



# TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council                      **Date:** October 23, 2012  
**From:** Mayor Barb Stanton    **Item No:** 4  
**Subject:** ADOPT ORDINANCE NO. 437, AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 3, "REVENUE AND FINANCE CODE", CHAPTER 3.12 "PURCHASES", OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE.

**T.M. Approval:** \_\_\_\_\_    **Budgeted Item:**  Yes  No  N/A

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## RECOMMENDED ACTION:

That the Town Council adopt Ordinance No. 437.

## SUMMARY:

At the October 9, 2012, meeting, the Town Council reviewed and introduced Ordinance No. 437. Ordinance No. 437 amends Chapter 3.12, "Purchases" of the Town of Apple Valley Municipal Code.

As part of the requirements to adopt any new Ordinance, Ordinance No. 437 has been scheduled for adoption at the October 23, 2012, Town Council meeting.

## ORDINANCE 437

### AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 3, "REVENUE AND FINANCE CODE", CHAPTER 3.12 "PURCHASES", OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE.

**WHEREAS**, on June 12, 2012, the Town Council of the Town of Apple Valley appointed five (5) members to a Local Preference Ad Hoc Committee to review the Town's current Local Preference Policy and Purchasing Policy and provide recommendations to the Town Council based upon its findings; and

**WHEREAS**, on October 5, 2012, an amendment was duly noticed in the Daily Press, a newspaper of general circulation within the Town of Apple Valley; and

**WHEREAS**, based upon the federal grants requirement for state and local governments, it can be seen with a certainty that the Municipal Code Amendment will not be in conflict with California Public Contract Code §20162; and

**WHEREAS**, the amendment is consistent with Title 3 (Revenue and Finance Code) of the Municipal Code of the Town of Apple Valley; and

**SECTION 1.** Title 3, Chapter 3.12 "Purchases" of the Town Municipal Code is hereby amended to read as follows:

#### Chapter 3.12

#### PURCHASES

**Sections:**

- 3.12.010 Adoption and objectives of purchasing system.**
- 3.12.020 Creation of purchasing division.**
- 3.12.030 Purchasing agent.**
- 3.12.040 Compliance with purchasing regulations.**
- 3.12.050 Encumbrance of Funds**
- 3.12.100 Inspection and testing.**
- 3.12.110 Bidding.**
- 3.12.120 Formal (sealed) bid procedures.**
- 3.12.130 Notice inviting formal bids.**
- 3.12.140 Published notice for formal bids.**
- 3.12.150 Solicitation of formal bids from approved vendors list.**
- 3.12.160 Bulletin board notice of pending purchases.**
- 3.12.170 Bidder's security.**
- 3.12.175 Bond requirements.**
- 3.12.180 Formal bid opening procedure.**
- 3.12.190 Rejection of formal bids.**
- 3.12.200 Award of formal bid contracts.**
- 3.12.210 Resolving tie formal bids.**
- 3.12.212 Credit for local sales and use taxes.**
- 3.12.215 No formal bids.**

- 3.12.230 **Open market or informal bid procedures.**
- 3.12.240 **Minimum number of informal bids.**
- 3.12.250 **Notice inviting informal bids.**
- 3.12.260 **Record of informal bids.**
- 3.12.270 **Exceptions to bidding procedures.**
- 3.12.280 **Regulation re selection of contract services.**
- 3.12.300 **Surplus supplies and equipment.**
- 3.12.310 **Surplus supplies--Trade ins.**
- 3.12.320 **Surplus supplies--Sale.**

**3.12.010 Adoption and objectives of purchasing system.** A purchasing system is adopted in furtherance of the following Town objectives: to establish efficient procedures for the purchase of supplies and equipment at the lowest possible cost proportionate to the quality needed; to exercise positive financial control over purchases; to clearly define the Town's purchasing procedures, bidding procedures exceptions, and the local preference credit for local businesses as defined herein; to establish the responsibilities of Town officials in the purchasing process; and to assure the acceptable quality of Town purchases. **(Amended per Ordinance 311 dated 4-25-06)**

**3.12.020 Creation of purchasing division.** A purchasing division is hereby created. This division shall have the authority to purchase the supplies and equipment required by the Town. **(Amended per Ordinance 311 dated 4-25-06)**

**3.12.030 Purchasing agent.** The purchasing agent shall be the Town Manager or the Town Manager's designee. The purchasing agent shall have the authority to:

(1) Issue purchase orders for or contract for supplies and equipment required by any Town agency in accordance with: the purchasing procedures and regulations prescribed in this Chapter; the administrative procedures and regulations adopted by the purchasing agent for the internal management and operation of the purchasing division; and the other rules and regulations as shall be prescribed by the Town Council or the Town Manager;

(2) Negotiate contract terms and recommend the execution of contracts for the purchase of supplies and equipment for the Town and its agencies;

(3) Procure for the Town and its agencies, at the least expense, the quantity and quality of supplies and equipment required, including any local preference credits as prescribed in this Chapter;

(4) Encourage full and open competition on all purchases, including the provisions of notices and the solicitation and consideration of formal and informal bids;

(5) Prepare and recommend to the Town Council general rules governing the purchase of supplies and equipment and specific findings with respect to the award of individual bid contracts, including credits for local sales and use tax as provided in this Chapter;

(6) Prepare and recommend revisions and amendments to the Town's purchasing rules;

(7) Keep informed of current developments in the field of purchasing, prices, market conditions and new products;

(8) Prescribe, collect and maintain such forms and records as are reasonably necessary for the operation of this Chapter;

(9) In his or her discretion, supervise the inspection of all supplies and equipment purchased to determine their conformance with the specifications set forth in the Town's purchase orders;

(10) Recommend the transfer or disposal of surplus or unused supplies and equipment between Town agencies and departments or to third parties as needed;

(11) Maintain an updated approved vendors list and all other records needed for the efficient operation of the purchasing division and of this Chapter; and

(12) Subject to the limitations and requirements of Section 3.12.170, determine if formal bids shall be accompanied by security and ensure that such requirement is designated in the notice inviting bids. **(Amended per Ordinance 311 dated 4-25-06)**

**3.12.040 Compliance with purchasing regulations.** The purchasing agent shall be responsible for ensuring compliance with the regulations and procedures in Section 3.12.050 through 3.12.110 of this Chapter. **(Amended per Ordinance 311 dated 4-25-06)**

**3.12.050 Required availability of funds for purchases.** Except in cases of emergency, the purchasing agent shall only issue a purchase order for supplies, equipment or services if there exists an amount of money in the fund account against which such purchase is to be charged to fully pay for such purchase order. **(Amended per Ordinance 349 adopted 6/26/07)**

**3.12.100 Inspection and testing.** The purchasing agent shall, in his or her discretion, inspect supplies and equipment delivered to determine their conformance with the specifications set forth in the Town's purchase orders. The purchasing agent shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications set forth in the purchase orders.

**3.12.110 Bidding.** Purchases of supplies and equipment shall be in accordance with the bid procedures outlined in Sections 3.12.120 through 3.12.260 of this Chapter. Bidding may be dispensed with only under conditions stated in Section 3.12.270.

**3.12.120 Formal (sealed) bid procedures.** Except as otherwise provided in this Chapter, public projects, as defined in Section 20161 of the California Public Contract Code, and purchases of supplies and equipment of an estimated value greater than fifty thousand dollars (\$50,000) shall be awarded to the lowest responsible bidder in compliance with the formal bid procedures prescribed in this Chapter. **(Section Amended per Ordinance 224 6-13-00) (Amended per Ordinance 349 adopted 6/26/07).**

**3.12.130 Notice inviting formal bids.** Notices inviting formal bids shall: include a general description of the supplies, equipment or services desired; state where bid documents and specifications may be obtained; and contain the time and place for opening formal bids.

**3.12.140 Published notice for formal bids.** Notices inviting formal bids shall be published at least ten (10) days prior to the date of opening of the formal bids. Notices shall be published at least once for non-public projects and at least twice, not less than five days apart for public projects (as defined in Section 3.12.120 of this Chapter), in a newspaper of general circulation in the Town.

**3.12.150 Solicitation of formal bids from approved vendors list.** The purchasing agent shall also solicit formal bids from responsible suppliers whose names are on the Town's approved vendors list, or who have made written request that their names be added to the approved vendors list. Placement on the Town's approved vendors list requires a valid Town business license, as prescribed in Chapter 5.02, at the time of the placement request.

**3.12.160 Bulletin board notice of pending purchases.** The purchasing agent shall advertise the pending purchases by posting a notice on the public bulletin board at the Town offices.

**3.12.170 Bidder's security.** When a public project is involved, and in other cases when deemed necessary by the purchasing agent, formal bids shall be accompanied by security, either cash, cashier's check, certified check or surety bond, in a sum equal to ten percent (10%) of the total bid, and notice that such security is required shall be designated in the notice inviting bids. Bidders shall be entitled to the return of their bid security; provided, however, that a successful bidder shall forfeit his bid security upon his refusal or failure to execute the contract within ten (10) days after the notice of award of contract has been deposited in the mail to the successful bidder, unless the Town is solely responsible for the delay or failure to execute the contract. The Town Council may, upon the successful bidder's refusal or failure to execute the contract, award the contract to the next lowest responsible bidder who is willing to execute the contract, or the Town may reject all bids and re-advertise the contract for bidding according to the procedures of this Chapter.

**3.12.175 Bond requirements.** A faithful performance bond and a labor and material bond, in amounts reasonably necessary to protect the best interests of the Town, shall be required for all public projects, unless waived by the Town Council. In addition, the Town Council shall have authority to require a faithful performance bond, labor and material bond, or other bonds before entering into a contract other than a public project contract. If bonds are required, the forms, types and amounts thereof shall be designated in the notice inviting bids.

**3.12.180 Formal bid opening procedure.** In response to formal bids, responsive sealed bids shall be submitted to the purchasing agent and shall be identified as "bids" on the sealed envelope containing the responsive bid. The purchasing agent, or his or her designee, shall publicly open all bids at the time and place stated in the public notices for the formal bids. A tabulation of all responsive bids received shall be available for public inspection in the purchasing office during the office's regular business hours for a period of not less than thirty (30) calendar days after the bid opening.

**3.12.190 Rejection of formal bids.** In its discretion, the Town Council may reject any and all bids received and may cause the re-advertising for bids according to the bid procedures outlined in this Chapter. However, when all bids received exceed the authorized budgeted amount for the project by the Town or when no formal bids or responsive bids are received, the Town Manager may authorize rejection of all bids and authorize re-bidding based upon the original bid specifications or as they may be modified, in accordance with procedures of this Chapter.

**3.12.200 Award of formal bid contracts.** Except as otherwise provided herein, formal bid contracts shall be awarded by the Town Council to the lowest responsible bidder whose bid complies with the procedures outlined in this Chapter. The determination of "lowest responsible bidder" shall be at the discretion of the Town Council pursuant to any findings and recommendations presented to the Town Council by the purchasing agent at the time of award of formal bid contract. Procurement of a Town business license, as prescribed in Chapter 5.02

of this Code, is required prior to the commencement of any work on any project for the Town, including those described in this Section.

**3.12.210 Resolving tie formal bids.** If two or more formal bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of re-advertising for bids, the Town Council may, in its discretion, either accept one of the tie bids that it chooses or, as a result of negotiation with the tie bidders, accept the lowest bid made by either of the tie bidders at the time of the bid opening or the lowest bid made by either of the tie bidders at the time of the award of the contract.

**3.12.212 Credit for local sales and use taxes.** In determining which responsible bidder is the lowest bidder, the purchasing agent, in his or her findings and recommendations to the Town Council, shall deduct from the total dollar amount of each responsive bid, the amount of local sales and use tax revenues which would be paid to the Town on account of that portion of the bid amount which is directly subject to the imposition of such sales and use taxes. **(Ord. 112, 10-27-92)**

**3.12.215 No formal bids.** When no formal bids or no responsive bids are received, the purchasing agent, or his or her designee, is authorized to negotiate for written proposals, and his or her recommendation shall be presented to the Town Manager. The award of the contract, if any, shall be made in accordance with this Chapter.

**3.12.230 Open market or informal bid procedures.** Purchases of supplies and equipment of an estimated value of fifty thousand dollars (\$50,000) or less may be made by the purchasing agent in the open market pursuant to the procedures prescribed in Sections 3.12.240 through 3.12.260 and these purchases need not comply with the procedures prescribed in Sections 3.12.120 through 3.12.215. Local preference credit may be given to providers of these supplies and equipment as prescribed for in Section 3.12.290. All bidding may be dispensed with for purchases of supplies and equipment having a total estimated value of less than five thousand dollars (\$5,000). Procurement of a Town business license, as prescribed in Chapter 5.02 of this Code, is required prior to the commencement of any work on any project for the Town, including the purchases described in this Section. **(Amended per Ordinance 349 adopted 6/26/07; Amended per Ordinance 409 dated 6-8-10; Amended per Ordinance 426 dated 12-13-11).**

**3.12.240 Minimum number of informal bids.** Open market purchases shall, wherever possible, be based on the purchasing agent's consideration of at least three informal bids, and shall be awarded to the bidder offering the most advantageous bid to the Town after consideration of price, quality, durability, servicing, delivery time, standardization, and other factors determined by the purchasing agent.

**3.12.250 Notice inviting informal bids.** The purchasing agent shall solicit informal bids by written requests to prospective vendors, or by telephone, or by public notice posted on a public bulletin board at the Town offices.

**3.12.260 Record of informal bids.** The purchasing agent shall keep a written record of all open market purchases and informal bids for a period of one year. This record, while so kept, shall be open to public inspection.

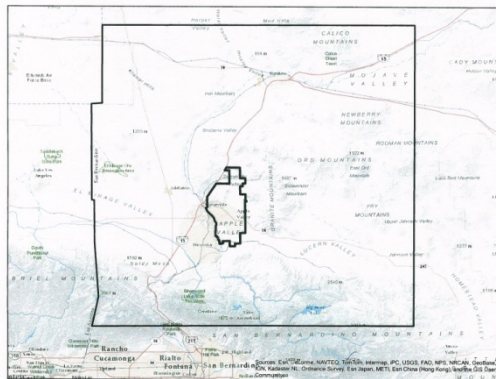
**3.12.270 Exceptions to bidding procedures.** Notwithstanding any provision of this Chapter to the contrary, the formal and informal bidding procedures and requirements may be dispensed with in any of the following instances:

- (1) When the estimated contract amount involved is less than five thousand dollars (\$5,000);
- (2) When the supplies, equipment or services can reasonably be obtained from only one vendor;
- (3) The Town Manager may authorize the purchase of materials, supplies, equipment and services in an emergency situation when it is determined that service impacting the public health, safety or welfare would be interrupted if the normal purchasing procedures were followed. All emergency purchases, which would otherwise require formal bidding procedures, made pursuant to this sub-section shall be submitted to the Town Council for ratification at the next regular Council meeting after the purchase is authorized;
- (4) The Town Council may authorize the execution of contracts for personal services, professional services, consultant services, contractual services, and for other, non public projects without observing the bidding procedures provided herein where the amount of the contract exceeds the value of fifty thousand dollars (\$50,000);
- (5) The Town Manager may authorize entering into contracts for personal services, professional services, consultant services, contractual services and for other, non public projects without observing the bidding procedures provided herein where the amount of the contract does not exceed the value of fifty thousand dollars (\$50,000) and the contract falls within the guidelines for local preference credit as specified under Section 3.12.290;
- (6) When the contract involves the acquisition of supplies, equipment or services entered into with another governmental entity;
- (7) The Town Council may authorize the execution of a lease or leases for office space for the Town government without observing the bidding procedures provided herein irrespective of the term of the lease or leases or the amount of rent and other charges to be paid by the Town under the lease or leases;
- (8) The Town Manager is authorized to enter into licensing contracts or annual support contracts for previously approved purchases of capital assets where the amount of the contract does not exceed fifty thousand dollars (\$50,000); provided there exists an amount of money in the fund account against which such contract is to be charged to fully pay for such contract;
- (9) Assistant Town Managers or Directors are authorized to enter into licensing contracts or annual support contracts for previously approved purchases of capital assets where the amount of the contract does not exceed ten thousand dollars (\$10,000); provided there exists an amount of money in the fund account against which such contract is to be charged to fully pay for such contract;
- (10) Without further contracting, solicitation, or formal bidding as described in this Chapter, the Town Council may authorize, or may authorize the Town Manager to allow, the Town's Finance Director or the purchasing agent to contract for the purchase of supplies, equipment or services with other governmental jurisdictions or public agencies who are making or have made the same such purchases through legal, competitively awarded contracts in effect at the time of the Town's entrance into that same contract (commonly referred to as 'piggybacking'). **(Section Amended by Ordinance 246 10-23-2001; Amended Ord. 409 dated 6-8-10; Section (5) Amended by Ordinance 426 dated 12-13-11).**

**3.12.280 Regulation regarding selection of contract services.** The Town Council shall by resolution prescribe the procedures, rules and regulations governing the solicitation, selection and award of proposals or bids for the furnishing of personal services, professional services, consultant services, or other contractual services. Such contracts may be awarded without observing the bidding procedures provided for in this Chapter. The purpose of such procedures, rules and regulations shall be to obtain the highest quality contractual services at the most cost effective price.

**3.12.290 Regulation regarding local preference.** The local preference classification will apply only to the procurement of supplies, equipment and services not involving public works projects of more than five thousand dollars (\$5,000). The local preference classification shall not apply to the procurement of goods and services for public works projects that exceed five thousand dollars (\$5,000) as outlined under state law (Public Contract Code, § 20162) or to any project assisted in whole or in part with federal funds.

1. The local preference classification applies to bids received from businesses that maintain their principal place of operation within the Local Preference Region. Bids received from businesses within this classification will be given a local preference credit.
  - (a) As it applies to this section, maintaining a business's principal place of operation within the Local Preference Region requires a business to have established a place of business operation within the Local Preference Region for at least six (6) months prior to the publication of the call for proposals or bids that qualify under the local preference guidelines set forth in this section.
  - (b) As it applies to this section, the "Local Preference Region" includes the municipalities contained within the geographical area depicted by the borders of the following map:



A true and correct copy of this map depicting the Local Preference Region is on file with the Town Clerk.

2. The local preference credit shall be a credit equal to five percent (5%) of the total points used to determine the most advantageous bid or response to a request for proposal. An additional local preference credit of one percent (1%) of the total points used to determine the most advantageous bid or response to a request for proposal shall be credited to businesses incorporated within the Town of Apple Valley. This additional one percent credit shall be given based upon the credits for local sales and use taxes as outlined in section 3.12.212. **(Section 3.12.290 added per Ordinance 426, dated 12-13-11).**



**3.12.300 Surplus supplies and equipment.** All Town agencies or departments shall submit to the purchasing agent, at such times and in such forms as he or she shall prescribe, reports showing all supplies and equipment which are no longer being used or which have become obsolete, worn out, or unfit for future use.

**3.12.310 Surplus supplies--Trade ins.** In return for new equipment and supplies, the purchasing agent shall have authority to exchange or trade in the equipment and supplies identified in the reports prescribed in Section 3.12.300.

**3.12.320 Surplus supplies--Sale.** After receiving bids or proposals which, in his or her judgment provide the maximum return to the Town, the purchasing agent shall also have authority, subject to approval of the Town Manager, to auction off, sell or otherwise dispose of any surplus supplies or equipment. **(Chapter 3.12 Ord. 3, 11-28-88)**

**SECTION 2. Invalidation.** The amendment by this Ordinance of the Title 3 "Revenue and Finance Code" of the Town of Apple Valley Municipal Code as previously in effect, or of any other prior enactment, shall not be construed to invalidate any entitlement exercised or proceeding taken pursuant to such Title or other enactment while the same was in effect.

**SECTION 3. Notice of Adoption.** The Town Clerk of the Town of Apple Valley shall certify to the adoption of this ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the Town in a manner permitted under Section 36933 of the Government Code of the State of California.

**SECTION 4. Effective Date.** This Ordinance shall become effective thirty (30) days after the date of its adoption.

**SECTION 5. Severability.** If any provision of this Ordinance, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications and, to this end, the provisions of this Ordinance are declared to be severable.

**APPROVED and ADOPTED** by the Town Council and signed by the Mayor and attested by the Town Clerk this 23rd day of October, 2012.

\_\_\_\_\_  
Barb Stanton, Mayor

ATTEST:

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La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

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John Brown, Town Attorney

\_\_\_\_\_  
Frank Robinson, Town Manager