

ORDINANCE NO. 1191

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COACHELLA, CALIFORNIA, REPLACING THE CITY'S PURCHASING ORDINANCE AS SET FORTH IN CHAPTER 4.08 OF THE CITY OF COACHELLA MUNICIPAL CODE

WHEREAS, updating the City of Coachella's purchasing ordinance will make the City more effective, efficient, fiscally responsible and better reflect the City's operating procedures for procurement; and

WHEREAS, on December 8, 2021, the City Council conducted a legally noticed public hearing on the proposed Code Amendments, and considered public testimony and materials in the staff report and accompanying documents and exhibits.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COACHELLA, CALIFORNIA, RESOLVES AS FOLLOWS:

Section 1. Recitals. The above recitals are hereby adopted by the City Council and incorporated as set forth in this section.

Section 2. Amendment. Chapter 4.08 of Title 4 of the City of Coachella Municipal Code is hereby replaced in its entirety to read as follows:

“Chapter 4.08 – PURCHASING

4.08.10 Purpose of this Chapter

This section is hereby adopted in order to establish efficient policies and procedures for the procurement of public goods and services at best overall value to the City, to exercise positive financial control over purchases and procurements, to clearly define authority for the purchasing function, and to comply with all applicable laws in a professional and ethical manner.

4.08.20 Definitions

For the purposes of this Chapter, the following words and terms, shall be construed with the following definitions:

A. **“Best value”** means the overall value provided to the City including price, competency, availability, quality and any other factor including setup costs, staff time, and levels of certainty that collectively provide lower overall costs irrespective of the quoted price. Best Value is the result of a comprehensive analysis of known variables and the determination of the total cost to the City.

B. **"Coachella Valley"** means the nine incorporated cities of the Coachella Valley, and the unincorporated areas of Riverside County in the Coachella Valley that are located within the boundaries of the Coachella Valley Association of Governments.

C. **“Federal funding purchases”** means any purchase of goods or services paid for with federal funds (including partial federal funding) or federal pass through funds.

D. **“General services”** means the furnishing of labor, time, or effort by a contractor for non-professional services as the city may, from time to time, find necessary and proper for the functioning of the city. Examples include, but are not limited to, janitorial, uniform cleaning, or other services which do not require any unique skill, special background or training.

E. **“General goods”** means any and all supplies, materials, articles, things, or property, other than real property, furnished to be used by the city.

F. **“Local business”** means a vendor, contractor, or consultant who has a valid physical business address located within the Coachella Valley, at least six months prior to bid or proposal opening date, from which the vendor, contractor, or consultant operates or performs business on a day-to-day basis, and holds a valid business license by a jurisdiction located in the Coachella Valley. Post office boxes are not verifiable and shall not be used for the purpose of establishing such physical address.

G. **“Maintenance services”** means:

1. Routine, recurring, and usual work not considered a Public Works Contract for the preservation or protection of a publicly owned, or publicly operated facility for intended purposes;
2. Minor repainting or resurfacing;
3. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; and
4. Work performed to keep, operate and maintain publicly owned water or waste disposal systems;
5. Other similar services that are generally classified as maintenance.

H. **“Professional services”** means services provided by a person, company, corporation, or firm engaged in a profession based on a generally recognized special knowledge, skill, license, and/or certification to perform the work including, but not limited to, the professions of accountant, attorney, artist, architect, landscape architect, construction manager, engineer, environmental consultant, dentist, physician, training or educational consultant, or land surveyor, and whose services are considered distinct and unique.

I. **“Public works contract”** means:

1. A contract for the erection, construction, alteration, repair or improvement of any public structure, building, road or other public improvement of any kind as defined in the California Public Contract Code;
2. Work in or about streams, embankments or other works for protection against overflow;
3. Street or sewer work except maintenance or repair; and
4. Furnishing supplies or materials for any such project,.

J. **“Request For Proposal (“RFP”)”** means a document that solicits firms to submit a proposal to perform the scope of work associated with a proposed project. Cost is not the sole basis for selection in an RFP; other qualifications including experience, turnaround time and approach to work are important factors when evaluating proposals. RFPs are project specific and preparation requires general knowledge of the project.

K. **“Request For Qualification (“RFQ”)”** means a document that solicits firms to submit information about their qualification and capabilities to perform the type of work associated with a proposed project. The preparation of an RFQ generally does not require specific project knowledge or scope. An RFQ may be used as a pre-qualification step to engaging a service provider. If an RFQ is required, only those candidates who successfully respond to it and meet the qualification criteria will be included in the subsequent RFP process. An RFQ will contain specific reference to selection criteria.

L. **“Goods and/or Services”** is/are used as an inclusive description for general goods and/or services, maintenance services, or professional services irrespective of whether the goods and/or services are related to federal funding purchase, maintenance services or public works contracts.

4.08.30 Purchasing Authority

The authority to purchase goods and services shall be delegated by resolution of city council based on dollar limit thresholds. The city manager or finance director will bring recommended modifications to purchasing authority limits to city council from time to time as deemed necessary. Recommended modifications under this section will be based on an evaluation of the costs associated with imprudent purchases versus the costs associated with city staff and council time required to analyze and approve purchases. Factors such as inflation and local purchasing practices should be considered when making this determination.

4.08.40 Purchasing Policy Procedures.

A. **Procurement Guidelines.** The finance director shall implement policies and procedures governing the procurement of public projects, goods and services for the city consistent with this Chapter. Said procedures and policies may be amended as needed to address operational issues as they arise.

B. Rejection of Bids and Proposals. At its discretion, the city council or city manager may reject any and all bids, proposals, quotations, or prices and take any other action deemed appropriate for the procurement of public projects, goods and services.

C. Required Procedures. More specific procurement methods shall be used if required by federal and state law, or where federal or state funds are involved in the contract to be awarded, or when required under a grant agreement, or when the city council or city manager determines it is in the best interest of the city to do so.

D. Appropriations Requirement. No contract or purchase shall be made unless the city manager or finance director shall have first confirmed that there is an appropriation in the fund against which such expenditure is to be charged sufficient to cover the amount of purchase or contract, unless in cases of emergency or where the immediate procurement is deemed to be in the immediate best interest of the City.

E. Unauthorized Purchases. No officer or employee of the city shall request a firm to deliver goods and/or services to the city without prior authorization by the city manager, department director or city council (depending on applicable approval limit). Such purchases are void and not considered an obligation of the city.

F. Performance Bonds. The city manager shall have authority to require a performance bond before entering a contract in such an amount necessary to protect the best interests of the city. The city manager shall have the authority to release the required performance bonds once the initial need to protect the best interest of the city is deemed reasonably mitigated.

G. Review and Approval of Plans and Specifications. The city engineer, or qualified designee(s), is authorized to review and approve engineering plans for all public projects. This shall include the working details, drawings, plans and specifications prepared for every public works project, including emergency and change order work, which may affect the design or operation of public improvements and which may bring into question the city's liability for dangerous conditions of public property.

H. Master Agreements. The city may enter into master agreements, under which city staff purchases goods and services, including but not limited to on-call services. Master Agreements shall have a not-to-exceed cost limit and be subject to the procurement requirements of this Chapter based on the not-to-exceed value.

I. Split Purchases. A split purchase occurs when the quantity of a required goods or service is known prior to the initial purchase, and is divided into multiple purchases in order to avoid the requirement for obtaining bids or proposals. Split purchases are prohibited, may be misdemeanors under State law if public bidding is required, and are generally considered fraud, waste, and/or abuse and in violation of best practices standards.

J. Subsequent Contract Awards, Amendments, Extensions or Renewals. Notwithstanding anything herein to the contrary, the city manager shall not award a subsequent contract to the same individual or entity for the same or similar services on

the same project, or amend, extend or renew such a contract, without obtaining approval authority by the city council, when the award, amendment, extension or renewal will result in the city paying an aggregate amount in excess of the approval authority of the city manager to the individual or entity in any given fiscal year.

4.08.50 Protest Procedure

A. **Right to Protest.** Prior to city making the award of a contract, any responsible bidder or proposer in connection with the procurement of the contract may protest the award. A subcontractor of a bidder or proposer may not submit a protest. This Section shall apply to all contracts awarded by the city council through a formal competitive process, including but not limited to a formal bidding process or formal RFP or RFQ process. The protest procedure does not apply to contracts that are awarded at the city staff level or through a non-competitive process (e.g., by sole source). The protest procedure is solely to serve the public interest and obtain finality of city contract awards.

B. **Timing of Protest.** The protest shall be submitted in writing within the following times:

1. For the protest of another bidder's bid, five (5) working days after the bid opening date.
2. If the city issues a notice of intent to reject a bid or any other determination of a bid, then the protest shall be submitted in writing within five (5) calendar days following the issuance of the notice and prior to the date of the contract award.
3. Untimely protests will not be considered and will be deemed waived.

C. **Contents of Protest.** The protest shall identify and explain the factual and legal grounds for the protest and include all relevant and supporting documentation. Any grounds not raised in the written protest are deemed waived by the protesting bidder.

D. **City Response.** If the protest is timely and complies with the above requirements, the city shall review the protest, any response from the challenged bidder(s), and all other relevant information and provide a written decision to the protestor.

E. **Effect of Failure to Comply with Protest Procedures.** The procedures set forth in this Section are mandatory and are the sole and exclusive remedy of a bidder or proposer to dispute the award of a contract. A protest that does not comply with these procedures may be summarily rejected.

F. **Conflicts.** The protest procedure contained in this section shall not apply if a particular procurement solicitation contains a different protest procedure.

4.08.60 Competitive Procurement

The total estimated contract amount for the cost of goods and services determines the competitive procurement procedures and procurement methods that must be followed, as described below:

A. **General** The competitive procurement thresholds for general goods and services will be set by resolution of the city council. The city manager or finance director will from time to time evaluate the general procurement thresholds to determine adequate levels considering the expected benefits from lower prices obtained through competitive procedures versus the costs incurred by the city through the use of city staff time to perform the competitive procurement procedures. Modifications to the thresholds will be recommended to city council as deemed necessary.

The city council may dispense with the formal bid process for goods if the city council finds that a formal RFP process would be more beneficial to the city or if the city council finds that the need to compare different products and/or negotiate the best value would be better achieved through the formal RFP process.

B. **Public Works Contracts** The thresholds for bidding of public works contracts shall be subject to the California Uniform Public Construction Cost Accounting Act (Public Contract Code sections 22000 et seq.) as adopted by resolution of city council.

C. **Expenditures of Federal Funds** The threshold for bidding of projects funded with federal funds will be consistent with 2 CFR Part 200 Uniform Guidance where the Office of Budget and Management sets and periodically amends competitive procurement thresholds. Where a project is a public works contract funded with federal funds, the lower competitive bidding threshold will apply. This requirement is applicable if any part of the public works contract is funded with federal funds.

4.08.70 Informal Quote Process

A. **Soliciting Quotes or Proposals.** City staff shall solicit via posted notice, telephone request, mail, email, fax or any other reasonable solicitation method, price quotes or proposals documented in writing. If unable to obtain a minimum of three (3) price quotes, staff shall document that reasonable efforts were made to obtain price quotes or proposals including, that a notice was posted for not less than seven (7) calendar days; that there were no other vendors to solicit price quotes or proposals from; or that they solicited to other vendors and two or more declined to provide a quote or proposal.

B. **Award of Contract.** Award shall be made to the vendor providing the best value.

4.08.80 Informal Bidding Procedures.

A. **Required Process.** The informal bidding procedures shall comply with all aspects of state and local law governing formal competitive bidding, including, but not limited to, the Government Code, Labor Code, Uniform Guidance under 2 CFR Part 200, resolutions of the city council as may be adopted from time to time, this Chapter, and

policies and procedures as the city manager or finance director may implement from time to time as applicable.

B. Notice Inviting Bids. At a minimum, a notice inviting bids shall: (1) describe the project; (2) state how to obtain more detailed information about the project; and (3) state the date, time and place for the submission of bids. The notice shall be advertised in the most expedient manner possible maximize the number of qualified respondents. Notices inviting bids will be sent by the advertising City Department to a list of qualified contractors.

C. Bid Submission. Bids shall be submitted to the advertising city department and shall be clearly identified by the department with a bid number. The receiving city department will track all bids received.

D. No Bids. If no bids are received, the city department or council may have the procurement done in any manner deemed prudent without further complying with this Chapter.

E. Award of Contract. If awarded, the contract shall be awarded to the lowest responsible bidder submitting a responsive bid. If two or more bids received are the same amount, the city council may decide which bid to accept and award.

F. Rejection of Bids. The city council or city manager may, at their sole and absolute discretion, reject any one or more items of a bid, reject any and all bids, or waive any irregularities or informalities in the bids or bidding process if deemed to best serve the interests of the city.

4.08.90 Formal Request for Proposal (RFP)/Request for Qualifications (RFQ) Process

The formal RFP or RFQ process shall be utilized to engage services on the basis of best value to the city. The following minimum guidelines and procedures shall be implemented:

A. Notice Inviting RFQs or RFPs. At a minimum, the notice inviting RFQs or RFPs shall: (1) describe the project; (2) state how to obtain more detailed information about the project; (3) state the date, time and place for the submission of qualifications or proposals; (4) describe general parameters for evaluation and selection; and (5) include any other information required by state or local law.

B. Published Notice. City staff shall solicit RFQs or RFPs via published notice in a newspaper of general circulation and/or the city's website at least ten (10) calendar days before the date for receiving qualifications or proposals, unless exigent circumstances call for a shorter time.

C. **Review of Qualifications or Proposals.** Proposals shall be evaluated based on the evaluation and selection criteria established by the city.

D. **Award.** Award for professional services contracts shall be to the respondent offering the best value to the city, in the city's sole and absolute discretion.

E. **Rejection of Proposals.** The city manager or city council may, in its sole and absolute discretion, reject all proposals presented and re-advertise.

4.08.100 Formal Public Works Contract Bidding Process

A. **Required Process.** The formal bidding process shall comply with all aspects of state and local law governing formal competitive bidding, including, but not limited to, the Public Contract Code, Government Code, Labor Code, Uniform Guidance under 2 CFR 200, resolutions of the city council as may be adopted from time to time, this Chapter, and policies and procedures as the city manager or finance director may implement from time to time as applicable.

B. **Notice Inviting Formal Bids.** Notice inviting formal bids shall be provided. Notices shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project. At a minimum, the notice inviting formal bids shall: (1) describe the project; (2) state how to obtain more detailed information about the project; (3) state the date, time and place for the submission of sealed bids; and (4) include any other information required by state or local law.

C. **Published Notice.** The notice shall be published at least ten (10) calendar days before the date of opening the bids in a newspaper of general circulation and on the city's website. Notice shall be published at least twice not less than five (5) calendar days apart.

D. **Bidder's Security.** All bids shall be presented under sealed cover accompanied by one of the following forms of bidder's security: (a) cash; (b) cashier's check made payable to the city; or (c) a bidder's bond executed by an admitted surety insurer made payable to the city. Such security shall be an amount at least equal to ten percent of the bid amount. No bid shall be considered unless security in the form above set forth is enclosed with the bid.

E. **Forfeiture of Security.** If the successful bidder fails to execute the contract, the bidder's security shall be forfeited to the city. The city council may on refusal or failure of the successful bidder to execute such contract award the contract to the next lowest responsible bidder. If the city council awards the contract to the second lowest bidder, the amount of the lowest bidder's security shall be applied by the city to the difference between the low bid and the second low bid. The surplus, if any, shall be utilized to offset any and all costs of preparation and printing of plans, specifications, estimates of cost, publication of notices, and any surplus remaining shall be returned to the lowest bidder who fails to execute the contract.

F. **Bid Opening.** Sealed bids shall be submitted to the city clerk and shall be clearly identified with the bid number on the envelope. Upon receipt, the city clerk shall date and time stamp the envelope. Bids shall be opened in public at the time and place stated in the public notices.

G. **Review of Bids.** The city shall review all bids received for completeness, accuracy, responsiveness to the invitation and bid documents, and the city's experience with or knowledge of the qualification and reliability of each bidder and prepare a recommendation for the city council. The city council may waive any irregularities or discrepancies in each bid received.

H. **No Bids.** If no bids are received, the city council may have the project done in any manner that the city council may direct without further complying with this Chapter.

I. **Award of Contract.** If awarded, the contract shall be awarded to the lowest responsible bidder submitting a responsive bid. If two or more bids received are the same amount, the city council may decide which bid to accept and award.

J. **Rejection of Bids.** The city council may, in its sole and absolute discretion, reject any one or more items of a bid, reject any and all bids, or waive any irregularities or informalities in the bids or bidding process if deemed to best serve the interests of the city. After all bids are rejected, the city council may pass a resolution by a four-fifths vote of its members declaring that the project can be performed more economically by employees of the city or procuring goods on the open market, or elect to readvertise for bids pursuant to the procedures prescribed in this Section.

4.08.110 Formal Non-Public Works Contract Bidding Procedures.

K. **Required Process.** The formal non-public project bidding procedures shall comply with all aspects of state and local law governing formal competitive bidding, including, but not limited to, the Government Code, Labor Code, Uniform Guidance under 2 CFR Part 200, resolutions of the city council as may be adopted from time to time, this Chapter, and policies and procedures as the city manager or finance director may implement from time to time as applicable.

L. **Notice Inviting Formal Bids.** At a minimum, a notice inviting formal bids shall: (1) describe the project; (2) state how to obtain more detailed information about the project; and (3) state the date, time and place for the submission of bids. The notice shall be advertised in the most expedient manner possible maximize the number of qualified respondents.

M. **Bid Opening.** Bids shall be submitted to the advertising city department and shall be clearly identified with a bid number. The receiving city department will track all bids received.

N. **No Bids.** If no bids are received, the city council may have the procurement done in any manner that the city council may direct without further complying with this Chapter.

O. **Award of Contract.** If awarded, the contract shall be awarded to the lowest responsible bidder submitting a responsive bid. If two or more bids received are the same amount, the city council may decide which bid to accept and award.

P. **Rejection of Bids.** The city council may, in its sole and absolute discretion, reject any one or more items of a bid, reject any and all bids, or waive any irregularities or informalities in the bids or bidding process if deemed to best serve the interests of the city.

4.08.120 Exceptions to Procurement Methods

This Section contains exceptions to the City's general procurement requirements. The City may determine that use of an exception is more beneficial under the circumstances. Exceptions should only be used where the particular exception provides a greater public benefit than adhering to standard procurement requirements.:

A. **Disaster Relief.** When in the case of a disaster, as further explained in Chapter 2.56, the requirements of this Chapter do not apply.

B. **Emergency.** When in case of emergency.

1. "Emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

2. In the case of an emergency which requires the immediate procurement of public works, services or goods the city manager or department director may procure these items without regard to the provisions of this Chapter. The action shall only be to repair or replace a public facility, take any directly related and immediate action required by that emergency, or procure the necessary equipment, services, and supplies for those purposes. The city manager or department director shall terminate the emergency action at the earliest possible date that conditions warrant. If a contract or purchase is made pursuant to this authority, the city manager or department director shall, upon request, provide to the city council for review a written public record showing the nature of the emergency and when applicable to a public works contract the city manager's authorization to proceed pursuant the provisions of this section and Public Contract Code section 22050.

C. **No Competitive Market.** Except where otherwise prohibited by law, when the city council, city manager or department director determines that a competitive market does not exist or that the city will not gain a competitive advantage by using the formal or informal bidding procedure, the city may use any other procurement method.

D. **Competitive Bidding Already Completed.** Except where otherwise prohibited by law, when it is determined that: (1) a competitive bid procedure has been conducted by another public agency, including, but not limited to, another local agency, the State through the California Multiple Award Schedule (CMAS), the federal government through the General Services Administration (GSA), or a joint powers

agency, authority or alliance that procures competitive contracts; and (2) the price to the city is equal to or better than the price to that public agency.

E. **Mandated Expenditures.** When expenditures are mandated by law or regulation, such as county booking fees, utilities, postage, waste disposal fees or other non-negotiable permit, use or application fees.

F. **Shared Services.** When the city council or city manager authorizes the award and execution of contracts for services, subject to the dollar limits consistent with this Chapter, that are provided by another government, public entity, joint powers authority, quasi-governmental entity, special district or non-profit entity that will maximize efficiency, increase cost effectiveness, increase range of services, minimize duplication, provide training or education encourage collaboration or standardize efforts, or leverage government resources.

G. **Best Interest of City.** Except where otherwise prohibited by law, when the city council or city manager authorizes the award and execution of contracts for services and goods subject to the dollar limits consistent with this Chapter, without following the required procurement methods, provided that the city council or city manager finds that such award is in the best interest of the city, or of the public health, safety, and welfare.

H. **Sole Source.** When the city council or city manager determines that there is only one source that provides the needed services or goods, or to ensure compatibility with other city products and equipment, the city shall work to procure these items in the best interest of the city.

I. **Purchase of Recurring Charges.** The city may create an open vendor list for the purposes of providing services and goods for the fiscal year for ongoing cleanup, maintenance and different routine items that are of a continuing nature. Prices from each vendor shall be obtained in a manner to ensure competitive pricing, in the best interest of the city. Vendor approval thresholds will be determined consistent with section 4.08.30 of this chapter consistent with each project for which the recurring charges are needed.

J. **Task or Job Orders.** Except where otherwise prohibited by law, task or job orders that the city places through a duly approved master agreement shall not be subject to further procurement requirements. This section is inclusive of pre-negotiated supplier contracts and cooperative purchasing arrangements and will be applicable to any similar purchasing mechanism where competitive procedures were undertaken and the purchasing mechanism is consistent with industry practices.

K. **Reoccurring as Needed Service Agreements.** The City may engage certain service providers to perform routine services that are requested on an intermittent basis for an unknown amount. These agreements should be based on competitive procurement through the informal quote process (usually on a per hour basis) using the best value standard. The City may engage multiple service providers under this item to ensure continuous availability of services.

L. **Individual Specific Agreements.** Certain professional services contracts are exempt from the competitive procurement process in the limited circumstance where the contract is not for a set amount and is so closely tied to the individual contracted that the same result would not be expected should the contract be competitively bid (procurement of services dependent on the individual contracted). This section is applicable when the services are more consistent with a function performed by a contracted employee than an independent professional services provider. To meet the exemption outlined in this section, the contracted services must be tied directly to an individual. A listing of such contracts will be maintained by the finance director and will be approved by the finance director and city manager or their designees.

M. **Otherwise Authorized.** When otherwise authorized by this Chapter or applicable law.

4.08.130 Change Orders.

A. Contracts may be amended by the issuance of a change order or amendment, provided the change is reasonably related to the scope of the original contract. The city manager shall have authority to approve change orders for contracts previously awarded by the city manager, provided that the combined total does not exceed the city manager's approval threshold under chapter 4.08.30.

B. During the award of a contract by the city council, the city council may give the city manager the authority to approve change orders, specific to that contract, based on either a percentage of the contract or a specific dollar amount. If no specific authority is given by the city council, the city manager may approve change orders for a city council awarded contract subject to the dollar limits consistent with this chapter, provided such change orders are within the approved project contingency.

C. Change orders in excess of the city manager's authority may be approved by the city manager and submitted to city council for ratification under the following circumstance:

1. The failure to immediately issue a change order may result in significant project cost increases or an unacceptable project delay due to work stoppage or other inefficiencies;

2. A special meeting or a regularly scheduled meeting of the city council is not scheduled within a reasonable period of time to sufficiently remedy the problem; and

3. Funding for the change order is currently available within the appropriated budget.

4.08.140 Disposition of Surplus Goods

A. **Disposing of Surplus.** Department heads shall have the authority to dispose of de minimis surplus, obsolete or no longer useful items utilized in the normal

course of the department's operations. The de minimis threshold will be set at \$5,000 or less in estimated current value for each item. The city manager shall have authority to sell or dispose as surplus all materials, supplies, and equipment which cannot be used by any department or which have become unsuitable for city use, or to exchange the same for, or trade in the same on, new materials, supplies, and equipment. The sale of surplus materials, supplies, and equipment shall be made pursuant to rules prescribed by the city manager and only after authorization from the city council as to any item with an estimated value of \$25,000 or more. Estimated value will be determined based on available quotes or on the best judgement of the department director or City manager considering cost/benefit considerations in making the estimate.

B. City Officials and Staff. City officials and employees and their immediate families, shall not be eligible to purchase such surplus materials, supplies, and equipment.

4.08.150 Local Business Preference Program

A. Findings.

1. The city annually spends significant amounts on purchasing on goods and services. The dollars used in making these purchases are derived in large measure from taxes and fees derived from local businesses and the city council has determined that funds generated in the community should, to the extent possible, be placed back in the local economy. Therefore, the city council has determined that it is in the best interest of the city to give a preference to local businesses in making such purchases whenever the application of such a preference is reasonable in light of the dollar-value received in relation to such expenditure.

2. The city council further finds that the Coachella Valley is in a state of economic depression and many local businesses have been forced to close their doors due to severe financial losses. Many of these local business establishments have been doing business in the Coachella Valley for many years. The city council finds that the city should promote and stimulate local businesses by requiring that purchases of supplies, materials, and equipment and contractual services be acquired from local businesses.

3. The city council further finds that this action is necessary to grow the local economy and preserve the local businesses that have diligently served the Coachella Valley for many years.

4. Strategies that encourage people to buy locally are an important component of economic sustainability. Retaining local dollars within a community reduces economic export and increases the financial productivity of taxpayer dollars and increases the consumption of local goods and services while fostering a sustainable community. In working towards a sustainable economy, the city council recognizes that sustainable procurement policies are an important early step on the Coachella path to a sustainable community. By leveraging the purchasing power of the city to buy local products and services instead of products and services from outside the Coachella Valley it strengthens

the local economic activity and employment as well as sets an example that helps foster and maintain a vital economic community for future generations.

B. Statement of Policy. It is the policy of the city to promote employment and business opportunities for local residents and firms on all contracts and give preference to local residents, workers, businesses, contractors, and consultants to the extent consistent with the law and interests of the public.

C. Local Preference in Goods. In the bidding of, or letting for procurement of, goods, as provided in this Chapter, the city council or the city manager may give a preference to local businesses in making such purchase or awarding such contract in an amount not to exceed five percent of the local business' total bid price, or fifteen thousand dollars (\$15,000.00), whichever amount is lower. Total bid price shall include only the base bid price but also adjustments to that base bid price resulting from alternates requested in the solicitation. In order for a local business to be eligible to claim the preference, the business must request the preference in the solicitation response and provide a copy of its current business license from a jurisdiction in the Coachella Valley.

D. Local Preference in Services. In awarding contracts for services, preference to local business shall be given whenever practicable pursuant to this chapter consistent with the statement of policy in this Section. The contractor or consultant will also, to the extent legally possible, solicit applications for employment and proposals for subcontractors and sub consultants for work associated with the proposed contract from local residents and firms as opportunities occur and hire qualified local residents and firms whenever feasible. In order for a local business to be eligible to claim the preference, the business must request the preference in the solicitation response and provide a copy of its current business license from a jurisdiction in the Coachella Valley.

E. Exceptions to Local Business Preference Policy. The preference set forth in this section shall not apply to the following purchases or contracts:

1. Goods provided under a cooperative purchasing agreement.
2. Purchases or contracts which are funded in whole or in part by a governmental entity and the laws, regulations, or policies governing such funding prohibit application of that preference.
3. Purchases made or contracts let under emergency or noncompetitive situations.
4. Purchases with an estimated cost of five thousand dollars (\$5,000.00) or less.
5. Application of the local business preference to a particular purchase, contract, or category of contracts for which the city council is the awarding authority may be waived at the city council's discretion.

F. **Quality and Fitness.** The preferences established in this section shall in no way be construed to inhibit, limit or restrict the right and obligation of the city council and the director to compare quality and fitness for use of supplies, materials, equipment, and services proposed for purchase and compare the qualifications, character, responsibility, and fitness of all persons, firms, or corporations submitting bids or proposals. In addition, the preferences established in this Section shall in no way be construed to prohibit the right of the city council or the director from giving any other preference permitted by law or this Chapter.

G. **Application.** The local business preference provided in this Section shall apply to new contracts for goods and services first solicited as of the effective date of the enabling ordinance. This Section shall be implemented in a manner consistent with otherwise applicable provisions of this Chapter and competitive bidding laws.

H. **Verification of Local Business Preference Eligibility.** Any vendor or consultant claiming to be a local business shall so certify in the bid, in writing to the director. The city manager shall not be required to verify the accuracy or any such certifications, and shall have sole discretion to determine if a vendor or consultant meets the definition of local business.

I. **Enforcement.**

1. The information furnished by each bidder requesting a local business preference shall be under penalty of perjury.

2. No person or business shall knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a local business for the purpose of this Section.

3. No person or business shall willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a city official or employee for the purpose of influencing the certification or denial of certification of any entity as a local business.

4. A business which has obtained city certification as a local business by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded a contract to which it would not otherwise have been entitled, shall:

(a) Pay to the city any difference between the contract amount and what the city's costs would have been if the contract had been properly awarded;

(b) In addition to the amount described in subsection (i) above, be assessed a penalty in an amount of not more than ten (10) percent of the amount of the contract involved; and

(c) Be subject to debarment from future award of contracts from the city.

5. The penalties identified above shall also apply to any business that has previously obtained proper certification and, as a result of a change in its status would no longer be eligible for certification, fails to notify the city manager of this information prior to responding to a solicitation or accepting a contract award.

J. **Promulgation of Administrative Rules.** The city manager is authorized to adopt administrative rules supplemental to the provisions of this Chapter as necessary or appropriate to implement the provisions of this Section. The provisions of this Section and the rules adopted by the city manager shall be provided to potential bidders, vendors, and contractors to the widest extent practicable.”

Section 3. Severability. If any provision or clause of this Ordinance or any application of it to any person, firm, organization, partnership or corporation is held invalid, such invalidity shall not affect other provisions of this Ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this Ordinance are declared to be severable.

Section 4. CEQA. The City Council hereby finds that this Ordinance is exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the CEQA Guidelines (14 Cal. Code Regs. 15061(b)(3)) because this Ordinance is not a project and does not have the potential for causing a significant effect on the environment. This Ordinance is intended only to establish a policy and procedure to purchase goods and services.

Section 5. Effective Date. This Ordinance shall take effect 30 days after passage.

PASSED, APPROVED, AND ADOPTED this ___ day of _____ 2021, by the City Council of the City of Coachella, California, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

Steven Hernandez, Mayor

APPROVED AS TO FORM:

Carlos Campos, City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Angela M. Zepeda, City Clerk of the City of Coachella, California, do hereby attest to and certify that the foregoing Ordinance is a true and correct copy of Ordinance No. 1191 introduced at a regular meeting of the City Council of the City of Coachella held on the 8th day of December, 2021, and approved and adopted at a regular meeting of the City Council of the City of Coachella held on the [redacted] day of [redacted], 2021.

Angela M. Zepeda, City Clerk

Date