

**ORDINANCE NO. 868-C.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA REPEALING AND REPLACING SECTIONS 3-15.02, 3-15.03, 3-15.06 AND 3-15.07 OF CHAPTER 15, "PUBLIC BIDDING PROCEDURES FOR PUBLIC PROJECTS" WITHIN TITLE 3 OF THE PACIFICA MUNICIPAL CODE RELATING TO BIDDING PROCEDURES AND AWARD OF CONTRACTS; AND ADDING A NEW CHAPTER 8, "PLANS AND SPECIFICATIONS" WITHIN TITLE 7 OF THE PACIFICA MUNICIPAL CODE RELATING TO STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION AND DELEGATION OF AUTHORITY TO THE CITY ENGINEER TO APPROVE THE PLAN OR DESIGN OF IMPROVEMENTS TO PUBLIC PROPERTY**

**WHEREAS**, pursuant to Pacifica Municipal Code section 3-15.01, the City has elected to be subject to the California Uniform Construction Cost Accounting Procedure referred to in the Uniform Public Construction Cost Accounting Act (California Public Contract Code Sections 22000 *et seq.*, as may be amended); and

**WHEREAS**, the City Council previously adopted the procedures in California Public Contract Code Section 22030 *et seq.*, which are set forth in City of Pacifica Municipal Code Title 3, Chapter 15; and

**WHEREAS**, the State legislature amended California Public Contract Code Section 22032, effective January 1, 2019, to raise the dollar amounts for certain specified projects for those public agencies that have elected to be subject to the Uniform Construction Cost Accounting Procedures; and

**WHEREAS**, the City of Pacifica desires to amend Chapter 15 to be consistent with the most recent version of California Public Contract Code Section 22030 *et seq.*; and

**WHEREAS**, City staff is recommending a new Chapter 8 within Title 7 to specifically delegate the discretionary authority to approve plans or designs from the City Council to the City Engineer in order to better position itself to assert the design immunity defense provided for in section 830.6 of the California Government Code; and

**WHEREAS**, to successfully assert the design immunity defense, the City of Pacifica must prove, among other things, that its legislative body, or some other body or employee exercising discretionary authority, approved the plan or design prior to construction, or the plan or design was prepared in conformity with standards previously so approved; and

**WHEREAS**, currently the City Council is the body that exercises discretionary authority to approve plans or designs prior to construction; and

**WHEREAS**, plans and specifications that later become finalized may not appear in the plans that were approved by the City Council because of practical timing considerations; and

**WHEREAS**, by delegating the discretionary authority to approve plans or designs from the City Council to the City Engineer, the City will be in better position to ensure that all plans that become finalized are approved within the meaning of the design immunity defense provided for in section 830.6 of the California Government Code since the City Engineer will be able to approve changes as they occur; and

**WHEREAS**, the City would like to adopt the latest edition of the Standard Specifications for Public Works Construction, and the Code every time a new edition comes out, as such, it is a more efficient policy to require that the City Council adopt and approve of new standards by resolution; and

**WHEREAS**, adopting new standards by resolution provides a second avenue to fulfilling the first element of the design immunity defense because, if a plan or design was prepared in conformity with standards previously so approved (i.e., the standards approved by resolution), that element is satisfied.

**NOW, THEREFORE**, the City Council of the City of Pacifica does ordain as follows:

**Section 1. Recitals.** The City Council of the City of Pacifica does hereby find that the above referenced recitals are true and correct and material to the adoption of this Ordinance.

**Section 2. Amended.** Section 3-15.02, "Award of Contract" of Chapter 15, "Public Bidding Procedures for Public Projects" within Title 3 is hereby amended by repealing section 3-15.02 in its entirety and replacing it to read as follows:

"Sec. 3-15.02. - Award of contract.

- A. Public projects up to Sixty Thousand and no/100ths (\$60,000.00) Dollars may be performed by City employee force account, by negotiated contract, or by purchase order.
- B. Public projects up to Two Hundred Thousand and no/100ths (\$200,000.00) Dollars may be let to contract by informal procedures as set forth in this chapter.
- C. Public projects of more than Two Hundred Thousand and no/100ths (\$200,000.00) Dollars shall, except as otherwise provided in this chapter, be let to contract by formal bidding procedure, including without limitation, those procedures contained within Public Contract Code Section 22037."

**Section 3. Amended.** Section 3-15.03, "Award of Contracts by City Manager" of Chapter 15, "Public Bidding Procedures for Public Projects" within Title 3 is hereby amended by repealing section 3-15.03 in its entirety and replacing it to read as follows:

"Sec. 3-15.03. - Award of contracts by City Manager.

- A. The City Council does hereby delegate to the City Manager, or their designated representative, the authority to award or reject contracts under Section 3-15.02(A) of this chapter, up to Sixty Thousand and no/100ths (\$60,000.00) Dollars.
- B. The City Council does hereby delegate to the City Manager, or their designated representative, the authority to award or reject contracts under Section 3-15.02(B) of this chapter, up to the value of Seventy-five Thousand and no/100ths (\$75,000.00) Dollars.
- C. The City Council may delegate to the City Manager, or their designated representative, the authority to award or reject contracts under Section 3-15.02(B) and (C) of this chapter, over Seventy-five Thousand and no/100ths (\$75,000) Dollars. Delegation of authority pursuant to this subsection (C) shall be through a resolution of the Council."

**Section 4. Amended.** Section 3-15.06, "Bidding Procedures for Formal Contracts" of Chapter 15, "Public Bidding Procedures for Public Projects" within Title 3 is hereby amended by repealing section 3-15.06 in its entirety and replacing it to read as follows:

"Sec. 3-15.06. - Bidding procedures for formal contracts.

- A. At least twenty-one (21) days before bids are opened, notice inviting formal bids shall be

- sent to the list of contractors and/or trade journals specified in Section 3-15.05A of this chapter.
- B. Notice inviting formal bids shall be published at least fourteen (14) calendar days before the date of bid opening in a newspaper of general circulation serving the City of Pacifica.
- C. The notice inviting formal bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the "project."

**Section 5. Amended.** Section 3-15.07, "Opening of informal bids and awarding of contract" of Chapter 15, "Public Bidding Procedures for Public Projects" within Title 3 is hereby amended by repealing section 3-15.07 in its entirety and replacing it to read as follows:

"Sec. 3-15.07. - Opening of informal bids and awarding of contract.

At the time provided in the notice inviting informal bids, all bids timely received shall be opened by the City Clerk, or their designee, evaluated and, unless all bids are rejected, the contract may be awarded by the City Manager to the lowest responsive responsible bidder. If two (2) or more bids are lowest, the contract shall be awarded by drawing lots. If no bids are received, at the discretion of the City Manager the project may be performed by employees of the City by force account or negotiated contract. The City Manager may, in their discretion, reject all bids presented, in which event he shall state the reasons for the rejection and follow one of the options specified in Public Contract Code Section 22038(a)."

Except as specifically amended herein, all other sections within Chapter 15 shall remain unchanged.

**Section 6. Added.** Chapter 8, "Plans and Specifications" within Title 7 is hereby added to read as follows:

"Chapter 8-Plans and Specifications.

Sec. 7-8.100. - Adoption of Standard Specifications; Delegation of Authority to Approve Plan or Design of Improvement to Public Property

A. The City Council shall adopt, by separate resolution, standard specifications, which are hereby incorporated by reference and made part of this chapter as though set forth in this chapter in full.

B. The City Engineer is hereby granted the exclusive authority to approve and exercise discretionary authority as to the plan or design of a construction of, or an improvement to, public property in advance of the construction or improvement.

C. The City Engineer shall affix the following statement, their signature, and the date thereof, to the plan or design of a construction of, or an improvement to, public property before said plan or design is advertised for public bid, and to any amendment, alteration or change to said plan or design of improvement to public property before said improvement is constructed:

In accordance with Section 7-8.100(B) of Chapter 8 of Title 7 of the Pacifica Municipal Code, as City Engineer for the City of Pacifica, I do hereby exercise the discretion delegated to me and approve the plan or design of a construction of, or an improvement to, public property to which this statement and my signature is affixed. Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[Name], City Engineer

Sec. 7-8.101. - Amendments

The City Council may make changes in either the type and character of materials used or the methods of construction whenever, in the opinion of the Council, the public interest will best be served by said changes. Such changes shall be in the form of amendments to said Standard Specifications for Public Works Construction and shall have the force of law.”

**Sec. 7. Compliance with CEQA.** The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility the adoption of this Ordinance may have a significant effect on the environment.

**Section 8. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

**Section 9. Publication.** The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Pacifica, California, and cause the same to be published in accordance with State law.

**Section 10. Effective Date.** This Ordinance shall be in full force and effective thirty days after adoption and shall be published and posted as required by law.


**PASSED AND ADOPTED** this 27th day of September, 2021, by the following vote:

AYES: Beckmeyer, Bier, Bigstycck, O'Neill, Vaterlaus.

NOES: n/a.

ABSTAIN: n/a.

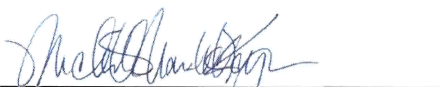
ABSENT: n/a.

  
Sue Beckmeyer, Mayor

ATTEST:

  
Sarah Coffey, City Clerk

APPROVED AS TO FORM:

  
Michelle Marchetta Kenyon, City Attorney