



City of Elkins

Rules and Ordinances Committee Meeting

November 6, 2023
3:30 PM
401 Davis Avenue
Council Chamber, 2nd Floor

Charter Authority of the Rules & Ordinances Committee: Consider and propose to Council new and amended ordinances, rules, and policies.

AGENDA

1. **Call to order and roll call**
2. **Public comment**
3. **Minutes**
 - a. Proposed minutes for the meeting of September 18, 2023
4. **New business**
 - a. Purchasing policy ordinance
 - b. Rules & Ordinances Committee protocol for proposed new ordinances
5. **Announcements**
6. **Adjournment**



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	November 6, 2023
Section:	Minutes
Category:	Action Item
Agenda Item Name:	Proposed minutes for the meeting of September 18, 2023
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. rules and ordinances - 2023_09_18 - minutes_proposed

RULES AND ORDINANCES COMMITTEE REGULAR MEETING MINUTES

***401 Davis Avenue
City Hall, Council Chambers
September 18, 2023
3:30 p.m.***

Present were Committee Members: Chris Lowther and Andrew Carroll.

Also present were: Jerry Marco (mayor), Mike Kesecker (operations manager), Gerry Roberts (city attorney), Tracy Judy (treasurer), Steve Himes (fire chief), Travis Bennett (police chief), and Sutton Stokes (city clerk).

Lisa Severino was absent.

MINUTES

Carroll **MOVED APPROVAL OF THE MINUTES OF THE PROPOSED MINUTES FOR THE MEETING OF MAY 10, 2023. The motion carried.**

NEW BUSINESS

a. Construction road closure request protocol

No action was taken on the proposed protocol. Staff will revise the building permit application to require information about aerial work, with notifications for affected property owners as needed on a case-by-case basis.

a. Purchasing policy ordinance

The city attorney was directed to prepare a new ordinance requiring council approval for all purchases \$25,000 and above, with the proviso that current exceptions 30.20 (B)(1)[a] and [b] can apply to waiving the council pre-approval when time is of the essence.

b. Proposed change to charter restriction on mayor serving in multiple elected offices

Carroll **MOVED RECOMMENDING THAT THE CITY ATTORNEY AND CITY CLERK BEGIN THE PROCESS NECESSARY TO LAY AN ORDINANCE BEFORE COUNCIL MAKING THE ABOVE CHANGE, FOLLOWING ALL APPROPRIATE REQUIREMENTS UNDER STATE LAW FOR CHANGING A CITY CHARTER BY ORDINANCE. The motion carried.**

c. Advance planning requirement for boards and commissions

The committee discussed requirements for advance planning by boards and commissions.

The meeting adjourned at 5:47 p.m.

The foregoing minutes were approved at the meeting of _____, 2023.

Name & Title

Signature



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	November 6, 2023
Section:	New business
Category:	Action Item
Agenda Item Name:	Purchasing policy ordinance
Recommended By:	City Clerk and other departments
Summary:	The city's current purchasing policy ordinance imposes bidding requirements for purchases of "goods and services" costing \$25,000 or more. If the bid requirement is complied with, the current ordinance requires no action by council, either to authorize request for bids or to approve the eventual purchase from the winning bidder. Under the current ordinance, the only role for council is approve a request to waive the bidding requirement (which can be granted under circumstances specified in the ordinance). The marked-up version of the ordinance attached makes only one substantive change, i.e., imposes a requirement that all purchases of "materials, supplies, equipment, or services" costing \$25,000 or more would have to be authorized by council. The marked-up version also adds a reference to "Applicable state requirements concerning bid bonds and other details." This is intended to ensure that bid-bond requirements are not overlooked by city staff. The highlighted section concerns a requirement to procure from an in-city vendor if the bid does not exceed what would otherwise be the lowest qualified bid from a nonresident vendor by more than two percent. This is highlighted for discussion and possible changes.
Fiscal Impact:	n/a
Recommendation:	Discuss and recommend to council or continue at next meeting
Attachments:	1. original competitive bidding section - marked up - 2023_11_02

COMPETITIVE BIDDING

§ 30.20 WHEN REQUIRED; PUBLICATION OF NOTICE.

(A) ~~(A)~~ Every contract for the procurement of materials, supplies, equipment, or services ~~goods and services~~ by the city, except as hereinafter provided, shall be by competitive bidding and shall not be approved and let until after at least fourteen days public notice made as 1) the public posting at City Hall of the notice for bids, request for proposal, or other written solicitation by the City, 2) the public posting of such notice, request, or solicitation on the City's website and social media accounts, and 3) a Class I legal advertisement in compliance with the provisions of article three [§§ 59-3-1, et seq.], Chapter fifty-nine of the Code of West Virginia, and after a public opening of bids. Provided, that the Council, or the Administrative Officer having issued such request for competitive bidding, may reject all bids and advertise again; notice of the intent to so contract and an invitation to sealed bids shall have been advertised once per week, for a period of two successive weeks, in one newspaper of general circulation in the city, the last of which publications shall occur no less than five days prior to the meeting at which the bids are to be opened and examined; further provided, that the above requirements shall not apply to any contract for a gross amount of less than \$25,000; further provided, that purchases of materials, supplies, equipment, or services costing \$25,000 or more shall in all cases be memorialized by a contract, or other writing, authorized by City Council prior to execution, even in the event that the above requirements concerning competitive bidding are waived under the provisions of division B, below; further provided, that City Council may by motion subsequently ratify purchases made by its employees or agents in the event of a mistake of law or fact. Nothing in or shall this section shall preclude the use by the city of or be applicable to the purchasing of goods or services through the State Director of the Purchasing Division of the State Department of Finance and Administration as provided by the W.Va. Code § 5A-3-9.

Commented [SS1]: This language borrowed from Buckhannon.

Commented [GU2R1]: Right- looks good

(B) (1) The provisions of division (A) above, concerning competitive bidding, shall not be applicable when the Council, by vote, finds that:

Commented [SS3]: This division provides for exceptions from competitive bidding. Shall we also provide an exception for the requirement for a written contract or other writing approved in advance? This would need to be available to an admin officer, and would presumably need to impose standards for using this exception and require an after the fact report/explanation to council.

Commented [GU4R3]: Generally- the fewer exceptions the better. If the Admin officers know the procedure and make sure that everyone in their Dept. knows, frankly this should not occur.

(a) Compliance therewith would be inimical to the public welfare;

(b) Procurement of the contemplated goods or services is of such urgency as to brook no delay;

(c) Other circumstances exist which would render the interests of the city better served by noncompliance than by compliance with division (A) above;

(d) As a practical matter it is determined that there exists only one supplier of the goods or services sought to be obtained;

(e) The goods or services sought to be obtained are for the purpose of maintenance or repair of existing city goods or equipment; or

(f) No suppliers of goods or services sought to be obtained are located within the general circulation area of any of the city newspapers.

(2) When the Council determines that the provisions of division (A) above, concerning competitive bidding, ~~is are~~ not applicable, the Council shall, at the time of the approval of the contract for the procurement of goods and services, refer to the applicable provision of this division (B) which is relied upon for the waiver of the bidding process.

(C) (1) Notwithstanding other provisions of this subchapter, in any instance that a purchase of goods or services by the city is required under the provisions of this subchapter to be made upon competitive bids, such purchase shall be made from a vendor resident in the city if such bid does not exceed the lowest qualified bid from a nonresident vendor by more than 2% of the latter bid, and if such resident vendor has made written claim for such preference at the time the bid was submitted.

(2) A vendor shall be deemed to be a resident of the city if such vendor is an individual, partnership, association or corporation that maintains an active, bona fide place of business within the city and maintains therein a representative inventory of the commodities on which the bid is submitted and, in the case of a corporation, is duly qualified to do business in the state as is in good standing under the laws of the state and under the ordinances of the city.

(1991 Code, § 2-3) (Ord. passed 11-1-1979; Ord. 175, passed 3-20-2014)

Statutory reference:

Authority of city to require competitive bidding for purchases of supplies and the like, see W.Va. Code § 8-12-10

Availability to municipalities of facilities of state division of purchases, see W.Va. Code § 5A-3-9

Applicable state requirements concerning bid bonds and other details, see W. Va. Code §5-22-1

§ 30.21 TRANSMITTING AND RECEIVING BIDS; BONDS; SPECIFICATIONS AND THE LIKE.

The form and manner of transmitting and receiving bids under the provisions of § 30.20, the amount of deposit or performance bond, if any, to accompany such bids, the terms, specifications, reservation of right to reject bids or waive irregularities therein shall be determined by the Council prior to each respective advertisement for bids and, insofar as is practical, be stated in the published notice.

(1991 Code, § 2-4)

Commented [SS5]: Any change needed here?

Commented [GU6R5]: I have no idea where the 2% comes from-and in looking at the competitive bid process i am unaware of any preferential treatment to a local business but I will check.

Commented [SS7R5]: I think it is probably something extra imposed by city council, above any minimum requirements in state code. Something to discuss whether we want to keep?

Commented [SS8]: Do we need to include requirement for performance bonds?

Commented [GU9R8]: It does include performance bonds- are you talking about bid bonds?

Commented [GU10R8]: I know we got into a situation on the sanitation garage regarding bid bonds and had to cancel the bid. Correct me if I am wrong, however, I think bid bonds are required.

Commented [SS11R8]: Bid bonds are what I meant. I added the following. Will this work? Applicable state requirements concerning bid bonds and other details, see W. Va. Code §5-22-1



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	November 6, 2023
Section:	New business
Category:	Action Item
Agenda Item Name:	Rules & Ordinances Committee protocol for proposed new ordinances
Recommended By:	City Clerk
Summary:	To ensure maximum efficiency for the committee, the clerk is recommending the committee consider adopting a protocol to be followed by anyone requesting new laws or substantial revisions to existing ones, prior to docketing the matter for committee consideration.
Fiscal Impact:	Streamlined consideration of new laws, reducing wasted staff and committee time
Recommendation:	Consider and discuss
Attachments:	1. Proposed Protocol for Consideration of New Ordinances by Rules Committee - 2023_11_06

Consideration of New Ordinances by Rules & Ordinances Committee

Committee meetings are not an ideal setting to commence research into complex topics. Rather than requesting a certain topic be added to an agenda as the starting point for potentially creating new city laws or making substantial revisions to existing ones, the following steps will allow for more efficient committee work on proposals when they are as close to ready as possible for consideration.

- First, consult with the city clerk, city attorney, police chief, or other relevant official for guidance and context concerning the topic of interest.
- Search state code to see what related or similar laws already exist.
 - o Some state laws automatically apply to Elkins and can already be enforced by city police. Sometimes it makes sense to adopt such laws locally; other times, this can result in a local law that eventually diverges from the state law, as the latter may be revised by the state legislature.
 - o Some state laws give cities like Elkins the option to adopt the law locally. In this case, the law doesn't apply to Elkins until after such local adoption. Considerations before local adoption may include additional demands on police or other personnel.
 - o If there is no related state law, it might not be advisable to pass a unique/standalone law applying only to Elkins. If a new law along these lines creates criminal offenses, for example, courts may apply much stricter scrutiny on appeal than is applied to laws established by the state legislature.
- After searching state code, search for comparable ordinances from similar cities. (It is important to consult state law first because other cities' laws may be out of date, imprecise, or even noncompliant with state code. Just because another city has a certain law doesn't mean it has been tested or would survive a court challenge.)
- Once you have discussed your idea with the appropriate staff members and searched for relevant state and city laws, prepare a brief written explanation/summary of the new law or changes to existing laws you are proposing. You don't have to actually write the law itself; this explanation can be in non-technical terms simply explaining the goals of the changes you are proposing.