

ORDINANCE NO. 2018-1672

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING CHAPTER 3 “PURCHASING” OF THE TOWN CODE RELATING TO PURCHASING LIMITATIONS AND EXEMPTIONS FROM COMPETITIVE BIDDING FOR PURCHASES OF EQUIPMENT AND REPAIR AND MAINTENANCE OF PUBLIC WORKS AND UTILITIES INFRASTRUCTURE; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 3 of the Town Code, “Purchasing”, contains purchasing procedures for the Town of Surfside (“Town”) applicable to expenditure of public funds in connection with procurement and contracts for supplies, services and construction; and

**WHEREAS**, the cost of purchase of equipment, repairs, maintenance and replacement of the Town’s public works and utilities infrastructure has increased since the purchasing limitations of \$8,500 were established in the Town Code, and preventive timely repairs, maintenance and replacements are necessary for the proper upkeep, functionality and efficiency of the systems; and

**WHEREAS**, the Town Commission wishes to amend Section 3-6(c) of the Town Code to increase the spending limit or authority to \$25,000 without Town Commission for the purchase of equipment, repairs, maintenance and replacement of the Town’s public works and utilities infrastructure facilities and systems in order to provide for timely repairs and preventive work; and

**WHEREAS**, the Town Commission wishes to further amend and expand Section 3-13(7)(e) of the Town Code to provide for exemption from competitive bidding for the purchase of equipment, repairs, maintenance and replacement of the Town’s public works and utilities infrastructure facilities and systems; and

**WHEREAS**, the Town Commission finds that amending Chapter 3 of the Town’s Code as set forth herein is in the best interest of the Town, and will provide for the timely routine and preventive repairs and maintenance to the Town’s public works and utilities facilities and infrastructure promoting functionality and efficiency.

**NOW, THEREFORE, THE COMMISSION OF THE TOWN OF SURFSIDE  
HEREBY ORDAINS:<sup>1</sup>**

**Section 1. Recitals Adopted.** That the above-stated recitals are hereby adopted and confirmed.

**Section 2. Amending Chapter 3 of the Town Code.** That Chapter 3, "Purchasing", of the Town Code is hereby amended and shall read follows:

\* \* \*

**Chapter 3 – PURCHASING**

**Sec. 3-6 - Purchasing limitations; effect on competitive bidding requirement.**

(a) *Purchases less than \$2,500.00.* Purchases of, or contracts for, materials, supplies, equipment, improvements or services for which funds are provided in the budget, where the total amount to be expended is not in excess of \$2,500.00 may be made or entered into by the town manager without submittal to the town commission and without competitive bidding. Single purchases or contracts in excess of \$2,500.00 shall not be broken down to amounts less than \$2,500.00 to avoid the requirements of this section.

(b) *Purchases of \$2,500.00 or more but less than \$8,500.00.* Purchases of, or contracts for, materials, supplies, equipment, improvements or services for which funds are provided in the budget, where the total amount to be expended is \$2,500.00 or more, but which do not exceed \$8,500.00 may be made, or entered into, by the town manager without submittal to the town commission, but shall require compliance with the competitive bidding requirements set forth in this chapter. Single purchases or contracts in excess of \$8,500.00 shall not be broken down to amounts less than \$8,500.00 to avoid the requirements of this section.

(c) *Purchases in excess of \$8,500.00.* The town commission shall approve all purchases of or contracts for materials, supplies, equipment, public improvements or services where the total amount to be expended is more than \$8,500.00, except expenditures for purchases of equipment or contracts for repairs, maintenance and replacement for public works and utilities where the amount to be expended is less than \$25,000.00.

(d) *Purchases in excess of \$25,000.00.* For purchases in excess of \$25,000.00 the town commission shall follow the formal provisions below.

(e) *[Purchases in excess of budget.]* The town manager may not purchase or contract for any item or service which exceeds any budget appropriation until such a time the town commission amends the budget to increase the appropriation to the applicable level.

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<sup>1</sup> Coding: ~~Strikethrough~~ words are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicted with highlighted ~~double-strikethrough~~ and double underline.

(f) *Local preference.* There shall be a five-percent local preference given to local businesses who are holders of current town local business tax receipts for businesses which are physically located within the town limits of Surfside and a three-percent local preference given to local businesses who located outside the corporate limits of the Town of Surfside but are holders of current town local business tax receipts for businesses which are physically located within a ten-mile radius of the corporate limits of the Town of Surfside (hereinafter referred to as "local bidder"). Said five-percent local preference must be asserted by the party seeking it at the time the competitive quotation, bid or proposal is made and shall be calculated by the selection committee evaluating competitive quotations, bids or proposals which are governed by this section of the Code. The local preference shall not apply if the solicitation specifications of the town so state. Further, said local preference, as described above, shall only be applied in certain situations and shall be specifically governed by the below-described limitations:

(1) A local preference for competitive quotations, bids or requests for proposals shall only be applied when the funds to be used to purchase said items or pay for such services are general funds of the city and not funds received from the federal government, the State of Florida or Miami-Dade County. In cases of the use of those funds, no local preference shall apply.

(2) Local preference shall not apply when the funds to be used for the purchase of such goods or the payment for such services are funds derived from grants or loans from any other governmental entity, including any taxing power approved for a special use by any other governmental agency such as tax increment financing and other approved government grants or loans.

(3) That when local preference has been used in computing award recommendations, either for the purchase of goods or for the purchase of services, the town commission shall not reject the low bid solely based upon the locale of the said business, provided however, that if a local bidder has submitted a bid that comes within three-percent of the actual lowest bid, the bid may be awarded to the local bidder automatically, assuming it is otherwise determined to be the lowest most responsive, responsible bidder.

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### **Sec. 3-13. - Exemptions from competitive bidding.**

The following shall be exempt from the competitive bidding procedures outlined in this chapter:

(1) Transactions described in section 3-6 of this chapter.

- (2) Contracts for professional services, except for those contracts of more than \$8,500.00 for professional services governed by F.S. § 287.055 (the Consultants Competitive Negotiations Act).
- (3) Purchases made under state general service administration contracts, federal, county or other governmental contracts or competitive bids with other governmental agencies.
- (4) Purchases arising out of or because of emergencies which shall be defined as a situation, occurrence or matter necessitating immediate or quick action and not permitting adequate time to utilize the competitive bidding process. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the item(s) procured under the contract, and the identification number of the contract file.
- (5) Under circumstances where time constraints do not permit the preparation of clearly drawn specifications or situations where, after competitive bidding, no bids meeting bid requirements are received, all compliant bids received are too high, or all bids are rejected for failure to meet bid requirements (i.e., bids are noncompliant).
- (6) Supplies, equipment or services available from a sole source only may be exempted from the bidding requirements of this chapter by the town manager upon the filing of a written request by a department head to the town manager outlining the conditions and circumstances involved, after conducting a good faith review of available sources, a contract may be awarded without competition when the town manager or purchasing agent determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, brand, service, or construction item capable of fulfilling the needs of the town. The town manager or purchasing agent shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be available as a public record and shall identify each purchase order and/or contract.
- (7) Exempt contractual services and products. Other exempt contractual services and products not subject to the competitive procurement requirements of this Code are listed as follows:
  - a. Academic program reviews or lectures or seminars by individuals.
  - b. Artistic services which are original and creative in character and skill in a recognized field of artistic endeavor such as music, dance,

drama, painting, sculpture and the like. However, contracts for artistic instructors, coaches and assistants are deemed contractual services subject to the requirements of competitive procurement.

- c. Performing artists and entertainers as approved by the town manager/purchasing agent when deemed in the town's best interests, for the benefit of the citizens of Surfside and the general public at any town function.
- d. Advertising.
- e. Public Works and Utilities purchases or contracts for materials, supplies, equipment, public improvements or services, repairs, maintenance and replacements, including but not limited to, stormwater electric, lighting, water, sewer, and telephone, roads and sidewalks.
- f. Items purchased for resale to the public.

(8) Competitive proposals shall not be required when a purchase is made for materials, equipment, prefabricated elements and components, appliances, fixtures and supplies, bought under a sales tax saving procedure constituting part of a construction project award, which construction contract has been awarded in accordance with this chapter.

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**Section 3. Codification.** That it is the intent of the Town Commission that the provisions of this ordinance shall become and be made a part of the Town's Code of Ordinances, and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

**Section 4. Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Conflicts.** All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

**Section 6. Effective Date.** That this Ordinance shall become effective on second reading. .

PASSED on first reading on the 9<sup>th</sup> day of January, 2018.

PASSED AND ADOPTED on second reading on the 13<sup>th</sup> day of February, 2018. .

**First Reading:**

Motion by: Commissioner Karukin  
Second by: Vice Mayor Cohen

**Second Reading:**

Motion by: Commissioner Gielchinsky  
Second by: Commissioner Karukin

**FINAL VOTE ON ADOPTION**

Commissioner Daniel Gielchinsky	<u>yes</u>
Commissioner Michael Karukin	<u>yes</u>
Commissioner Tina Paul	<u>Absent</u>
Vice Mayor Barry Cohen	<u>Absent</u>
Mayor Daniel Dietch	<u>yes</u>

  
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Daniel Dietch, Mayor

Attest:

  
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Sandra Novoa, MMC  
Town Clerk

Approved as to Form and Legal Sufficiency:

  
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Weiss Serota Helfman Cole & Bierman, P.L.  
Town Attorney