



**CITY COUNCIL MEETING
STAFF REPORT**

<p>Meeting Date: May 20, 2024</p>	<p>Subject: Ordinance No. 891 – 2nd Reading An Ordinance of the City Of Wilsonville Repealing And Replacing Wilsonville Code Sections 2.310-2.319 Regarding Public Contracts</p> <p>Staff Member: Stephanie Davidson, Assistant City Attorney</p> <p>Department: Legal</p>	
<p>Action Required</p> <p><input checked="" type="checkbox"/> Motion</p> <p><input checked="" type="checkbox"/> Public Hearing Date: May 6, 2024</p> <p><input checked="" type="checkbox"/> Ordinance 1st Reading Date: May 6, 2024</p> <p><input checked="" type="checkbox"/> Ordinance 2nd Reading Date: May 20, 2024</p> <p><input type="checkbox"/> Resolution</p> <p><input type="checkbox"/> Information or Direction</p> <p><input type="checkbox"/> Information Only</p> <p><input type="checkbox"/> Council Direction</p> <p><input type="checkbox"/> Consent Agenda</p>	<p>Advisory Board/Commission Recommendation</p> <p><input type="checkbox"/> Approval</p> <p><input type="checkbox"/> Denial</p> <p><input type="checkbox"/> None Forwarded</p> <p><input checked="" type="checkbox"/> Not Applicable</p> <hr/> <p>Comments: N/A</p>	
<p>Staff Recommendation: Adopt Ordinance No. 891 on first reading.</p>		
<p>Recommended Language for Motion: I move to adopt Ordinance No. 891 on first reading.</p>		
<p>Project / Issue Relates To:</p>		
<p><input type="checkbox"/> Council Goals/Priorities:</p>	<p><input type="checkbox"/> Adopted Master Plan(s):</p>	<p><input checked="" type="checkbox"/> Not Applicable</p>

ISSUE BEFORE COUNCIL:

Consider repealing and replacing code provisions regarding public contracts (Wilsonville Code Sections 2.310-2.319).

EXECUTIVE SUMMARY:

Public contracting (also referred to as “public procurement”) refers to the City’s efforts to procure goods or services.

The Legal Department has been working to update the City’s public contracting code for the following reasons:

- Financial reviewers (e.g., auditors, state and federal grant providers, etc...) often request more robust public contracting regulations and guidance than what is currently reflected in the Wilsonville Code (WC).
- City staff have also periodically expressed that some parts of our public contracting program are frustrating or confusing.
- The City’s public contracting code was adopted in 2005. With the exception of a minor revision in 2014, it has not been updated since 2005.

The Legal Department has presented to City Council on this project at work sessions held on February 22 and March 18, 2024.

Attachment 1 is a copy of Ordinance no. 891, with proposed updated code language regarding public contracting. Here is a summary of what would change if Ordinance no. 891 is adopted:

- The City Manager’s administrative authority to enter into contracts (without City Council’s prior approval, but subject to certain requirements such as budget authority) would be expanded as follows. Under the proposed code language, the City Manager may enter into or approve:
 - o Contracts with a value of up to \$250,000 (current code language allows this only for contracts with a value of up to \$100,000);
 - o “Procurement” activity that is not a “Public Contract” (e.g., Intergovernmental Agreements, these terms are defined in state law) with an aggregate value of up to \$100,000 (current code language does not address this point); and,
 - o Contract amendments and change orders with a value of up to 25% of the original contract value (current code language allows this up to 15% of the contract price).
- With respect to contracts related to certain services, such as architectural and engineering services:
 - o Contracts with a value of up to \$150,000 require the approval of the Community Development Director (current code language only requires this approval up to \$50,000), and
 - o Contracts with a value of between \$150,000 and \$250,000 require the approval of the City Manager (current code language only requires this approval up to \$100,000).

These changes are recommended by City staff because they will:

- Increase efficiency and reduce administrative barriers to City staff's ability to enter into contracts,
- Reflect the impact that inflation has had on the value of contracts since 2005 (i.e., adjust approval thresholds upward to account for inflation),
- Align the city's public contracting rules with state public contracting rules that were effective as of January 1, 2024, and,
- Address ambiguities in these code sections.

Attachment 2 shows the changes made to the last draft of the proposed code revisions that were reviewed by City Council during the work session held on March 18, 2024. With one exception, these are minor adjustments to the language to add clarity. The only major change is the addition of the new term "Original Contract Value" and use of this term in Section 2.312(1)(c). This change is recommended to allow City Council to approve the total cost for work performed by a third-party (such as the design work by an engineering firm or construction work by a contractor) for projects that may be completed in various phases, and which may include the value of anticipated contract amendments or change orders. For example, when approving a contract for 30% design of a new street, the resolution will include contract price approval for future phases of design work – 60%, 90%, 100% design, as well as construction management by the engineering firm up to the established "Original Contract Value." This value would be clearly stated as the "Original Contract Value" in the resolution approved by City Council. This change will promote efficiency. Rather than having to approve all change orders or contract amendments as phases of a project occur, City Council may approve change orders or contract amendments up to a certain amount (i.e., the Original Contract Value) at one time. As written, Section 2.312(1)(c) will allow the City Manager to approve contract amendments and change orders that together have an aggregate value not exceeding 25% of the Original Contract Value, and that are budgeted-for in a budget or supplemental budget that has been approved by City Council (see part iii of Section 2.312(1)(c)).

EXPECTED RESULTS:

If City Council adopts Ordinance No. 891, the Legal Department will also present updated administrative rules to City Council on May 20, 2024, which will supplement the rules adopted by Ordinance No. 891. In addition, the Legal Department will prepare a manual to be used by City staff who engage in public contracting activities, to ensure that City staff are empowered to engage in public contracting activities in compliance with all applicable laws. Following the effective date of Ordinance No. 891, the Legal Department will also conduct a training regarding public contracting rules and laws with City staff who engage in public contracting activities.

TIMELINE:

- May 6, 2024: Public hearing and first reading of Ordinance No. 891.
- May 20, 2024: Second reading of Ordinance No. 891, and first reading of the proposed administrative rules.
- July 1, 2024: Effective date of Ordinance No. 891 and related administrative rules.

CURRENT YEAR BUDGET IMPACTS:

N/A

COMMUNITY INVOLVEMENT PROCESS:

A public hearing on Ordinance No. 891 was held on May 6, 2024.

POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:

Ordinance no. 891 will improve and clarify the City's public contracting rules, which will reduce our risk related to public contracting activities, and aid staff who must abide by our City public contracting rules.

ALTERNATIVES:

Do not repeal and replace Wilsonville Code Sections 2.310-2.319, which will result in Wilsonville's public contracting rules being inconsistent with state public contracting rules that were effective as of January 1, 2024, and ambiguities and points of confusion persisting.

CITY MANAGER COMMENT:

N/A

ATTACHMENTS:

1. Ordinance No. 891
 - A. Exhibit A
2. Proposed City Public Contracting Code (Redline of changes after March 18, 2024 work session)