CITY OF AUBURN WASHINGTON	**City Council Study Session Finance, Technology and Economic Development Special Focus Area** **March 23, 2020 - 5:30 PM** **City Hall Council Chambers** **AGENDA** **Watch the meeting LIVE!** **Watch the meeting video** Meeting videos are not available until 72 hours after the meeting has concluded.

I. CALL TO ORDER

II. Virtual Participation

A. Virtual Participation Link

The City Council Meeting will be held virtually and in person at Council Chambers. The public is highly encouraged to attend the meeting by clicking on the link or calling into the meeting at the phone number listed below.

Join Zoom Meeting
https://zoom.us/j/420306048

Meeting ID: 420 306 048

One tap mobile
+13462487799, 420306048#

Dial by your location
+1 346 248 7799

B. Roll Call

III. ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS

IV. AGENDA ITEMS FOR COUNCIL DISCUSSION

A. Ordinance No. 6757 (Caillier)(5 Minutes)

An Ordinance amending Section 6.35.030 relating to the restraint and registration of potentially dangerous dogs

B. Ordinance No. 6765 (Gaub, Comeau, Thomas)(15 Minutes)

An Ordinance amending Sections 3.10 and 3.12 relating to public contracting and purchasing

C. Ordinance No. 6766 (Comeau)(15 Minutes)

An Ordinance amending Section 9.22.010 related to controlled substances

V. OTHER DISCUSSION ITEMS

VI. NEW BUSINESS

VII. ADJOURNMENT

Agendas and minutes are available to the public at the City Clerk's Office, on the City website (http://www.auburnwa.gov), and via e-mail. Complete agenda packets are available for review at the City Clerk's Office.

AGENDA BILL APPROVAL FORM

Agenda Subject:
Ordinance No. 6757 (Caillier)(5 Minutes)

Date:
March 18, 2020

Department:
Police

Attachments:
Ordinance No. 6757

Budget Impact:
Current Budget: $0
Proposed Revision: $0
Revised Budget: $0

Administrative Recommendation:

For discussion only.

Background Summary:

Proposed Amendment of language under E to read:

The restraint requirements of this section do not apply if the owner **of a potentially dangerous dog** provides proof to the City Clerk that the dog passed the American Kennel Club Good Canine Citizen test or a reasonably equivalent canine behavioral test as determined by the Police Chief or designee and the dog is exempt from such requirements for a period of two years from the date of the test. **This section does not apply to dangerous dogs.**

Reviewed by Council Committees:

Councilmember:

Staff: O'Neil

Meeting Date: March 23, 2020

Item Number:

ORDINANCE NO. 6757

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING SECTION 6.35.030 OF THE AUBURN CITY CODE RELATING TO THE RESTRAINT AND REGISTRATION OF POTENTIALLY DANGEROUS DOGS

WHEREAS, on December 16, 2019, and in response to Washington State Legislature House Bill 1026, the Auburn City Council adopted Ordinance 6740, amending the restraint and registration requirement for potentially dangerous dogs; and

WHEREAS, it is appropriate to further amend ACC 6.35.030 to clarify that the recently enacted restraint and registration requirements only apply to potentially dangerous dogs and do not apply to dogs that have been declared dangerous.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows:

Section 1. Amendment to City Code. Section 6.35.030 of the Auburn City Code is amended to read as follows:

6.35.030 Dangerous dogs and potentially dangerous dogs – Requirements for restraint.

A. It is unlawful for an owner of a dangerous dog to permit the dog to be outside the proper enclosure, as defined and described in ACC 6.01.010(A)(27), unless the dog is muzzled and restrained by a substantial chain or leash and under physical restraint of a responsible person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal.

B. It is unlawful for an owner of a potentially dangerous dog to permit the dog to be allowed or permitted to run free and unrestrained or off leash or not otherwise under physical restraint of a responsible person, unless within a fenced yard or similar restraint reasonably designed to prevent the dog from running free and unrestrained. It is provided, however, that the top of such fence shall be six feet in height as measured from the ground level, unless there is a secured top – full enclosure – to the fenced-in

area; and it is further provided, that such fence or enclosure area shall comply with all applicable city codes.

C. It is unlawful for an owner of a dangerous dog or a potentially dangerous dog to permit the dog to be walked outside the proper enclosure by anyone under the age of 16 years.

D. The owners of dangerous dogs and potentially dangerous dogs are responsible for taking all reasonable measures to assure that the dogs do not escape the above restraints, the failure of which responsibility shall constitute a violation of this chapter, punishable pursuant to ACC 6.35.040. The failure of the owner of a dangerous dog to comply with the requirements for dangerous dog registration shall also constitute a violation of this chapter, punishable pursuant to ACC 6.35.040. (Ord. 6424 § 4, 2012; Ord. 6304 § 1, 2010; Ord. 6244 § 3, 2009; Ord. 5996 § 1, 2006; Ord. 5829 § 1, 2004.)

E. The restraint requirements of this section do not apply if the owner of a potentially dangerous dog provides proof to the city clerk that the dog passed the American kennel club good canine citizen test or a reasonably equivalent canine behavioral test as determined by the Police Chief or designee and the dog is exempt from such requirements for a period of two years from the date of the test. This section does not apply to dangerous dogs.

Section 2. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 3. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application of it to any person or circumstance, will not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 4. Effective date. This Ordinance will take effect and be in force five days from and after its passage, approval, and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

_____
NANCY BACKUS, MAYOR

ATTEST:

_____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

_____
Kendra Comeau, City Attorney

Published: _____

AGENDA BILL APPROVAL FORM

Agenda Subject:
Ordinance No. 6765 (Gaub, Comeau, Thomas)(15 Minutes)

Date:
March 17, 2020

Department:
Public Works

Attachments:
Ordinance No. 6765
Exhibit A

Budget Impact:
Current Budget: $0
Proposed Revision: $0
Revised Budget: $0

Administrative Recommendation:

For discussion only.

Background Summary:

Ordinance No. 6765 modifies Chapter 3.10, Purchasing Policy and Chapter 3.12, Public Contracts. The primary purpose of these modifications is to remove antiquated sections of code that are no longer relevant to how the City processes payments for services as technology advances and to be consistent with best practices and improve processes for contracting. This includes some re-organization of Chapter 3.10 to provide better clarity on requirements for construction contracting and to align sections of code with current state legislation.

Reviewed by Council Committees:

Councilmember:

Staff: Gaub

Meeting Date: March 23, 2020

Item Number:

ORDINANCE NO. 6765

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING SECTIONS 3.10 AND 3.12 OF THE AUBURN CITY CODE RELATING TO PUBLIC CONTRACTING AND PURCHASING

WHEREAS, after reviewing the City Code related to Public Contracting and Purchasing, it is appropriate to amend contract authorization limits consistent with Washington state law;

WHEREAS, City staff determined that Sections 3.10 and 3.12 of the Auburn City Code ("ACC") require updates to the language used for consistency with the remainder of the ACC;

WHEREAS, City staff recommend consolidating subsections within former ACC 3.10.025 for clarity;

WHEREAS, ACC 3.10.028 is revised to update current City processes for capital projects;

WHEREAS, the emergency purchasing authorizations are modified for consistency with Chapters 39.04 and 38.52 RCW;

WHEREAS, it is also appropriate to amend the City Code to make it consistent with state law and reflect current City Council practices.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows:

Section 1. Amendment to City Code. Chapters 3.10 and 3.12 of the Auburn City Code are amended to read as shown in Exhibit A.

Section 2. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 3. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application of it to any person or circumstance, will not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 4. Effective date. This Ordinance will take effect and be in force five days from and after its passage, approval, and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

_____
NANCY BACKUS, MAYOR

ATTEST:

_____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

_____
Kendra Comeau, City Attorney

Published: _____

Chapter 3.10
PURCHASING POLICY

Sections:

~~3.10.010 Purchase order.~~
3.10.0~~2~~10 Contract authorization limits.
3.10.020~~5~~ ~~Professional and personal services~~Contract Amendments.
~~3.10.026 Public work projects—Contract amendment—Conditions.~~
~~3.10.028 Approval of asset and/or system expansions, additions, and betterments.~~
3.10.~~029~~030 Competitive negotiations.
~~3.10.030 Administrative procedures authority.~~
3.10.0~~4~~50 Emergency purchases – Authorization.
3.10.0~~5~~60 Sole source purchases of equipment and materials – Authorization.

~~3.10.010 Purchase order.~~

~~All payments for city goods and services in excess of $100.00 shall be made only after a purchase order has been duly authorized and approved, unless authorized by city code or written city policy. (Ord. 6528 § 1, 2014; Ord. 6147 § 1, 2008; Ord. 5490 § 1, 2000.)~~

3.10.0~~1~~20 Contract authorization limits.

A. The following authorization approval limits shall apply for all city contracts. For contracts with total dollar amounts up to $10,000, authority rests at the department director (or designee) level. All contracts over $10,000, up to $~~5~~100,000, and contracts that have been individually and separately listed in the city's annual budget shall be approved and signed by the mayor (or designee). For all unbudgeted expenditures not individually and separately listed in the city's annual budget in excess of $~~5~~100,000, approval shall be obtained from the mayor and the city council.

B. For purposes of this section, a contract is "individually and separately listed" if it is:

1. Expressly identified, in writing, defining or describing the expenditure or project as a line-item in the budget;

2. Identified by express reference to the CFP or TIP project, or other specific project in the budget.

C. If a contract does not provide for cash consideration, the responsible department will estimate the value of the contract as if there was cash consideration. Authorization authority will be based on that estimated value.

D. If a contract does not provide for cash consideration, but requires the city to indemnify the other party, the responsible department, in consultation with the risk manager, shall determine the value of the city's possible indemnification risk. Authorization authority will be based on that estimated value.

E. Unless the value is $~~25,000~~50,000 or less, or unless required for a budgeted project, or unless otherwise authorized in this code or otherwise expressly authorized by the city council, all contracts that convey an interest in real estate shall be approved by the city council.

(Ord. 6679 § 1, 2018; Ord. 6528 § 2, 2014; Ord. 6147 § 1, 2008; Ord. 5778 § 2, 2003; Ord. 5490 § 1, 2000.)

3.10.020~~5~~ ~~Professional and personal services.~~Contract Amendments

A. ~~Professional and personal services are those services involving specialized skill, education, and special knowledge. These services include, but are not limited to, architectural, engineering, design services, accounting, art, real estate appraisal, relocation assistance, title abstracts, surveying, soils analysis, and core testing.~~

~~B. Procurement and administration of such contracts are the responsibility of the mayor or the department director. The mayor/designees may sign professional or personal service contracts in conformity with ACC 2.03.030 and 3.10.020.~~ Except as specified in Section B herein, Council action will be required to authorize amendments to contracts that are either not included in the budget or exceed the approved budget as follows:

1. When the original contract is under $50,000 and was not included in the budget and the total of the amendment(s) will increase the total contract amount to more than $50,000.

2. When the original contract is $50,000 or more and was not included in the budget and the total of the amendment(s) will increase the total contract amount by more than $50,000 and the amendment(s) are also not budgeted.

3. When the original contract was included in the budget and the total of the amendment(s) to the contract will increase the total contract amount to more than $50,000 above the amount included in the budget.

~~C. Council action is required for the initial authorization of contracts for on-call services. For contracts solicited for a contract period of up to five years, each on-call contract may be amended by the mayor on an annual basis to extend the contract duration by up to one year for a total duration not to exceed the original solicited contract period and may be amended by the mayor to increase the contract amount by an amount equal to or less than the original contract amount authorized by the city council.~~

~~3.10.026 Public work projects—Contract amendment—Conditions.~~

~~A~~B. Construction contracts which have been ~~initially~~ authorized by the city council or the mayor or mayor's designee may be amended administratively by the mayor/designees by change order, letter of instruction, or other legally appropriate form, up to the ~~total maximum~~ authorized total maximum contract amounts set forth below:

1. Awarded contract amount plus up to 20 percent of authorized contingency for contracts originally awarded for up to $200,000.

2. Awarded contract amount plus up to 15 percent or $40,000 of authorized contingency, whichever is greater, for contracts originally awarded for between $200,000 and $500,000.

3. Awarded contract amount plus up to 10 percent or $75,000 of authorized contingency, whichever is greater, for contracts originally awarded for between $500,000 and $1,000,000.

4. Awarded contract amount plus up to five percent or $100,000 of authorized contingency, whichever is greater, for contracts originally awarded for between $1,000,000 and $5,000,000.

5. Awarded contract amount plus up to two and one-half percent or $250,000 of authorized contingency, whichever is greater, for contracts originally awarded for over $5,000,000.

Council approval is required to increase the authorized total maximum contract beyond the limits set forth above.

~~B. If available budget contingency remains after the authorized total maximum contract amount, as defined in subsection A of this section, is reached, additional authorization to increase the total contract amount shall be obtained from the city council.~~

~~C. No administrative action is authorized, the result of which would be to amend a contract to increase the authorized total maximum contract amount, as defined in subsection A of this section, beyond funds approved by the city council.~~

(Ord. 6679 § 2, 2018; Ord. 6147 § 1, 2008; Ord. 5640 § 1, 2002; Ord. 5525 § 1, 2001, Ord. 5490 § 1, 2000.)

~~3.10.026 Public work projects—Contract amendment—Conditions.~~

~~A. Construction contracts which have been initially authorized by the city council or the mayor or mayor's designee may be amended administratively by the mayor/designees by change order, letter of instruction, or other legally appropriate form, up to the total maximum contract amounts set forth below:~~

~~1. Awarded contract amount plus up to 20 percent for contracts originally awarded for up to $200,000.~~

~~2. Awarded contract amount plus up to 15 percent or $40,000, whichever is greater, for contracts originally awarded for between $200,000 and $500,000.~~

~~3. Awarded contract amount plus up to 10 percent or $75,000, whichever is greater, for contracts originally awarded for between $500,000 and $1,000,000.~~

~~4. Awarded contract amount plus up to five percent or $100,000, whichever is greater, for contracts originally awarded for between $1,000,000 and $5,000,000.~~

~~5. Awarded contract amount plus up to two and one-half percent or $250,000, whichever is greater, for contracts originally awarded for over $5,000,000.~~

~~B. If available budget contingency remains after the authorized total maximum contract amount, as defined in subsection A of this section, is reached, additional authorization to increase the total contract amount shall be obtained from the city council.~~

~~C. No administrative action is authorized, the result of which would be to amend a contract to increase the authorized total maximum contract amount, as defined in subsection A of this section, beyond funds approved by the city council.~~ ~~(Ord. 6679 § 3, 2018; Ord. 6147 § 1, 2008; Ord. 5525 § 1, 2001.)~~

~~3.10.028 Approval of asset and/or system expansions, additions, and betterments.~~

~~Asset and/or system expansions, additions, and betterments that have been recognized as authorized capital projects exceeding $25,000 in the budget shall be reviewed by the mayor or designee to formally initiate the project prior to a call for bids.~~ ~~(Ord. 6532 § 6, 2014; Ord. 6147 § 1, 2008; Ord. 5490 § 1, 2000.)~~

3.10.~~029~~030 Competitive negotiations.

Competitive negotiations can be used as an alternative to the competitive bidding procedures for the acquisition of electronic data processing and telecommunications systems, energy-saving or energy-related equipment or services, or when it is determined in writing that the use of competitive bidding is neither practicable nor advantageous to the city of Auburn consistent with RCW 39.04.270.

"Electronic data processing" includes, but is not limited to, systems which comprise a combination of equipment or units to provide input of source data, and storage and processing of data and output in predetermined form, including a central processing unit (CPU) or main frame. (Ord. 6147 § 1, 2008; Ord. 5490 § 1, 2000.)

~~3.10.030 Administrative procedures authority.~~

~~The mayor is authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation. (Ord. 6147 § 1, 2008; Ord. 5490 § 1, 2000.)~~

3.10.0~~4~~5~~5~~0 Emergency purchases – Authorization.

A. The mayor is ~~hereby~~ authorized to make emergency purchases or enter into emergency contracts as permitted by RCW 39.04.280 and Chapter 38.52 RCW in unforeseen circumstances beyond the control of the city that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.~~, such emergencies being:~~

~~A. In case of any breakage or loss of equipment or in other circumstances in which any necessary service is or is about to be interrupted;~~

~~B. In cases where the city will suffer loss by following the normal purchases and contract procedures;~~

~~C. In situations where public health or safety may be jeopardized;~~

~~D. In other cases as allowed by state law.~~

B. The Mayor will declare an emergency in writing authorizing a purchase or contract without competitive bid or negotiation. The declaration must be entered of record not later than two weeks following the award of the contract. The declaration shall include the factual basis for the emergency purchase or contract, which shall be filed with the City Clerk and open to public inspection.

~~(~~(Ord. 6147 § 1, 2008; Ord. 5525 § 1, 2001.)

3.10.0~~5~~6~~6~~0 Sole source purchases of equipment and materials – Authorization.

The mayor is ~~hereby~~ authorized to waive competitive bidding requirements for purchases of equipment or material when the purchase is limited to a single source of supply as determined by the city engineer, pursuant to RCW 39.04.280. A “single source of supply” ~~shall be~~ is defined as either (A) only one available brand, manufacturing company, or vendor from which the city may purchase the needed material; or (B) city engineer has determined that it is in the public’s best interest to purchase only one particular brand, type, or model of material for maintenance and/or quality performance reasons. (Ord. 6679 § 9, 2018.)

Chapter 3.12
PUBLIC CONTRACTS

Sections:

3.12.010 Definitions.
3.12.020 Bid solicitation.
3.12.030 Bid opening.
3.12.040 Rejection of bids.
3.12.050 Disqualification of bidders.
3.12.060 Award.
3.12.070 Contractor's bond.
3.12.080 Contractor evaluation form.
3.12.090 Small works roster.
3.12.100 Limited public works process.
3.12.110 On-call contracting.
3.12.120 Publication, printing, and notices.

For statutory provisions requiring public bidding on certain public contracts of second-class cities, see RCW 35.23.352; for provisions making RCW 35.23.352 applicable to code cities, see RCW 35A.40.200 and 35A.65.010.

Prior legislation: 1957 code § 1.30.030; Ords. 3689 and 4327.

3.12.010 Definitions.

The following definitions shall apply throughout this chapter:

A. "Public work" shall be as defined in RCW 39.04.010, as currently enacted or hereinafter amended. All public work, including maintenance, when performed by contract shall comply with the provisions of Chapter 39.12 RCW. A "public work" shall include all scope of work necessary to result in a complete operating facility. The total scope of work necessary will not be subdivided for the purpose of avoiding public bidding.

B. "Contract" shall mean a contract in writing for the execution of public work for a fixed or determinable amount duly awarded in conformance with this code.

C. "Improvements" refers to a public work.

D. "Responsible bidder" means a contractor who meets the criteria in RCW 39.04.350 and the requirements of ACC 3.12.050. (Ord. 6545 § 1, 2014; Ord. 4924 § 2, 1997; Ord. 4581 § 2, 1992.)

3.12.020 Bid solicitation.

A. *Formal Advertisement Required.* Except as otherwise authorized in Chapters 39.04 and 39.28 RCW or RCW 35.23.352, relating to emergency public works, or other applicable general state law, as now enacted or as hereafter amended, all public work and improvements shall be done by contract pursuant to public notice and call for competitive bids whenever the estimated cost of such public work or improvement, including the cost of materials, supplies, equipment and labor, will exceed the limits for competitive bid as stated in RCW 35.23.352 as now enacted or as hereafter amended, provided the city may use a small works roster pursuant to RCW 35.23.352. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process.

Where formal bidding is required, a call for bids shall be issued in accordance with the provisions herein before any contract is let for the performance of any public work.

B. *Formal Advertising Procedures.* For projects requiring formal advertisement per this section, a notice of a call for bids, stating the nature of the contract to be let and the time on or before which sealed bids for the same must be filed with the city clerk, shall be given by posting notice thereof on the bulletin board in the lobby of City Hall. The notice shall also be published in the official newspaper, and a newspaper of general circulation most likely to bring responsive bids, at least 13 days prior to the last date upon which bids will be received. The notice shall generally state the nature of the work to be done, where the plans and specifications may be seen or obtained, and a specified hour and date when such bids shall be opened, and that the sealed bids be filed with the city clerk within the time specified therein. The clock within the city clerk's office shall be the official time used for determining receipt of bids.

C. *Council Approval.* Issuance of solicitations for bids shall require city council consent approval unless the solicitation is for a project identified in the city's current approved budget at the time of bid solicitation or if the estimated contract amount is within the budget authority of the mayor as provided in Chapter 3.10 ACC.

D. For the purposes of determining whether or not bidding contractors must declare the names of subcontractors for certain work based on the amount of the contractor's expected costs per RCW 39.30.060, the expected costs of the contract shall be the engineer's estimate of the contract work plus the amount of any work added by addenda to the bid documents, plus any applicable sales tax computed at the rate in place at the time of bid opening.

E. For contracts not required to be formally advertised, the city shall issue an invitation to bid, request for quote or other form as determined appropriate by the city engineer. Nonformal advertised contracts may conform to the small works roster or limited public works process described in RCW 39.04.155 or other procurement process as deemed appropriate by the city engineer. (Ord. 6679 § 4, 2018; Ord. 6545 § 1, 2014; Ord. 5866 § 1, 2004; Ord. 4924 § 2, 1997; Ord. 4581 § 2, 1992. Formerly 3.12.011 and 3.12.020.)

3.12.030 Bid opening.

A. For contracts utilizing a formal advertisement process per ACC 3.12.020, bids shall be opened and publicly read aloud by the city clerk at the time and location as set forth in the contract advertisement.

B. For contracts not utilizing a formal advertisement process, the city engineer shall determine whether a public reading of the bids is required and indicate this in the new invitation to bidders or request for quote documents. (Ord. 6679 § 5, 2018; Ord. 6545 § 1, 2014.)

3.12.040 Rejection of bids.

The city shall have the power to reject any or all bids, to determine and to waive any irregularities or informalities that do not materially affect the substance of the bid itself, and to make further calls for bids in the same manner as the original call; or, if in its judgment the project can be done by the city at less cost than the lowest bid submitted, it may do so without making further call for bids or awarding any contract therefor. If no bid is received on the first call, the city may re-advertise and make a second call, or may enter into a contract by negotiation without further calls, or may purchase the supplies, material or equipment and perform such work or improvement with in-house forces. (Ord. 6545 § 1, 2014.)

3.12.050 Disqualification of bidders.

A bidder may be deemed not responsible and the proposal rejected, unless contract terms specify otherwise, if:

A. The bidder does not meet the mandatory bidder responsibility criteria in RCW-39.04.3501(1) as it is now or as amended; or

B. Evidence of collusion exists with any other bidder or potential bidder. Participants in collusion will be restricted from submitting further bids; or

C. The bidder, in the opinion of the city, is not qualified for the work or to the full extent of the bid, or to the extent that the bid exceeds the authorized prequalification amount as may have been determined by a requalification of the bidder; or

D. An unsatisfactory performance record exists based on past or current contracting work for the city or for others, as judged from the standpoint of conduct of the work; workmanship; or progress; affirmative action; equal employment opportunity practices; termination for cause; of disadvantaged business enterprise, minority business enterprise, or woman’s business enterprise utilization; or

E. An unsatisfactory safety record exists based on past or current contracting work; or

F. There is uncompleted work, with the city or others, which in the opinion of the city might hinder or prevent the prompt completion of the work bid upon; or

G. The bidder failed to settle bills for labor or materials on past or current contracts, unless there are extenuating circumstances acceptable to the city; or

H. The bidder has failed to complete a written public contract or has been convicted of a crime arising from a previous public contract, unless there are extenuating circumstances acceptable to the city; or

I. The bidder is unable, financially or otherwise, to perform the work, in the opinion of the city; or

J. A bidder is not authorized to do business in the state of Washington; or

K. More than one proposal is submitted for the same project by a bidder under the same or different names; or

L. Any other reasons deemed proper by the city. (Ord. 6545 § 1, 2014; Ord. 4924 § 2, 1997; Ord. 4581 § 2, 1992. Formerly 3.12.022.)

3.12.060 ~~Award.~~

~~For contracts greater than the bid limits as provided in RCW 35.23.352, as now enacted or as hereafter amended, the city council shall award the contract to the lowest responsible bidder. For contracts less than the bid limits provided in RCW 35.23.325, as now enacted or as hereafter amended, the director or designee shall have the authority to award the contract. (Ord. 6679 § 6, 2018; Ord. 6545 § 1, 2014.)~~Reserved

3.12.070 Contractor's bond.

A. Whenever the city shall contract with any person or corporation to do any work, the city shall require the person or persons with whom such contract is made to make, execute, and deliver to the city clerk a sufficient bond, with a surety company as surety, conditioned that such person or persons shall faithfully perform all the provisions of such contract and pay all laborers, mechanics, subcontractors and material suppliers, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work. Said security company in accordance with RCW 39.08.010 shall be bound by the laws of the state of Washington and subject to the jurisdiction of the state of Washington. The provisions of RCW 39.08.010 through 39.08.030 shall not apply to any money loaned or advanced to any such contractor, subcontractor or other person in the performance of any such work.

B. For contracts using the limited public works process, the city may waive the payment and performance bond requirements of Chapter 39.08 RCW and retainage requirements of Chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen,

suppliers, and taxes imposed under RCW Title 82 that may be due from the contractor for the limited public works project; however, the city shall have the right of recovery against the contractor for any payments made on the contractor's behalf. The city engineer shall have the authority to waive the payment and performance bond requirements and retainage requirements based on their evaluation of the project and determination of risk.

C. On contracts of $150,000 or less, upon request by the contractor, the city may, in lieu of the bond, retain 10 percent of the contract amount for a period of 30 days after the date of final acceptance, or until receipt of all necessary releases from the Department of Revenue, Employment Security Department, and the Department of Labor and Industries, receipt of all affidavits of wages paid for the prime and subcontractors, and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

D. For the purposes of determining the time frame required for notices of claims against retainage and release of retainage, the city engineer shall have the authority to take affirmative action to determine that a contract is complete and to accept the contract work. (Ord. 6679 § 7, 2018; Ord. 6545 § 1, 2014; Ord. 5866 § 1, 2004; Ord. 4924 § 2, 1997; Ord. 4581 § 2, 1992. Formerly 3.12.040.)

Note: See RCW 39.08.010.

3.12.080 Contractor evaluation form.

A. After work is performed by a contractor, the city shall evaluate the contractor's work performance as to certain criteria but not limited to the following:

1. Progress of the work, including:

    a. The ability, capacity and skill of the contractor to perform the work;

    b. Whether the contractor performed the work promptly and within the time specified without delay or interference;

2. Quality of the work;

3. Equipment;

4. Administration/management/supervision;

5. Coordination and control of subcontractors;

6. Whether the contractor provided a safe working environment for their employees and the general public;

7. Whether the contractor stood behind their service or work performed.

B. A copy of the contractor evaluation form will be sent to the contractor and any contractor responses will be added to the evaluation. The contractor evaluation form may be used by the city to determine whether or not the contractor is a responsible bidder who should be considered for further public works projects. The city may also complete evaluations for subcontractors utilizing the same process described herein for contractors and then utilize the subcontractor evaluations to determine bidder responsibility and in determining whether or not to approve a contractor's request to sublet. (Ord. 6679 § 8, 2018; Ord. 6545 § 1, 2014; Ord. 4924 § 3, 1997. Formerly 3.12.025.)

3.12.090 Small works roster.

A. ~~The city need not comply with formal sealed bidding procedures for construction, building, renovation, remodeling, alteration, repair, or improvement of real property where the estimated cost does not exceed the current statutory limit in RCW 39.04.155, which includes the costs of labor, material, equipment, and sales and/or use taxes as applicable. Instead, the city may use the small works roster procedures for public works projects as set forth herein. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process.~~

~~B.~~ *Number of Small Work Rosters.* The city may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Said small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor.

~~C~~B. *Contractors on Small Works Roster(s).* The small works roster shall consist of all responsible contractors who have requested to be on the roster(s), and where required by law are properly licensed or registered to perform contracting work in the state of Washington. Contractors desiring to be placed on a roster or rosters must keep current records of any applicable licenses, certificates, registrations, bonding, insurance, or other appropriate matters on file with the city as a condition of being placed on a roster or rosters. The city reserves the right to exclude a contractor from the roster if they are deemed to be not responsible or to remove a contractor from the roster at such time as the city becomes aware of specific facts that would deem the contractor to be not responsible.

~~D~~C. *Publication of Small Works Roster.*

1. At least once a year, the city shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to an appropriate roster or rosters at any time that they submit a written request and necessary records.

2. The city will utilize the statewide electronic database developed and maintained by the Municipal Research and Services Center of Washington (MRSC Rosters) or successor agency.

~~E~~D. *Quotations for Small Works Roster Projects.* The city shall obtain telephone, written or electronic quotations for public works contracts from contractors on the appropriate small works roster(s) to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010 and 39.04.350, and ACC 3.12.050, as follows:

1. A contract awarded from a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes.

2. Quotations may be invited from all appropriate contractors on the appropriate small works roster(s). As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster(s) who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster.

3. For the purpose of this section, "equitably distribute" means that the city may not favor certain contractors on the appropriate small works roster(s) over other contractors on the appropriate roster(s) who perform similar services. At the time bids are solicited, the city shall not inform a contractor of the terms or amount of any other contractor's bid for the same project.

4. A written record shall be made by the city of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. (Ord. 6545 § 1, 2014; Ord. 5866 § 1, 2004; Ord. 4924 § 2, 1997; Ord. 4581 § 2, 1992. Formerly 3.12.030, 3.12.032 and 3.12.034.)

3.12.100 Limited public works process.

If a work, construction, alteration, repair, or improvement project does not exceed the current statutory limit in RCW 39.04.155(3), the city may award such a contract using the limited public works process.

Public works projects awarded under the limited public works process are exempt from the other requirements of the small works process provided under ACC 3.12.090.

For limited public works projects, the city shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder, as defined under RCW 39.04.010 and 39.04.350, and ACC 3.12.050. After an award is made, the quotations shall be open to public inspection and available by electronic request.

For limited public works projects, the city may waive the payment and performance bond requirements of Chapter 39.08 RCW and the retainage requirements of Chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes imposed

under RCW Title 82 that may be due from the contractor for the limited public works project. However, the city shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

The city shall maintain a list of the contractors contacted and the contracts awarded during the previous 24 months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. (Ord. 6545 § 1, 2014; Ord. 5866 § 1, 2004. Formerly 3.12.036.)

3.12.110 On-call contracting.

The city may use unit priced contracts as described in RCW 35.23.352 or a job order contractor as described in RCW 39.10.420 and following the procedures as identified in Chapter 39.10 RCW. (Ord. 6545 § 1, 2014.)

3.12.120 Publication, printing, and notices.

The city shall comply with the requirements of state law for publication, printing and notices as now exist or hereafter amended and relating to all public printing for the city and the publication of legal notices by the city. (Ord. 6545 § 1, 2014; Ord. 4581 § 2, 1992. Formerly 3.12.050.)

AGENDA BILL APPROVAL FORM

Agenda Subject:
Ordinance No. 6766 (Comeau)(15 Minutes)

Date:
March 16, 2020

Department:
City Attorney

Attachments:
Ordinance No. 6766

Budget Impact:
Current Budget: $0
Proposed Revision: $0
Revised Budget: $0

Administrative Recommendation:

For discussion only.

Background Summary:

The City adopted its controlled substance possession ordinance (AMC 9.22.010.B) in 2018 to enable more effective misdemeanor prosecution of County declined felony drug possession cases. The ordinance legally defines "controlled substance" by adopting the State law controlled substance definition in RCW 69.50.101. When the ordinance was adopted, the definition was in paragraph (f) of that RCW.

In 2019, the State Code Reviser amended RCW 69.50.101 to move the controlled substance definition from paragraph (f) of the RCW to paragraph (g).

To make sure that our ordinance accurately adopts the RCW controlled substance definition, it needs to be amended to reflect the RCW paragraph change. The proposed ordinance revision eliminates the RCW paragraph from the ordinance, so that the ordinance refers to RCW 69.50.101 as a whole, rather than to a specific paragraph. Adopting this proposal will minimize the need for additional ordinance revisions if the RCW paragraphs change this way again in the future.

Reviewed by Council Committees:

Councilmember:

Staff: Comeau

Meeting Date: March 23, 2020

Item Number:

ORDINANCE NO. 6766

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING SECTION 9.22.010 OF THE AUBURN CITY CODE RELATED TO CONTROLLED SUBSTANCES

WHEREAS, Auburn City Code (ACC) 9.22.010.B prohibits controlled substance possession and defines controlled substances by incorporating the state law definition in RCW 69.50.101;

WHEREAS, this RCW section formerly defined controlled substances in its subsection (f), but the State Legislature and/or State Code Reviser recently amended the section to move the definition to subsection (g);

WHEREAS, to avoid the need for further ordinance revisions should the legislature similarly revise this statute again in the future, the reference to the specific subsection should be eliminated.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows:

Section 1. Amendment to City Code. Section 9.22.010 of the Auburn City Code is amended to read as follows:

A. *Restrictions on Marijuana.*

1. Except as otherwise authorized by United States Code (USC) Title 21, Chapter 69.50 or 69.51A RCW, it is unlawful for any person to knowingly grow, manufacture, process, deliver, or sell marijuana.

2. Except as otherwise authorized by Chapter 69.50 or 69.51A RCW, it is unlawful for any person aged 21 or older to knowingly possess marijuana in an amount that violates RCW 69.50.4013(3).

3. Except as otherwise authorized by Chapter 69.50 or 69.51A RCW, it is unlawful for any person under age 21 to knowingly possess marijuana in any amount.

4. "Marijuana," also known as "marihuana," means all parts of the plant genus Cannabis and all of its species, subspecies, taxa and hybridizations, whether growing or not; the seeds thereof; the resins extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, and includes all marijuana concentrates, usable marijuana, and marijuana-infused products. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

B. It is unlawful for any person to knowingly possess a controlled substance other than marijuana as defined by RCW 69.50.101~~(f)~~ unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of their professional practice.

C. It is unlawful for any person to knowingly possess a legend drug in violation of Chapter 69.41 RCW.

D. Penalties.

1. Violation of subsection A of this section is a misdemeanor. For a first offense, the maximum penalty shall be 90 days in jail and/or a $1,000 fine. For a second or subsequent offense, the maximum penalty shall be 180 days in jail and/or a $2,000 fine.

2. Violation of subsection B of this section is a gross misdemeanor punishable by up to 364 days in jail and/or a $5,000 fine.

3. Violation of subsection C of this section is a misdemeanor punishable by up to 90 days in jail and/or a $1,000 fine.

Section 2. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 3. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision,

section, or portion of this ordinance, or the invalidity of the application of it to any person or circumstance, will not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 4. Effective date. This Ordinance will take effect and be in force five days from and after its passage, approval, and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

_____
NANCY BACKUS, MAYOR

ATTEST:

_____
Shawn Campbell, MMC, City Clerk

APPROVED AS TO FORM:

_____
Kendra Comeau, City Attorney

Published: _____