

ORDINANCE NO. 2009-04-334

AN ORDINANCE AMENDING THE CODE OF ORDINANCES FOR THE CITY OF TONTITOWN, ARKANSAS, PROVIDING FOR PROCEDURES FOR PURCHASES USING CITY FUNDS, DECLARING AN EMERGENCY AND FOR OTHER PURPOSES

WHEREAS, Arkansas Code Annotated § 14-58-303 provides that cities of the second class may provide by ordinance for the making all purchases, and

WHEREAS, the City of Tontitown is a city of the second class; and

WHEREAS, the City currently has numerous ordinances which overlap, are not entirely consistent with one another and are inadequate to provide for all purchasing scenarios; and

WHEREAS, the City Council has determined that it is in the best interests of the City of Tontitown, Arkansas, to amend Section 32.02 of the Code of Ordinances for the City of Tontitown, Arkansas, by repealing the current section and adopting a revised Section 32.02.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TONTITOWN, ARKANSAS:

SECTION 1: Ordinances No. 80, No. 81, No. 159, No. 2006-01-241, No. 2006-05-260, No. 2008-11-324 codified at Section 32.02 of the Code of Ordinances for the City of Tontitown, Arkansas are hereby repealed.

SECTION 2: Section 32.02 of the Code of Ordinances for the City of Tontitown, Arkansas, is hereby amended and shall provided as follows:

§ 32.02 PURCHASING BY MAYOR AND COUNCIL MEMBERS; PROCEDURE.

- (A) The approval by the Council of the budget shall amount to an appropriation of funds, which are lawfully applicable to the items therein contained. Expenditures shall be made only from funds previously appropriated by the Council and only for the purposes set forth in such appropriation.

All miscellaneous administrative expenditures shall be made from a petty cash fund established in an amount appropriated by the City Council. No amount shall be expended for miscellaneous administrative expenditures beyond the monthly amount appropriated by the City Council. All payments from said petty cash fund shall be documented by paid receipts. Additional funding must be approved by the City Council.

- (B) The Mayor, or the Mayor's duly authorized representative, shall have exclusive power and responsibility to make purchases of all supplies, apparatus, equipment, materials, and other things requisite for public purposes in and for the City of Tontitown, and to make all necessary contracts for work or labor to be done, or material or other necessary things to be furnished for the benefit of the city, or in carrying out any work or undertaking of a public nature therein, subject to the provisions of this Section.
- (C) Purchases of all supplies, apparatus, equipment, materials, and other things requisite for the city, and all contracts for work or labor to be done, shall be deemed bills, debts or liabilities asserted as claims against the city. If the amount thereof is in excess of \$1,000, but less than \$5,000, payment or disapproval of the bill, debt or liability shall require prior confirmation by the City Council.
- (D) For all purchases of supplies, apparatus, equipment, materials, and other things requisite for the city, or for necessary contracts for work or labor, where the expenditure therefor is, or is anticipated to be, in excess of \$5,000, but less than \$20,000, the following process shall be followed:
 - (1) A detailed list of specifications shall be provided to the Recorder/Treasurer who shall cause the specifications to be posted on the City's website with an invitation for competitive bidding. Bids shall be received for a period of twenty (20) days.
 - (2) If at least three (3) bids are received, the bids shall be opened at the next regularly scheduled City Council meeting, or a special meeting called for that purpose. The City Council is not required to award the contract. However, if the City Council decides to award the contract, it shall be awarded to the lowest responsible bidder, provided that the City Council may reject any or all bids determined to be, in the Council's discretion, unreasonable, undesirable, insufficient, not in accordance with the invitation for bids, or submitted by an irresponsible or unreliable bidder.
 - (3) In the event fewer than three (3) bids are received, City Council may choose to either proceed with the bid opening or may extend the invitation period for no more than twenty (20) days. If extended, the bids shall be opened at the next regularly scheduled City Council meeting, or a special meeting called for that purpose. The City Council is not required to award the contract, however, if the City Council decides to award the contract, it shall be awarded to the lowest responsible bidder, provided that the City Council may reject any or all bids determined to be, in the Council's discretion, unreasonable, undesirable, insufficient, not in accordance with the invitation for bids, or submitted by an irresponsible or unreliable bidder.

- (4) Once it is determined that a particular bid will be accepted, the Mayor or the Mayor's duly authorized representative shall award the bid to successful bidder and, with the participation of the City Attorney, shall ensure a proper contract is entered into between the City and the successful bidder.
- (E) For all purchases of supplies, apparatus, equipment, materials, and other things requisite for the city, or for necessary contracts for work or labor, where the expenditure therefor is, or is anticipated to be, in excess of \$20,000, the following process shall be followed:
- (1) An invitation for bids shall be published by legal advertisement in any paper of general circulation within the City.
 - (2) If at least three (3) bids are received, the bids shall be opened at the date, time and location set for the opening of bids. The City Council is not required to award the contract, however, if the City Council decides to award the contract, it shall be awarded to the lowest responsible bidder, provided that the City Council may reject any or all bids determined to be, in the Council's discretion, unreasonable, undesirable, insufficient, not in accordance with the invitation for bids, or submitted by an irresponsible or unreliable bidder.
 - (3) In the event fewer than three (3) bids are received, City Council may choose to either proceed with the bid opening or may extend the invitation period for no more than twenty (20) days. If extended, the bids shall be opened at the place, time and date set for the opening of bids. The City Council is not required to award the contract, however, if the City Council decides to award the contract, it shall be awarded to the lowest responsible bidder, provided that the City Council may reject any or all bids determined to be, in the Council's discretion, unreasonable, undesirable, insufficient, not in accordance with the invitation for bids, or submitted by an irresponsible or unreliable bidder.
 - (4) Once it is determined that a particular bid will be accepted, the Mayor or the Mayor's duly authorized representative shall award the bid to successful bidder and, with the participation of the City Attorney, shall ensure a proper contract is entered into between the City and the successful bidder.
- (F) No invitation for bids, advertisement or competitive bidding shall be required for:
- (1) Professional services; or
 - (2) Products or services determined by the City Council to be provided by a unique vendor such that it does not lend itself to competitive bidding; or

- (3) When it is determined by the City Council that competitive bidding is not feasible, possible or practical under the circumstances; or
 - (4) When reimbursing or repaying a federal, state, county or another local governmental entity for goods or services purchased for the benefit of, or on behalf of, the City, provided that the governmental entity complied with applicable competitive bidding laws or regulations when making the purchase or expenditure to be reimbursed or repaid; or
 - (5) In cases of emergency. In the event of emergency, the Mayor shall report the expenditure to the City Council and shall certify in writing the facts constituting the emergency no later than the next regularly City Council meeting or special meeting called for that purpose.
- (G) The Mayor, or the Mayor's duly authorized representative, may approve for payment out of any funds previously appropriated pursuant to the process and for the purposes enumerated above, or disapprove any bills, debts, or liabilities asserted as claims against the city, when funds on hand are adequate to pay such bills, debts, or liabilities subject to the City Council's vote to override any disapproval.
- (H) The Mayor, or the Mayor's duly authorized representative, may sell or exchange any municipal supplies, apparatus, equipment, materials, and other things requisite for the city, pursuant to the following procedure:
- (1) The Mayor, or the Mayor's duly authorized representative, may sell or exchange any municipal supplies, materials or equipment without competitive bidding, if such supplies, materials, or equipment have a value of less than \$1.00.
 - (2) If the Mayor believes the value of such supplies, apparatus, equipment, material, or other things to be sold or exchanged is less than \$1.00, he or she shall certify his or her opinion in writing to the governing body, after which the Mayor or the Mayor's duly authorized representative may sell or exchange such supplies, apparatus, equipment, material, or other things without approval by the governing body.
 - (3) Supplies, materials or equipment having a value in excess of \$1.00, or for which the Mayor has not previously certified his opinion of value in accordance with this Section, shall be sold or exchanged only:
 - (a) By advertising the item for sale by legal publication in a paper of general circulation within the City. The advertisement shall invite bids, and the highest bidder shall be accepted, provided that the City Council may reject any and all bids determined, in its

discretion, to be unreasonable, undesirable, not in accordance with the invitation for bids or submitted by an irresponsible or unreliable bidder. The City may dispense with publication and competitive bidding when it determines the same is not feasible, possible or practical under the circumstances; or

(b) to the highest bidder at a public auction under such terms as set by the City Council.

(I) The Mayor and alderman may conduct business with the city under the following conditions:

(1) The purchase is under \$5,000 in value and comparable merchandise or equipment at comparable prices is not otherwise available within the city.

(2) The cost of the service is under \$5,000 in value and comparable services at comparable prices are not otherwise available within the city.

(J) The Mayor, or the Mayor's duly authorized representative, shall observe the following procedures for purchasing, which shall be the purchasing policy for the city. All items purchased should be assigned purchase orders

SECTION 3: EMERGENCY CLAUSE: The City Council hereby determines that an emergency exists in that the ability to make purchases and expenditures for City purposes is essential to the functioning of the City. The current ordinances are inadequate to allow for purchases and expenditures necessary for the public health, welfare and safety. Thus, being necessary for the protection of public health, safety, peace and welfare, this ordinance shall be in force and effect immediately upon its passage and approval.

PASSED AND APPROVED THIS 7th DAY OF April 2009.

Mayor of the City of Tontitown

ATTEST:

Approved To *Joseph E. Edger*
Form only, not substance

Recorder - Treasurer of the City of Tontitown

Amy B. Piantalto

SPONSOR:

Art Penzo _____