

AN ORDINANCE TO AMEND AND ~~RESTATE~~ CHAPTER 14 OF THE CODE OF ORDINANCES FOR THE CITY OF MOBILE, ALABAMA ENTITLED "CONTRACTS" TO PROVIDE FOR FILING, DISCLOSURE AND OTHER REQUIREMENTS FOR CERTAIN CITY CONTRACTS; AND TO IDENTIFY OFFICERS AUTHORIZED TO EXECUTE CONTRACTS ON BEHALF OF THE CITY

Sponsored by: Councilmembers Richardson, Manzie, Small, Williams, Rich and Gregory

BE IT ORDAINED by the City Council of the City of Mobile, Alabama as follows:

Section One. Chapter 14 of the Code of Ordinances for the City of Mobile, Alabama, 1991 is hereby amended and restated to read as follows:

"Sec. 14-1 Findings

(a) The City of Mobile is an Alabama Class 2 municipality created pursuant to the Zoghby Act, *Ala. Code §11-44C-1 et seq.* and vested with a portion of the state's sovereign power to protect the public health, safety and welfare. *Ala. Code §11-45-1.*

(b) All powers of the city are "vested in the council, which is authorized to enact ordinances, adopt budgets and determine policies." All powers "shall be exercised in the manner prescribed [by the Zoghby Act] or if the manner be not prescribed, then in such manner as may be prescribed by law or by ordinance." *Ala. Code §11-44C-10-11.*

(c) In addition to the powers enumerated in the Zoghby Act, the council has all of the powers granted to municipal corporations by the constitution and laws of the State of Alabama, together with "all the implied powers necessary to carry into execution all the powers granted." *Ala. Code §11-44C-12.*

(d) The power to contract is specifically vested in the council by *Ala. Code §11-40-1*: "All municipal organizations are "bodies politic and corporate" with the power to "contract and be contracted with."

(e) The council is charged with the "management and control of the finances and all of the property, real and personal, belonging to the City." *Ala. Code §11-43-56.* To be valid, all contracts of the city must be in writing, serve a public purpose, and be executed in the name of the city by the officers authorized by law or ordinance. *Ala. Code §11-47-5.* The council has previously authorized the mayor to execute certain contracts without council approval, see *e.g. §2-66, Mobile City Code.*

(f) The purpose of this ordinance is to promote transparency in the contracting process; to adopt reasonable regulations with respect thereto; to require full disclosure of the city's contractual obligations; and to specify the officers authorized to contract on behalf of the city.

Sec. 14-2 Disclosure and Other Requirements

(a) *Definitions.* As used in this chapter, the term "contract" means a written agreement, by whatever name, that imposes a financial obligation on the City; or that affects, or may affect, any property rights of the City. The term does not include deeds, contracts or bonds required in judicial proceedings, as set forth in *Ala. Code §11-43-83*.

(b) *Disclosure Requirements.* Not later than 30 days from the effective date of this ordinance, the mayor shall cause to be filed with the City Clerk a true and correct copy of the following:

- 1) grant agreements that are or will be in effect for the 2018-19 fiscal year;
- 2) retainer agreements, engagement letters or other contracts for legal services with attorneys whether hired pursuant to *Ala. Code § 11-44C-38(b)* or otherwise;
- 3) all contracts, letters or other communications setting out or describing the terms of the employment of the city attorney; any firm with which he is affiliated as city attorney or chief legal advisor to the mayor; or any in any other capacity compensated or funded by the City of Mobile; and
- 4) appointment letters or agreements to employ any person who is not in the "classified service" as defined by Act 470, Section II (otherwise known as the Mobile County Personnel Law), and any person whom the mayor has appointed to a position pursuant to *Ala. Code §11-44C-40* or any other authority. Such disclosures shall identify the person's title, department, salary, supervisor, length of service and all other terms of employment.

Sec. 14-3 Contract Procedures

(a) *Execution.* All contracts shall be in writing, serve a public purpose, and be executed in the name of the city by the officers authorized by law or ordinance. The mayor shall have no authority to execute any contract that has not first been approved by the city council, except for deeds and bonds required in judicial proceedings, and as may be authorized by this Chapter.

(b) *Bid Awards.* All bids shall be awarded by resolution duly adopted by the Council.

(c) *Settlements.* No payment shall be made to settle, adjust, or compromise any litigation, claim, debt, account, dispute, demand for or against the City, unless the agreement is first reduced to writing, presented to and approved by the Council, except for settlements with a monetary value of less than \$5,000 and which have been approved by the mayor and the city attorney. All settlements, in any amount, shall be promptly filed with the City Clerk.

(d) *Performance Contracts.* All commitments to fund organizations, regardless of funding source, shall require a performance contract and resolution of the council finding a public purpose for the expenditure.

(e) *Budgeted Performance Contracts.* Not later than 30 days after the effective date of this ordinance, the mayor shall prepare performance contracts for all organizations that are itemized in the annual budget, and shall submit such contracts to the council for approval. Thereafter, such performance contracts shall be prepared and submitted to the council for approval not later than 30 days after the effective date of the general fund budget.

Sec. 14-4 Change Orders.

The mayor is authorized to approve change orders to city construction contracts subject to at least one (1) of the following criteria. All change orders shall be filed in the Clerk's office.

- 1) Minor changes for a total monetary value less than required for competitive bidding under the state competitive bid laws.
- 2) Changes for matters relatively minor and incidental to the original contract necessitated by unforeseeable circumstances arising during the course of the work.
- 3) Emergencies arising during the course of the work on the contract.
- 4) Changes or alternates provided for in the original bidding where there is no difference in price on the change order from the original best bid on the alternate.
- 5) Changes of relatively minor items not contemplated when the plans and specifications were prepared and the project was bid which are in the public interest and which do not exceed ten (10) percent of the contract price. This shall mean that the total of all change orders on each contract shall not exceed ten (10) percent of the contract price for each project.

Sec. 14-5 Leases

If a new lease or lease-purchase requires funding which will overlap into the subsequent budget year, council approval will be required.

Sec. 14-6 Contracts Requiring Budget Amendments.

All contracts requiring a budget amendment for funding must come before the council in order to appropriate funds.

Sec. 14-7 Contract Implementing Major Programs

Contracts which implement major programs for the city should come before the council for the purpose of full disclosure. This includes but is not limited to contracts which exceed seven thousand five hundred dollars (\$7,500.00) for construction, consultants, training, lease purchases, privatized services, and other contracts for services.

Sec. 14-8 Contracts for Routine Purchases

For the purposes of this chapter, a contract shall be deemed for routine purchases if the total amount of the contract is less than seven thousand five hundred dollars (\$7,500.00). Pursuant to *Ala. Code* §11-44C-72, the purchasing agent may execute contracts for routine purchases so long as it is pursuant to a written requisition from the head of the office, department or agency whose appropriation will be charged; and no contract or order shall be issued to any vendor unless and until the director of finance certifies that there is a sufficient unencumbered appropriation balance to pay for the supplies, materials, equipment or contractual service for which the contract or order is to be issued.

Sec. 14-9 Nondiscrimination provisions to be included in municipal contracts.

All municipal contracting agencies shall include in every municipal contract hereafter entered into the following provisions:

"During the performance of this contract the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin or disability. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin or disability. Such action shall include but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency of the municipality setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualifying applicants will receive consideration for employment without regard to race creed, color, national origin or disability.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the municipal contracting agency, advising the labor union or worker's

representative of the contractor's commitments under this section, and shall post copies of such notice in conspicuous places available to employees and applicants for employment.

4. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further municipal contracts.

5. The contractor will include the provisions of this section in every subcontract or purchase order unless exempted by written orders of the governing body of the City of Mobile so that such provisions will be binding upon each subcontractor or vendor.

6. Each contractor will agree to the above in writing, including the contractor's commitment to follow the Americans with Disabilities Act of 1990."

Sec. 14-10 Participation by socially and economically disadvantaged contractors.

(a) All contracts or agreements entered into by the City or any entity thereof for any service of any kind, whether by bid or otherwise, including but not limited to professional services and bond issues, shall make every reasonable effort to require that the contractor, firm or company to which any such contract is awarded must have at least fifteen (15) percent participation by socially and economically disadvantaged individuals, or the City shall make every reasonable effort to ensure that at least fifteen (15) percent of the total value of all such contracts or agreements described above shall be awarded to qualified contractors or professionals who are socially and economically disadvantaged.

(b) The City will hire a consultant to provide technical assistance and recommend regulations to the City to ensure every reasonable effort is made to implement this section.

Section Two. This Ordinance repeals Section 2-66(e), 2-66(f), 2-66(g), 2-66(h), 2-66(i), 2-66(j), 2-66(k), 2-66(l), and 2-66(m).

Section Three. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such invalid or unconstitutional phrase, clause, sentence, paragraph or section.


Section Four. This amendment shall be effective following adoption and publication.

Adopted: 12 - 18 - 18


City Clerk

ADOPTED BY THE COUNCIL OF THE
CITY OF MOBILE AT ITS
MEETING HELD ON

DEC 18 2018


CITY CLERK
APPROVED BY THE MAYOR
MAYOR