

DRAFT ORDINANCE

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING
CHAPTER 2 (ADMINISTRATION), ARTICLE V, DIVISION 2 OF THE TOWN CODE
REGARDING PURCHASING**

WHEREAS, Chapter 2, Article V, Division 2 of the Town Code regulates Purchasing; and

WHEREAS, on January 25, 2021, the Council Policy Committee held a public meeting and added updating the Town Purchasing Policy to its work plan for the year; and

WHEREAS, Chapter 2, Article V, Division 2 of the Town Code regarding Purchasing should be updated in tandem with the Purchasing Policy in order to ensure consistency; and

WHEREAS, staff prepared draft updates to the Town Purchasing Policy and amendments to Chapter 2, Article V, Division 2 of the Town Code regarding Purchasing; and

WHEREAS, on October 26, 2021, the Council Policy Committee held a public hearing to consider the draft updates to the Town Purchasing Policy and amendments to Chapter 2, Article V, Division 2 of the Town Code regarding Purchasing. The Committee recommended the Town Council review and approve the updates; and

WHEREAS, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on November 16, 2021.

WHEREAS, on November 16, 2021, the Town Council reviewed and discussed the updates to the Town Purchasing Policy and amendments to Chapter 2, Article V, Division 2 of the Town Code regarding Purchasing and the Town Council voted to introduce the Ordinance; and

WHEREAS, on December 7, 2021, the Town Council voted to approve second reading of said Ordinance.

NOW, THEREFORE, THE PEOPLE OF THE TOWN OF LOS GATOS AND THE TOWN COUNCIL DO HEREBY ORDAIN AS FOLLOWS:

Section I

Chapter 2, Article V, Division 2 of the Town Code is hereby amended as follows:

DIVISION 2. - PURCHASING^[8]

Footnotes:

--- (8) ---

State Law reference— Purchasing of supplies and equipment by municipalities, Gov. Code § 54201 et seq.

Sec. 2.50.105. - Purchasing system adopted.

In order to establish efficient procedures for the purchase of goods and services for the Town at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function and to assure the quality of purchases, a purchasing system is hereby adopted. Nothing in this chapter shall prevent the Town from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

(Code 1968, § 23-1)

Sec. 2.50.110. - Decentralized Purchasing Process.

There is hereby established a Decentralized Purchasing Process in which requesting Departments can directly solicit bids or proposals and place orders with vendors, subject to the limitations established in this section, the Town Purchasing Policy, and the approval of the appropriate awarding authority. The Town Finance Department and Town Manager shall oversee the procurement process.

(Code 1968, § 23-2)

Sec. 2.50.115. – Department Purchasing Representatives.

Department Directors shall designate one or more of their Department's employee(s) as a Department Purchasing Representative who will coordinate the procurement process in conjunction with the Finance Department and concurrence of the Town Manager. Department Purchasing Representatives shall have the authority to:

- (1) Purchase or provide for the purchase or lease of all goods and services for the use of their Town Departments in accordance with the provisions of this section, and such administrative rules and regulations put forth in the Purchasing Policy and/or prescribed by the Town Council.
- (2) Recommend execution of contracts for the purchase or lease of goods and services.
- (3) Act to procure the needed quality of goods and services at the least expense to the Town.
- (4) Keep informed of current developments in the field of purchasing, prices, market conditions, services, and new products.
- (5) Prescribe and maintain such policies and administrative forms as are reasonably necessary to the operation of this chapter and other rules and regulations.
- (6) Supervise the inspection of all goods and services purchased or leased to ensure performance with regulations.

- (7) When necessary, oversee the maintenance of a bidder's list and records needed for the efficient operation of purchasing.

(Code 1968, § 23-4)

Sec. 2.50.125. - Use of requisitions.

Town Departments shall submit requests for goods and services over a certain amount defined in the Purchasing Policy by standard electronic purchase requisition forms. A purchase requisition is required to be submitted in order for a purchase order to be issued when necessary.

(Code 1968, § 23-5)

Sec. 2.50.130. – Except as otherwise authorized or required by this chapter or under State or Federal law, purchases of goods and services shall be by bidding procedures.

- (a) When the expenditure required for the purchase of goods and services exceeds the amount defined in the Purchasing Policy, such purchases shall be contracted for and let to the lowest responsible bidder after notice pursuant to section 2.50.140. Purchases which do not exceed the specified amount shall be made by a Department Purchasing Representative only after an informal investigation of the sources of supply for the purpose of ascertaining the lowest price for which the commodities desired can be acquired and appropriate cost accounting principles are employed.
- (b) The letting of purchases to the lowest responsible bidder pursuant to section 2.50.140 may be dispensed with when any of the following circumstances exist, unless otherwise required by State or Federal law:
 - (1) An emergency situation exists as defined in the Purchasing Policy and separate Emergency Procurement Policy.
 - (2) The commodity can be obtained only from a sole or single source vendor due to its uniqueness or special characteristics, as defined in the Purchasing Policy.
 - (3) When it would be impractical, impossible, or would not be likely to result in a lower price to the Town from a responsible bidder, or would cause unnecessary expense or delay under the circumstances as determined by the awarding authority.
 - (4) The purchase is a public works project and falls under the Cost Accounting Policies and Procedures Manual of the California Uniform Public Construction Cost Commission and adopted by resolution.
 - (5) For professional services which require the exercise of professional discretion and independent judgment, based on an advanced or specialized knowledge, expertise, or training gained by formal studies or experience. Examples of professional service providers include appraisers, architects, attorneys, engineers, instructors, land

surveyors, physicians, information technology services, graphic designers, construction inspectors, etc.

- (6) Where the Town makes use of a cooperative purchasing agreement pursuant to the guidelines set forth in the Purchasing Policy.
- (7) When a Request for Proposal (or Request for Information, Request for Qualifications, etc.) process is utilized pursuant to the guidelines set forth in the Purchasing Policy.
- (8) When State or Federal law forbids selection on the basis of the lowest responsible bidder alone.
- (9) When no acceptable bids are received from any responsible bidder after following the procedures set forth in Section 2.50.140.
- (10) When the Town has elected to purchase goods or services directly from the State of California, County of Santa Clara, or any other California municipality.

(Code 1968, § 23-6; Ord. No. 1958, § I, 10-4-93; Ord. No. 2020, § X, 9-16-96)

Sec. 2.50.131. – Public Works Projects.

The Town has adopted the California Uniform Public Construction Cost Accounting Act for public works projects as defined in Section 22002 of the Public Contract Code.

(Ord. No. 1958, § II, 10-4-93; Ord. No. 2151, § A, 10-2-06)

Sec. 2.50.132. – Informal bid procedure for public works projects.

Public projects, as defined by the California Uniform Public Construction Cost Accounting Act and in accordance with the limits listed in Section 22032 of the Public Contract Code, may be let to contract by informal procedures as set forth in Section 22032, et seq., of the Public Contract Code.

(Ord. No. 1958, § III, 10-4-93)

Sec. 2.50.133. – Contractors List for public works projects.

The Town shall comply with the requirements of Public Contract Code Section 22034.

(Ord. No. 1958, § IV, 10-4-93)

Sec. 2.50.134. – Notice Inviting Informal Bids for public works projects.

Where a public project is to be performed which is subject to the provisions of this Ordinance, a notice inviting informal bids shall be circulated using one or both of the following alternatives:

- (1) Notices inviting informal bids may be mailed, faxed, or emailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with Section 2.50.133.
- (2) Notices inviting informal bids may be mailed to all construction trade journals as specified by the California Uniform Construction Cost Accounting Commission in accordance with Section 22036 of the Public Contract Code. Additional contractors and/or construction trade journals may be notified at the discretion of the Department soliciting bids, provided however:
 - a. If the good or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to such contractor or contractors.

(Ord. No. 1958, § V, 10-4-93)

Sec. 2.50.135. – Award of contracts for public works projects.

The Town Manager is authorized to award informal contracts pursuant to this Section.

Sec. 2.50.136. – Formal bid procedure for public works projects.

Public projects of more than the amount specified in the Uniform Public Construction Cost Accounting Act shall, except as otherwise provided in this Section, be let to contract by formal bidding procedure in accordance with the applicable provisions of the Act and the Public Contract Code.

(Code 1968, § 23-8)

Sec. 2.50.140. - Formal bid procedure for goods.

Except as otherwise provided in the Uniform Public Construction Cost Accounting Act for public projects and Section 2.50.130, purchases for goods above an estimated value defined in the Purchasing Policy that are of standardized or uniform quality shall be by formal bidding procedure as follows:

- (1) Notice inviting bids. Notices inviting bids shall include a general description of the articles to be purchased, shall state where to obtain more information, where to submit bids, and the time and place for opening bids.

- (2) Published notice. Notice inviting bids shall be published by the Town Clerk at least ten (14) days before the date of opening of the bids. Notice shall be published at least twice in a newspaper of general circulation printed and published in the Town, or if there is none, it shall be posted in at least three (3) public places in the Town.
- (3) Bulletin board. Pending purchases shall also be advertised by a notice posted on the public bulletin boards at the Town Hall.
- (4) Website. Notice inviting bids shall be posted to the designated area of the Town website.
- (5) Bidders' list. The purchasing Department shall also solicit sealed bids from all responsible prospective suppliers whose names are on the bidders' list or who have requested their names to be added thereto.
- (6) Bidder's security. When deemed necessary by the purchasing Department, bidder's security may be prescribed in the public notices inviting bids. Bidders shall be entitled to return of bid security; provided, that a successful bidder shall forfeit the bid security upon refusal or failure to execute the contract within ten (10) days after the notice of award of contract has been mailed, unless the Town is responsible for the delay. The awarding authority may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest bidder, the amount of the lowest bidder's security being applied by the Town to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder.
- (7) Bid-opening procedure. Sealed bids shall be submitted to the Town Clerk and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) calendar days after the bid opening.
- (8) Rejection of bids. In its discretion, the awarding authority may reject any bids presented and readvertise for bids.
- (9) Award of contracts. Contracts shall be awarded to the lowest responsible bidder, except as otherwise provided herein.
- (10) Tie bids. If two (2) or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of readvertising for bids, the awarding authority) may accept the one it chooses or accept the lowest bid made by negotiation with the tie bidders at the time of the bid opening.
- (11) Performance bonds. The awarding authority shall have authority to require a performance bond before entering a contract in such amount as it shall find reasonably necessary to protect the best interests of the Town. If a performance bond is required, the form and amount of the bond shall be described in the notice inviting bids.

(Code 1968, § 23-9; Ord. No. 1958, § VI, 10-4-93; Ord. No. 2151, § B, 10-2-06)

Sec.2.50.141. -Request for Proposal (RFP) process.

- (1) The Town may utilize the Request for Proposal (RFP) method for purchase of services and will apply to the purchase of goods above an estimated value defined in the Purchasing Policy when any of the following conditions exist:
 - a. Quality, capability, performance, or qualification is overriding in relation to price; or
 - b. Delivery, installation, service, maintenance, reliability, or replacement is overriding in relation to price; or
 - c. It is determined that the marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussion of proposals before entering the contract.
- (2) The identity of persons responding to the Request for Proposals and the content of proposals submitted to the Town may be kept confidential during the process of negotiation and until a contract is awarded.
- (3) The format and procedures for Requests for Proposals shall be established in the Purchasing Policy.
- (4) The contract award shall be based upon the proposal determined by the Town to be the most advantageous to the Town, taking into consideration price and the evaluation factors set forth in the Request for Proposals.
- (5) The Town may reject any and all proposals if such rejection is deemed to be in the best interest of the Town.
- (6) The Town may utilize various other accepted requests for procurement in place of a Request for Proposal, including a Request for Information, Request for Qualifications, or others as deemed appropriate.

Sec. 2.50.143. – Procurement of paper products.

- (1) Definitions:
 - a. “Paper Purchase” means all purchases by a jurisdiction of items in the following categories: (1) Paper products. (2) Printing and writing papers.

- b. "Paper Products" include but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling.
- c. "Printing and Writing Papers" include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications.

(2) All vendors providing paper products shall:

- a. If fitness and quality are equal, provide Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper that consists of at least 30 percent, by fiber weight, postconsumer fiber instead of nonrecycled products whenever recycled Paper Products and Printing and Writing Paper are available at the same or lesser total cost than nonrecycled items or at a total cost of no more than ten percent of the total cost for nonrecycled items.
- b. Provide Paper Products and Printing and Writing Paper that meet Federal Trade Commission recyclability standard as defined in 16 Code of Federal Regulations (CFR) Section 260.12.
- c. Certify in writing, under penalty of perjury, the minimum percentage of postconsumer material in the Paper Products and Printing and Writing Paper offered or sold to the Town. This certification requirement may be waived if the percentage of postconsumer material in the Paper Products, Printing and Writing Paper, or both can be verified by a product label, catalog, invoice, or a manufacturer or vendor internet website.
- d. Certify in writing, on invoices or receipts provided, that the Paper Products and Printing and Writing Paper offered or sold to the Town is eligible to be labeled with an unqualified recyclable label as defined in 16 Code of Federal Regulations (CFR) Section 260.12 (2013).
- e. Provide records to the Town's recordkeeping designee, in accordance with the Town's Recycled-Content Paper procurement policies of all Paper Products and Printing and Writing Paper purchases within thirty days of the purchase (both recycled-content and non-recycled content, if any is purchased) made by any Department or employee of the Town. Records shall include a copy (electronic or paper) of the invoice or other documentation of

purchase, written certifications for recycled-content purchases, purchaser name, quantity purchased, date purchased, and recycled content (including products that contain none), and if non-recycled content Paper Products or Printing and Writing Papers are provided, include a description of why Recycled-Content Paper Products or Printing and Writing Papers were not provided.

Sec. 2.50.145. - Purchasing Policy.

In order to implement the provisions of this division, a Purchasing Policy shall be prepared and adopted by resolution of the Town Council. No amendments to the policy shall be made without Town Council approval.

(Code 1968, § 23-11)

Section II

The Town Council finds and determines that the adoption of this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines under the General Rule (Section 15061(b)(3)), which sets forth that the CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that the proposed Town Code text amendments will have no significant negative effect on the environment.

Section III

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The Town Council of the Town of Los Gatos hereby declares that it would have passed this ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid. Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

Section IV

This ordinance shall take effect immediately and will be enforced thirty (30) days after its adoption.

Section V

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on _____, 2021, and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the _____, 2021. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____