ORDINANCE NO. 2021-030

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE
AMENDING CHAPTER 2.16 OF THE PACIFIC GROVE MUNICIPAL CODE
TO ENABLE LOCAL PREFERENCE FOR PURCHASING

FACTS

1. The City of Pacific Grove is a Charter City.


3. The City recognizes that local bidders are disadvantaged because doing business within the City limits is more expensive than doing business outside the City.

4. On August 18, 2021, the City Council discussed amending PGMC Chapter 2.16 to consider incorporating local preference in its contracts. The City Council determined it would be a positive to local businesses, local COVID-19 economic recovery, and sustainability of its local economy to add local preference to the City’s Purchasing Systems and Procedures.

5. The City determined the intent of a local preference for purchasing procedure is to make sure: the dollars stay local, the jobs stay local, and to support small business in the local region.

6. The City desires a local preference procedure that will not impede any procurement of public work projects, purchases procured under federal or state requirements, cooperative purchases with other agencies, or where prohibited by other specific directive.

7. This ordinance does not constitute a Project as that term is defined by Section 15378 of the California Environmental Quality Act (CEQA) as it is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:

SECTION 1. Facts.

The facts set forth above are true and correct and are adopted as findings of the City Council as though set forth fully within the body of this ordinance.

SECTION 2. Amendment of Pacific Grove Municipal Code Section 2.16.100

Section 2.16.100 of Chapter 2.16 (Purchasing System and Procedures) shall be amended to address local business preference by the addition of text shown in bold italics below:
2.16.100 Lowest responsible bidder – Determining.

For the purpose of this chapter, in addition to price, the “lowest responsible bidder” will be determined after the following factors have been considered:

(a) The ability, capacity and skill of the bidder to perform the contract or provide the service required;

(b) Whether the bidder has the facilities to perform the contract or provide the service promptly, or within the time specified, without delay or interference;

(c) The character, integrity, reputation, judgment, experience and efficiency of the bidder;

(d) The bidder’s record or performance of previous contracts or services;

(e) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;

(f) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;

(g) The quality, availability and adaptability of the supplies, equipment, materials or services to the particular use required;

(h) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;

(i) The number and scope of conditions attached to the bid.

In the event the lowest bidder is rejected the purchasing agent or council, as the case may be, shall provide the lowest bidder with written explanation and/or findings regarding the rejection.

(j) In the case of a bid received from a bidder, a portion of whose sales tax is paid to the city, the purchasing agent shall calculate the actual cost to the city of accepting such bid. Said actual cost shall be the bid amount less sales tax revenue which would be received by the city were the city to accept such bid. Said actual cost shall be the price utilized by the city, in addition to the other factors set out in this section, in determining the lowest responsible bidder.

(k) Local Business preference.
   i. Local bidders must bid with the same specification as required of non-local bidders.
   ii. Where competitive bidding is utilized for the purchase of supplies, equipment, materials or general services as specifically set forth in this section, the City
shall grant preference to a local bidder who submits a quote or bid within five percent (5%) of the lowest responsible bidder and who is otherwise responsive and responsible to the invitation for bids.

iii. Where the lowest responsible bidder is not a Local Business, the Purchasing Officer shall provide the lowest responsible Local Business bidder, should one exist and its bid is within five percent (5%) of the lowest responsible bidder, with notice and an opportunity to reduce its bid to match that of the lowest responsible bidder.

iv. Upon notice being provided pursuant to this section, the Local Business shall have two (2) full business days to provide written notice to the Purchasing Officer of its desire to match the lowest bid.
   1. In the event the Local Business elects to match, the contract will be awarded to the Local Business.
   2. In the event, the Local Business provided the opportunity to match does not opt to match the lowest responsible bid, the award of the contract shall be given to the lowest responsible bidder.

v. In instances where a local business and a non-local business submit equivalent lowest, responsible bids, the Purchasing Officer shall give preference to the local business.

vi. All notices required under this section may be made orally, in writing or electronically.

vii. The application of a local preference as set forth in this section shall only apply if factors such as quality, previous performance, and availability are equal among bidders.

viii. Local preference shall not apply to any procurement of public work, purchases procured under federal or state requirements, cooperative purchases with other agencies, or where prohibited by other specific directive.

ix. No Exemption from Local Sales Tax. The application of a local preference as set forth in this section shall not exempt any eligible Local Business to which a contract is executed or awarded from having to pay all applicable federal, state or local sales tax.

tax. Local Business Defined. For purposes of this section, a “local business” means a business enterprise including but not limited to, a sole proprietor, partnership, or corporation which has the following:
   1. A valid business license issued from the City; and
   2. Has a place of business with a physical address located within the jurisdictional limits of the City at least six (6) months prior to publication of the call for bid and have at least one full-time employee located at the City business address.

SECTION 3. Interpretation.

This Ordinance shall be liberally construed to implement its purposes.
SECTION 4. Severability.

If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. Effective Date.

In accordance with Article 15 of the City Charter, this ordinance shall take effect thirty (30) days following adoption on second reading by the City Council.

SECTION 6. No Sunset Date.

This ordinance shall have continuing effect and shall not expire.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS 3rd day of November, 2021, by the following vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Amelio, Coletti, McAdams, Poduri, and Tomlison.
NOES: None.
ABSENT: None.

APPROVED:

BILL PEAKE, Mayor

ATTEST: 11/8/2021

SANDRA KANDELL, City Clerk
APPROVED AS TO FORM:

David C. Laredo

DAVID C. LAREDO, City Attorney