

MEMORANDUM

TO: Dublin City Council

FROM: Stephen J. Smith
Jennifer Readler
Chris W. Michael

DATE: February 7, 2013

RE: Ordinance No. 15-13 – Enacting New Chapter 37, Contracting and Competitive Bidding, of the Codified Ordinances of the City of Dublin

I. SUMMARY

During the past three to four months, the City of Dublin's Engineering and Legal Departments have been engaged in a collaborative process to create a comprehensive and streamlined system for contracting and competitive bidding. Ohio law changed substantially in 2011 and 2012, and many new options, such as new project delivery systems, are now available to political subdivisions. Accordingly, the City has undertaken this process to address these new laws now in effect and centralize the City's contracting procedures.

This process has included a comprehensive review of the City's contract document system as well as its current contracting ordinance, Chapter 37 of the Codified Ordinances of the City of Dublin. Chapter 37 was originally enacted under Dublin's Home-Rule authority under the Ohio Constitution, which is expressly reserved in Article VIII, Section 8.04 of the Revised Charter of the City of Dublin. As currently written, Chapter 37 does not address the new law; therefore, the revisions described below are being proposed to bring Chapter 37 current with applicable law, and to provide for a more comprehensive contracting and competitive bidding process for the City. These revisions are being proposed under Article VIII, Section 8.04 of the Revised Charter of the City of Dublin.

The bulk of the revisions are contained in Sections 37.04 through 37.08. The former section adds five new exceptions and alternatives to competitive bidding, and gives the City Manager (or its designee) the flexibility to prescribe the procedures by which the project will be administered. Section 37.06 establishing a preference for recycled materials is being deleted. The City has already enacted an Administrative Order addressing its use of recycled materials, which has made old Section 37.06 outdated. To eliminate any confusion, Section 37.06 is being deleted.

Finally, Section 37.08 adds a new set of basic procedures related to bidding of public contracts. Incorporating this new section is designed to provide a transparent set of procedures by which entities contracting with the City will be given notice. Moreover, these additions are designed to increase the City's flexibility under its Home-Rule authority in regard to its contracts. For example, under the proposed Chapter 37, the City would have the flexibility to issue an addenda to a competitively bid project on the day of bid opening and not have to push the date of opening

back a week. Instead, the City may extend the bid opening to a reasonable period of time at its discretion. Based on the foregoing, staff recommends that Council adopt the proposed revisions to Chapter 37.

Additionally, staff recommends that Ordinance No. 15-13 be passed by emergency at the second reading/public hearing on February 25, 2013. With the construction season approaching and the need for numerous projects to be bid in the early months of 2013, Dublin has an immediate need to adopt the proposed contract procedures necessary to provide for the effective and efficient operation of the City. Accordingly, emergency legislation is needed so that the proposed legislation takes immediate effect upon its passage by Council.

II. RECOMMENDATION

Staff recommends that Council approve Ordinance No. 15-13 by emergency action at the second reading/public hearing on February 25, 2013.

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engineers, accountants, physicians, insurance brokers/agents, and/or third party administrators.

PRODUCT. Any material, equipment, supplies, commodities or any similar items purchased by the City in order to fulfill the operating and/or capital responsibilities of the City.

RECYCLED MATERIAL. Material the components of which, in whole or in part, would otherwise have been destined for permanent disposal.

§37.03 COMPETITIVE BIDDING AND NOTICE REQUIREMENTS.

Pursuant to Revised Charter section 8.04, a threshold amount of \$75,000 is established for competitive bidding.

(A) Current competitive bidding threshold or more. For the award of contracts reasonably anticipated by the City to involve expenditures equal to or greater than the current competitive bidding threshold, competitive bidding and legislative authorization shall be required, unless an exception or alternative is otherwise provided by Council.

(1) In estimating the anticipated expenditure to determine whether the competitive bidding threshold will be exceeded, the labor portion of the expenditure may be calculated without the use of prevailing wage rates.

(B) Less than the current competitive bidding threshold. The City Manager may, without competitive bidding or further legislative authorization, enter into contracts for expenditures of less than the current competitive bidding threshold for which City funds have been appropriated, provided that price quotes are obtained and documented as required by administrative order based upon the amount of the estimated expenditure.

(C) Notice. All bid advertisements or other solicitations for Competitive Bidding shall be placed, on a timely basis, with a reasonable period allowed for response, at least once in any of the following: a newspaper of general circulation within the City; on the City's website; or on any other website accessible to the public.

§37.04 EXCEPTIONS AND ALTERNATIVES TO COMPETITIVE BIDDING.

Pursuant to Revised Charter section 8.04, the exceptions and alternatives to the requirement for competitive bidding set forth in this chapter are deemed to be in the best interest of the City.

(A) No or rejected bids. If no bids are received after the advertisements or other solicitations required by this chapter, or if all bids are rejected, the City Manager shall have the authority to either seek new, competitive bids, or to obtain the goods and/or services for which funds have been appropriated through competitive bargaining without further legislative authorization, whichever is deemed to be in the best interest of the City.

(B) Used equipment or utilities. Regarding contracts for the purchase of used equipment or utilities such as gas, water, electricity, or telephone service for which funds have been appropriated, the City Manager shall have the authority to enter into contracts through competitive bargaining without further legislative authorization.

(C) Professional services. Pursuant to Revised Charter section 8.04(d), contracts for professional services are not subject to competitive bidding requirements and shall not require further legislative authorization where the operating budget provides sufficient funding.

(D) Cooperative purchasing programs. As an alternative to both competitive bidding and competitive bargaining, the City Manager shall have the authority to obtain goods and/or services for which funds have been appropriated through

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(1) Time between Notice and Bid Opening. There shall be no minimum time requirement between the publishing of the notice and the opening of the bids. The City shall notify prospective bidders of the bid opening date and time in the Notice and shall adjust the same to meet the needs of the City by issuing Addenda when necessary.

(2) Addenda Do Not Extend Bid Opening. The City may issue such addenda to the bid documents as it feels necessary and such addenda may be issued up to and including the last business day before the bid opening without any extension of the bid opening date. Addenda issued the same day as the bid opening shall cause the bid opening date to be extended to the date and time set forth in such addenda.

(3) Estimate of Cost. The City shall disclose the estimated cost of the project or purchase when it determines that doing so is in its best interest.

(4) Time for Award of Bids. In the Notice required for the bid solicitation, the City shall establish the time limit for awarding a contract. Submitted bids may not be withdrawn during this period. The City's failure to award and execute the contract within this period invalidates the entire bid proceedings and all bids submitted, unless the time for awarding and executing the contract is extended by mutual consent of the City and the bidder whose bid the City accepts and with respect to whom the City subsequently awards and executes a contract. Such an agreed extension shall not entitle the contractor to delay costs.

(5) Withdrawal of Bids. Bidders may withdraw bids pursuant Section 9.31 of the Ohio Revised Code; such a withdrawal shall not modify the City's right to award to the next lowest and best bidder.

(6) Bids in Excess of Estimate. The City may award contracts regardless of the value of the bid as compared to the value of the estimated cost.

(7) Notice to Proceed. The contractor is not entitled to a Notice to Proceed with the work by the City or its representative upon execution of the contract and no contractor shall begin work in the absence of a Notice to Proceed. The City shall either issue the Notice to Proceed at a time that it determines is in its best interest or it shall terminate the contract for its convenience.

(8) Retainage. Retainage shall be withheld from payments to the contractor at the rate set forth in the Owner/Contractor agreement. Retainage shall not be held in an escrow account. Retainage shall be released at such times and in such amounts as the City determines to be equitable.

(9) General Contractor Permitted. The City may advertise and award a single contract for constructing and managing an entire public improvement project.

(10) Extension of Bid Opening. The City may issue an addendum or addenda modifying the plans and specifications for the project or the time for the bid opening at any time prior to the bid opening.

(11) Combined Statement of Material and Labor. The City at its discretion may accept a combined statement of labor and materials from bidders.

(12) Bonus and Liquidated Damages for Time. The City may offer a bonus for completion of a contract prior to a specified date, or may exact liquidated damages for each day of delay beyond a specified date, or both. The amounts of the bonus and liquidated damages may be different.

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(13) No Arbitration. The City shall not enter into a contract that requires arbitration as a dispute resolution procedure unless the choice to arbitrate solely belongs to the City.

(14) Return of Bid Guarantees. The City shall return bid guaranties to bidders to which it does not award a contract in a reasonably timely manner.

SECTION 2. That existing Chapter 37 of the Codified Ordinances of the City of Dublin be and the same is hereby repealed.

SECTION 3. That the actions of this Council concerning and relating to the passage of this legislation were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

SECTION 4. That this Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City of Dublin and, further, provides for the timely enactment of contract procedures necessary to provide for the effective and efficient operation of the City; wherefore, this ordinance shall be in full force and effect immediately upon its passage.

Passed this _____ day of _____, 2013.

Mayor – Presiding Officer

ATTEST:

Clerk of Council

ORDINANCE NO. 15-13

AN ORDINANCE

ENACTING NEW CHAPTER 37, CONTRACTING AND COMPETITIVE BIDDING, OF THE CODIFIED ORDINANCES OF THE CITY OF DUBLIN, AND DECLARING AN EMERGENCY.

WHEREAS, Article VIII, Section 8.04 of the Charter of the City of Dublin provides that “Council, by ordinance, shall establish a threshold amount, notice provisions and other procedures for competitive bidding.”

WHEREAS, this Council desires to enact new Chapter 37 of the Codified Ordinances to provide standards and procedures for the advertising and awarding of contracts for the City of Dublin.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF DUBLIN, COUNTY OF FRANKLIN, STATE OF OHIO:

SECTION 1. That a new Chapter 37, Contracts, of the Codified Ordinances of the City of Dublin, be and the same hereby is enacted to read and provide, in its entirety, as follows:

“CHAPTER 37: CONTRACTING AND COMPETITIVE BIDDING

~~§37.01 HOME~~37.01 HOME RULE AUTHORITY.

—As a home rule charter city, Dublin shall not be obligated to follow Ohio statutory procedures regarding contracting including, but not limited to, R.C. §§ 7.12, 9.31, 9.311, 9.312, 9.313, 9.315, 9.32, 9.33 through 9.3325, 153.12-.14, 153.50-.52, 153.54, 153.56, 153.57, 153.571, 153.63, 153.67-.71, 153.80, ~~and~~ 735.05-.09, 735.074, ~~—~~and other applicable sections within the R.C. and -its Chapter 153.

~~§37.02 DEFINITIONS~~37.02 DEFINITIONS.

—For the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates or requires a different meaning:

—**CONTRACTING.** The process of entering into a deliberate verbal or written agreement between the city and competent parties in accordance with the Ohio Ethics Law for the purchase of goods and/or services.

—**COMPETITIVE BIDDING.** A contracting method by which the city develops bid specifications, performance criteria, and/or documents, publishes notices and/or advertisements soliciting bids by a stated deadline, accepts or rejects bids, and awards a contract to the lowest and best bidder.

—**COMPETITIVE BARGAINING.** A contracting method by which the city solicits proposals and/or quotes, negotiates the terms, conditions, and other relevant factors, and enters into a contract advantageous and beneficial to the city.

—**COOPERATIVE PURCHASING.** A contracting method by which the combined and collective efforts of governmental entities share the advantages and benefits of volume purchasing programs and reduced administrative expenses including, without limitation, the local government purchasing programs sometimes referred to as SWOP4 G, COOPP, a separate program through the Office of State Purchasing (part of the Ohio Department of Administrative Services) pursuant to R.C. § 125.04, and the program arranged by the Ohio Department of Transportation pursuant to R.C. § 5513.01; or any other similar program whether operated by a public or private entity.

—**PROFESSIONAL SERVICES.** Services that usually require education, training or expertise to an advanced, specialized or significant degree, including, without limitation, such services as those performed by attorneys, architects, engineers, accountants, physicians, insurance brokers/agents, and/or third party administrators.

—**PRODUCT.** Any material, equipment, supplies, commodities or any similar items purchased by the city in order to fulfill the operating and/or capital responsibilities of the city.

—**RECYCLED MATERIAL.** Material the components of which, in whole or in part, would otherwise have been destined for permanent disposal.

~~§37.03~~ COMPETITIVE ~~37.03~~ COMPETITIVE BIDDING AND NOTICE REQUIREMENTS.

—Pursuant to Revised Charter section 8.04, a threshold amount of \$75,000 is established for competitive bidding.

—(A)— ~~Current competitive bidding threshold or more.~~ As a factor in determining the lowest and best bid, and fFor the award of contracts reasonably anticipated by the city to involve expenditures equal to or greater than the current competitive bidding threshold, competitive bidding and legislative authorization shall be required, unless an exception or alternative is otherwise provided by Council.

(1) In estimating the anticipated expenditure to determine whether the competitive bidding threshold will be exceeded, the labor portion of the expenditure may be calculated without the use of prevailing wage rates.

—(B)— Less than the current competitive bidding threshold. The City Manager may, without competitive bidding or further legislative authorization, enter into contracts for expenditures of less than the current competitive bidding threshold for which city funds have been appropriated, provided that price quotes are obtained and documented as required by administrative order based upon the amount of the estimated expenditure.

—(C)— Notice. All bid advertisements or other solicitations for Competitive Bidding bids shall be placed, on a timely basis, with a reasonable period allowed for response, at least once in any of the following: -a newspaper of general circulation within the city; on the city's website; or on any other website accessible to the public. -

~~§37.04 EXCEPTIONS~~ 37.04 EXCEPTIONS AND ALTERNATIVES TO COMPETITIVE BIDDING.

—Pursuant to Revised Charter section 8.04, the exceptions and alternatives to the requirement for competitive bidding set forth in this chapter are deemed to be in the best interest of the city.

—(A)— No or rejected bids. If no bids are received after the advertisements or other solicitations required by this chapter, or ~~if all~~ if all bids are rejected, the City Manager shall have the authority to either seek new, competitive bids, or to obtain the goods and/or services for which funds have been appropriated through competitive bargaining without further legislative authorization, whichever is deemed to be in the best interest of the city.

—(B)— Used equipment or utilities. Regarding contracts for the purchase of used equipment or utilities such as gas, water, electricity, or telephone service for which funds have been appropriated, the City Manager shall have the authority to enter into contracts through competitive bargaining without further legislative authorization.

—(C)— Professional services. Pursuant to Revised Charter section 8.04(d), contracts for professional services are not subject to competitive bidding requirements and shall not require further legislative authorization where the operating budget provides sufficient funding.

—(D)— Cooperative purchasing programs. As an alternative to both competitive bidding and competitive bargaining, the City Manager shall have the authority to obtain goods and/or services for which funds have been appropriated through cooperative purchasing programs without further legislative authorization. As part of any cooperative purchasing program, the City Manager may agree that the city will be bound by contract terms and conditions prescribed by that program, including, without limitation, payment of a reasonable fee by the city to cover the administrative costs incurred by the program officials as a result of

purchases by the city. The City Manager may also agree that the city will pay the vendor directly for items received by the city.

—(E)—Reverse auction. Whenever the city determines that the use of the reverse auction is advantageous to the city, the City Manager or his or her designee may purchase goods or services by reverse auction.

—(1)—The city, in establishing a reverse auction process, will:

—(a)— Determine the specifications and requirements of the goods or services to be acquired;

—(b)— Identify and provide notice to potential sellers concerning the proposed acquisition;

—(c)— Establish prequalification requirements to be met by a seller to be eligible to participate in the reverse auction.

—(2)— Prior to conducting a reverse auction, the city shall establish a threshold amount which shall be the maximum amount that the city is willing to pay for the goods or services to be acquired.

—(3)— The city shall enter into a contract with a seller which meets the specifications or description of the goods or services to be procured and whose proposal the city determines to be the most advantageous.

(F) Intergovernmental Purchases. The proposed purchase is from or with another political subdivision, the Ohio State Government, or the United States Government.

(G) Design-Build. The proposed purchase is a Design-Build Construction project let under the procedures established by Council the City Manager or its designee.

(H) Construction-Manager-At-Risk. The proposed purchase is a Construction-Manager-At-Risk project let under the procedures established by Council the City Manager or its designee.

(I) Purchases that do not exceed the bidding threshold set by Council.

(J) Real Estate. The Council may, by ordinance, provide for the purchase, sale or lease of real property, with or public bidding, on such terms and for such value as Council, in the exercise of its discretion, may deem reasonable and in the best interest of the City.

§37.05 ~~37.05 EXECUTION ALTERATION~~ AND MODIFICATION OF CONTRACTS.

—Pursuant to Revised Charter section 8.04, ~~execution and modifications or alterations toof competitively bid contracts shall not require competitive bidding~~ modifications or alterations of contracts shall not require competitive bidding.

—(A) ~~___~~ Limited to appropriations. No contract alteration or modification to a competitively bid contract shall be approved as set forth below, when the amount of the alteration or modification causes the contract sum for the project or purchase to exceed the amount appropriated by Council.

—(B) No contract shall be enforceable against the City unless it has been duly authorized, as provided for herein, and executed in the name of the City by the City Manager or designee, and bears the signature of the Fiscal Officer of the City, as required by Section 5705.41 of the Ohio Revised Code, certifying the availability and appropriation of funds.

(C) ~~___~~ Approval procedure. An alteration or modification to a competitively bid contract shall be approved only upon the order of the City Manager or designee. No order shall be effective until the sum to be paid under the altered or modified contract is agreed to in writing and signed by the contractor, the City Manager or designee, and the Finance Director or designee. certifying the availability and appropriation of funds.

~~§37.06~~ ~~PURCHASING~~ 37.06 PURCHASING PREFERENCE FOR RECYCLED MATERIALS.

~~—A purchasing preference is hereby established for products manufactured with recycled material.~~

~~—(A) Less than \$20,000. For purchases less than \$20,000 the following conditions are established:~~

~~—(1) Products manufactured with recycled material may be purchased when the following circumstances or conditions exist:~~

~~—(a) The price of the product manufactured with recycled material does not exceed by more than five percent to a maximum of \$1,000, the price of the otherwise lowest and best quote; and~~

~~—(b) The product that is made of recycled material is of equal or superior quality to the product made from non-recycled material offered in the otherwise lowest and best quote.~~

~~—(2) When the additional cost of the product made from recycled material forces the total price of the product to exceed \$20,000, the next lowest and best quote with a price of less than \$20,000 shall be purchased.~~

~~—(B) \$20,000 or more. For purchases requiring competitive bidding, all specifications for manufactured products shall include the following language:~~

~~"Bidder may submit an alternate bid reflecting the price for a like or similar product which is made of recycled content material. Bidder shall note what component(s) of the product is (are) made from recycled material and describe the recycled material. Bidder shall state what percentage of the total product is made of recycled material. Products must consist of no less than ten percent recycled material. Said alternate bid may be accepted if:~~

~~• The price does not exceed 5% or \$10,000.00 of the price of the otherwise lowest and best bid. The product that is made of recycled material is of equal or superior quality to the product made from non-recycled material offered in the otherwise lowest and best bid; and~~

~~• The city determines that the ratio of added cost to the amount of recycled content is beneficial to justify the added cost."~~

~~§37.07 AUTHORITY~~**37.076 AUTHORITY OF CITY MANAGER.**

To implement Council policy and procedures as established within this chapter, the City Manager or designee shall have the authority to promulgate and amend written administrative rules, regulations, and procedures not inconsistent with this chapter or the Revised Charter.

~~§37.08 DISPOSAL~~**37.087 DISPOSAL AND SALE OF SURPLUS PROPERTY.**

—(A) — Surplus property owned by the city that is determined by the Finance Director, with the approval of the City Manager, to no longer be needed for municipal purposes may be declared surplus and disposed of by any of the following methods:

—(1) — By sale by sealed bid to the highest and best bidder, following notice at least one time in a newspaper of general circulation in the city and posting on the city website at least ten business days prior to the opening of bids.

—(2) — By live public auction.

—(3) — By internet auction. Notice of internet auction will be posted on the city website at least ten business days prior to commencement of bidding.

—(4) — By sale to another government jurisdiction without the requirement of competitive bidding.

—(5) — By trade-in for credit at the time of the purchase of replacement property, provided that trade-in value is established separately from the purchase price of the replacement property, and can be verified to represent fair market value for the traded property.

—(6) — By sale for scrap value, or discarding, if the property can be shown to have minimal or no residual market value in its current form.

—(7)—By destruction upon the determination by the City Manager that the surplus property must be destroyed for public safety reasons.

—(8)—By donation to an appropriate charitable organization with the approval of the City Manager.

—(B)—Disposal of all municipally-owned property that has been declared surplus and to no longer be needed for municipal purposes that has an estimated value of greater than \$5,000, or is a motor vehicle, may be disposed of by any of the above methods with the prior approval of City Council.

—(C)—The Finance Director will estimate the value of the property deemed by the user division to be surplus for purposes of determining the method to be used for the disposal of property. All property determined to be surplus and disposed of shall be fully documented and recorded for purposes of maintaining an accurate inventory of city-owned property.

§37.098 MISCELLANEOUS BIDDING PROCEDURES.

Pursuant to Revised Charter section 8.04, the following procedures shall apply to contracts that require competitive bidding.

(A) Procedures related to Bidding.

(1) Time between Notice and Bid Opening. There shall be no minimum time requirement between the publishing of the notice and the opening of the bids. The City shall notify prospective bidders of the bid opening date and time in the Notice and shall adjust the same to meet the needs of the City by issuing Addenda when necessary.

(2) Addenda Do Not Extend Bid Opening. The City may issue such addenda to the bid documents as it feels necessary and such addenda may be issued up to and including the last business day before the bid opening without any extension of the bid opening date. Addenda issued the same day as the bid opening shall cause the bid opening date to be extended to the date and time set forth in such addenda.

(3) Estimate of Cost. The City shall disclose the estimated cost of the project or purchase when it determines that doing so is in its best interest.

(4) Time for Award of Bids. In the Notice required for the bid solicitation, the City shall establish the time limit for awarding a contract. Submitted bids may not be withdrawn during this period. The City's failure to award and execute the contract within this period invalidates the entire bid proceedings and all bids submitted, unless the time for awarding and executing the contract is extended by mutual consent of the City and the bidder whose bid the City accepts and with respect to whom the City subsequently awards and executes a contract. Such an agreed extension shall not entitle the contractor to delay costs.

(5) Withdrawal of Bids. Bidders may withdraw bids pursuant Section 9.31 of the Ohio Revised Code; such a withdrawal shall not modify the City's right to award to the next lowest and best bidder.

(6) Bids in Excess of Estimate. The City may award contracts regardless of the value of the bid as compared to the value of the estimated cost.

(7) Notice to Proceed. The contractor is not entitled to a Notice to Proceed with the work by the City or its representative upon execution of the contract and no contractor shall begin work in the absence of a Notice to Proceed. The City shall either issue the Notice to Proceed at a time that it determines is in its best interest or it shall terminate the contract for its convenience.

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(9) General Contractor Permitted. The City may advertise and award a single contract for constructing and managing an entire public improvement project.

(10) Extension of Bid Opening. The City may issue an addendum or addenda modifying the plans and specifications for the project or the time for the bid opening at any time prior to the bid opening.

(11) Combined Statement of Material and Labor. The City at its discretion may accept a combined statement of labor and materials from bidders.

(12) Bonus and Liquidated Damages for Time. The City may offer a bonus for completion of a contract prior to a specified date, or may exact liquidated damages for each day of delay beyond a specified date, or both. The amounts of the bonus and liquidated damages may be different.

(13) No Arbitration. The City shall not enter into a contract that requires arbitration as a dispute resolution procedure unless the choice to arbitrate solely belongs to the City.

(14) Return of Bid Guarantees. The City shall return bid guaranties to bidders to which it does not award a contract in a reasonably timely manner.

SECTION 2. That existing Chapter 37 of the Codified Ordinances of the City of Dublin be and the same is hereby repealed.

SECTION 3. That the actions of this Council concerning and relating to the passage of this legislation were adopted in an open meeting of this Council and that all deliberations of this

Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

SECTION 34. That this Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the residents of the City of Dublin and, further, provides for the timely enactment of contract procedures necessary to provide for the effective and efficient operation of the City; wherefore, this ordinance shall be in full force and effect immediately upon its passage by Council.