contract is clear, terms are consistent, risk is mitigated, the parties have legal authority to sign and the contract is enforceable.** In addition, the City Attorney shall review all formal competitive solicitations or formal competitive bids to ensure that the appropriate process is being followed.

~~C. The Local Contract Review Board shall approve the award of all contracts for which the Ashland Municipal Code or the Oregon Public Contracting Code require formal competitive solicitations or formal competitive bids.~~

~~C. D. *Electronic Solicitation.* Competitive sealed bids and competitive sealed proposals may be available online **or issued in hard copy. Proposals will be submitted and received according to ORS 279B.060.** but applicants will NOT be able to submit their proposals and/or responses online. Bids and proposals must be delivered in hard copy form to the City in accordance with the requirements for the competitive solicitation. Individuals that obtain the solicitation materials electronically are responsible for regularly checking for instructions, addenda, and related materials. (Ord. 3039, amended, 11/07/2010; Ord. 3013, added, 05/18/2010; Ord. 2934, replaced, 11/21/2006; Ord. 2917, amended, 03/01/2005)~~

## 2.50.090

### Exemptions from Formal Competitive Selection Procedures

All Public Contracts shall be based upon Competitive Sealed Bidding (Invitation to Bid) or Competitive Sealed Proposals (Request for Proposal) pursuant to ORS 279A – 279C and the Model Rules except for the following:

A. Contracts listed in ORS 279A.025(2).

B. Purchases through federal programs as set forth in ORS 279A.180.

C. Public Improvement Contracts that qualify for exemption as set forth in 279C.335.

D. ~~Small Procurements—a public contract not exceeding \$5,000.~~

~~1. Small Procurements shall be awarded in accordance with ORS 279B.065, OAR 137-047-0800, OAR 137-047-0265 and all other applicable provisions of law.~~

E. ~~Intermediate Procurements—a public contract for goods and services greater than \$5,000 and less than \$100,000.~~

~~1. Intermediate Procurements shall be awarded in accordance with ORS 279B.070, OAR 137-047-0800, OAR 137-047-0270 and other applicable provisions of law.~~

**DF.** Sole Source Procurements – a public contract in which the Department Head finds in writing that there is only one provider of a product or service of the quality and type required available.

1. Sole-source procurements shall be awarded in accordance with ORS 279B.075 and all other applicable provisions of law.

**EG.** Special Procurements – a public contract for a class special procurement, a contract specific procurement or both, based upon a contracting procedure that differs from procedures described in ORS 279B.055, 279B.060, 279B.065, 279B.070. The contracting approach may be custom designed to meet the procurement needs.

1. Special procurements shall be awarded in accordance with ORS 279B.085 and all other applicable provisions of law.

**FH.** Emergency Procurements – a public contract that is necessary because an emergency exists meaning there are circumstances creating a substantial risk of loss, damage, interruption of services or threat to public health, safety, welfare, or property that could not have been reasonably foreseen and requires prompt execution of a public contract to remedy the condition.

1. Emergency procurements shall be awarded in accordance with ORS 279B.080 and all other applicable provisions of law.

**GI.** The following classes of contracts are hereby specifically exempted from the Oregon Public Contracting Code and Model Rules pursuant to ORS 279A.025(t):

1. Contracts for the purchase of materials where competitive bids for the same materials have been obtained by other public agencies or the federal government whose processes for bid and award are substantially equivalent to those set forth herein, and the contract is to be awarded to the party to whom the original contract was awarded as long as no material change is made to the terms, conditions, or prices of the original contract.

2. Contracts for licenses and maintenance of computer hardware, computer software, and telecommunications products (including cable, video and television products).

3. Purchase of items or services of an artistic nature, including, but not limited to public art.

4. *Contracts for removal, cleanup or transport of hazardous materials.* As used in this Subsection, “hazardous materials” include any material or substance which may pose a present or future threat to human health or the environment, including Hazardous Waste as that term is used in the Resources Conservation and Recovery Act (42 USC 6901 et seq.).

5. Contracts for purchase of used motor vehicles, defined as any motor vehicle that is at least one year old.

6. Contracts for the purchase of used heavy construction equipment.

7. Contracts for the purchase of copyrighted materials where there is only one supplier available within a reasonable purchase area for such goods.

8. Contracts for the purchase of advertising, including legal advertising intended for the purpose of giving public notice.
9. Contracts for the purchase or sale of all utilities including, but not limited to, electric power, gas, water, sewage, internet, cemetery lots, cable and telecommunication services, and the sale of telecommunication materials or products or other 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. (Ord. 3039, amended, 11/07/2010; Ord. 3013, added, 05/18/2010)

## 2.50.095

### **Additional Requirements for Exemptions Pursuant to 2.20.090(I)**

Any contract exempted under 2.20.090.I shall additionally satisfy these criteria:

- A. The performance bond requirements of ORS 279C.375 and 279C.380, unless an emergency exemption exists in accordance with the Oregon Public Contracting Code and Model Rules.
- B. The construction and landscape contractor registration and requirements of ORS Chapter 671.630 et seq. and Chapter 701;
- C. Any other law applicable to such a contract; and,
- D. To the extent that BOLI applies, the City and the contractor shall comply with the prevailing wage provisions of ORS 279C.800 - 279C.870. (Ord. 3013, added, 05/18/2010; Ord. 2934, replaced, 11/21/2006)

## 2.50.100

### **Informal Process - ~~Process for Exempt~~ Small and Intermediate Procurements**

The following process shall apply to all contracts that are exempt from formal competitive selection procedures in AMC 2.50.090.

~~A. The Public Contracting Officer is responsible for determining whether a project is subject to an exemption pursuant to AMC 2.50.090 that will allow a process other than a formal solicitation. Except for small procurements and emergency procurements, it is the responsibility of the Public Contracting Officer to evaluate whether an exemption exists and write findings consistent with Oregon law to document the exemption. A copy of the written findings shall be given to the City Attorney. If an exemption is approved all applicable provisions of the Oregon Public Contracting Code and the Model Rules must be followed. Notwithstanding the exemptions, the City Attorney, the Public Contracting Officer, or Local Contract Review Board may require a formal competitive solicitation to ensure the purposes of this Chapter.~~

~~AB. Except for small procurements equal to or less than \$5,000, and emergency procurements, any informal procurement process, listed in AMC 2.50.090 shall require the Public Contracting Officer to obtain written authorization from the Finance Director to ensure that adequate funds are available for the project. **Small procurements as set forth in ORS 279B.065 are subject to the City's Purchasing Policies.**~~

~~BC. For Intermediate procurements as set forth in ORS 279B.070 are subject to the City's Purchasing Policies.~~ of any amount ~~†~~The contracting agency shall use a written solicitation specifications to obtain quotes, bids, or proposals **and must go through the City's Purchase Order and Contracting process. The City Attorney must determine that the contract is Approved as to Form before the contract is awarded. Utilizing a City standard form contract without changes eliminates the requirement for legal approval in informal contracting procedures.**

~~D. For all contracts over \$5,000 the City Attorney must determine that the contract is appropriate as to form before the contract is awarded. Use of a City standard form contract negates the need for legal sign-off on all informal contracting processes.~~

~~CE.~~ After the procurement process is complete, the Public Contracting Officer must execute the procurement contract, and the Finance Director must endorse the amount of the contract if the value of the contract exceeds the amount originally approved by the Finance Director on the requisition documents.

~~DF.~~ The Public Contracting Officer must execute any change orders or amendments to the contract that are authorized under the Oregon Public Contracting Code or the Model Rules. (Ord. 3039, amended, 11/07/2010; Ord. 3013, added, 05/18/2010; Ord. 2934, replaced, 11/21/2006)

## **2.50.110**

### **Electronic Advertisement of Public Contracts**

~~The City may publish the advertisement for Offers by posting it on the website of the City, or if applicable, another governmental entity as long as the content required by the Model Rules and Oregon Public Contracting Code is available. Individuals that obtain the solicitation materials electronically are responsible for regularly checking for instructions, addenda, and related materials. (Ord. 3013, added, 05/18/2010)~~

## **2.50.120**

### **Personal Services Contracts**

~~A. A personal service contract that does not exceed \$35,000 may be awarded by direct appointment. Personal Services Contracts that are for contract amounts greater than \$35,000, but less than \$75,000 shall follow the process for Intermediate Procurements as outlined above. In addition, for personal services contracts greater than \$5,000, but less than \$75,000, the Public Contracting Officer shall make findings that City personnel are not available to perform the services, and that the City does not have the personnel or resources to perform the services required under the proposed contract. However, the City Attorney, the Public Contracting Officer, or Local Contract Review Board, can require a formal solicitation for bids to ensure that the purposes of this chapter are upheld.~~

~~1. *Class Exemption—Attorney Services.* Personal service contracts for legal counsel, legal services, expert witnesses, court-appointed attorneys, stenographers and other legal services are exempt from the competitive procurement requirements of this section and may be entered into based upon the judgment of the City Attorney. The City Attorney shall obtain City Council~~



approval of any expenditure for legal services paid to a single legal services provider that is expected to exceed \$50,000 prior to entering into the contract. In addition, except for legal counsel hired by the City to provide legal services to indigent criminal defendants prosecuted by the City, the City Attorney shall select and retain all outside legal counsel hired by the City subject to the approval of the City Council.

~~2. *Pre-qualified Pool Exemption.* The City may directly award a personal services contract that does not exceed \$100,000 to a provider that has been selected to be on a list of:~~

~~a. The City's current list of qualified providers through a formal process; or~~

~~b. From another public contracting agency's current list of qualified providers as long as the public contracting agency uses a process substantially similar to the City's to derive the list.~~

~~3. *Continuation of Work Exemption.* Personal service contracts of not more than \$100,000 for the continuation of work by a contractor who preformed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition if the prior contract was awarded under a competitive process and the Public Contracting Officer determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.~~

~~B. The Local Contract Review Board is hereby opting out of OAR 137-048 regarding architectural, engineering, and land surveying services.~~

~~C. The standard procurement rules adopted above shall apply to such contracts, as well as the following personal services selection criteria:~~

~~1. Specialized experience in the type of work to be performed;~~

~~2. Capacity and capability to perform the work, including any specialized services within the time limitations for the work;~~

~~3. Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration where applicable;~~

~~4. Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of designing or techniques peculiar to it, where applicable;~~

~~5. Cost of the services; and~~

~~6. Any other factors relevant to the particular contract. (Ord. 3039, amended, 11/07/2010; Ord. 3013, added, 05/18/2010; Ord. 2934, replaced, 11/21/2006)~~

## **2.50.125**

### **Cost and Feasibility Determinations**

The Public Contracting Officer shall make written cost or feasibility findings pursuant to ORS 279B.030. If the Public Contracting Officer is performing a cost analysis pursuant to ORS 279B.033, the Public Contracting Officer shall add a profit margin of ten percent (10%) of the cost of the project when estimating the total cost of hiring a contractor. (Ord. 3013, added, 05/18/2010)

## 2.50.130

### Record Keeping

All records shall be retained in accordance with OAR 137-047-0620. To facilitate contract file record keeping and reduce accounting and auditing difficulties in having dispersed contract files, each city department will maintain a complete file on all contracts executed on behalf of that department. Information to be included in the file shall include, at a minimum:

- A. Any and all invitation for bids, requests for proposals, and any advertisements;
- B. Council consent authorizing contract execution when applicable;
- C. Copies of the signed contract, any required insurance certificates, bonds, or other bid security;
- D. Any approved Local Contract Review Board waivers; and
- E. List of who the solicitation documents were sent out to or the list of plan holders.

The City Recorder's Office shall retain the original executed contract as well as original copies of any required insurance certificates, performance bonds, and payment bonds or other bid security. The department which is responsible for the procurement shall continually monitor insurance certificates to ensure the City remains an additional insured and that the other party has sufficient coverage. (Ord. 3013, added, 05/18/2010)

## 2.50.140

### Protests of Procurement Process and Solicitation Award

A. The Uniform Administrative Appeals Process outlined in AMC 2.30 shall apply to all protests of the procurement process and award of public contracts except that the timelines of this section shall govern when determining whether an appeal is filed timely.

B. *Timelines for Submitting Protests.*

1. Protests regarding the process or specification shall be received no later than ~~ten (10)~~ **seven (7)** calendar days prior to bid closing.

2. Protests regarding the award of the contract shall be received within seven (7) calendar days from the notice of intent to award the public contract.

C. Failure to strictly comply with the applicable protest requirements, including but not limited to the required elements for the written protest required by the Model Rules and the Oregon Public Contracting Code, payment of the applicable appeal fee pursuant to AMC 2.30, and time for filing as specified in this section, shall constitute jurisdictional defects resulting in the summary dismissal of the appeal. (Ord. 3013, added, 05/18/2010)

**SECTION 2. Severability.** Each section of this ordinance, and any part thereof, is severable, and if any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in full force and effect.

The foregoing ordinance was first ready by title only in accordance with Article X, Section 2(C) of the City Charter on the \_\_\_\_\_ day of \_\_\_\_\_, 2024, and duly PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

ATTEST:

\_\_\_\_\_  
Alissa Kolodzinski, City Recorder

SIGNED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Tonya Graham, Mayor

Reviewed as to form:

\_\_\_\_\_  
Douglas M. McGeary, Acting City Attorney