

6/21/2012

ORDINANCE NO. 28705

An ordinance amending Sections 2-27, 2-30, 2-31, 2-32, and 2-33 and Article VIII-a of CHAPTER 2, "ADMINISTRATION," of the Dallas City Code, as amended; defining terms; providing that a preference may be given to local businesses in awarding city contracts under certain circumstances; raising the thresholds on when a city contract must be competitively bid or approved by the city council as authorized by state law; raising the thresholds on when settlements for claims against the city must be approved by the city council; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 2-27, "Definitions," of Division 1, "Purchasing and Contracting Generally," of Article IV, "Purchasing," of CHAPTER 2, "ADMINISTRATION," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 2-27. DEFINITIONS.**

In this article:

(1) CITY EXPENDITURE means the payment of money by the city directly to a vendor or contractor pursuant to a city-awarded contract in consideration of goods furnished to or services performed on behalf of the city, or in consideration of the accomplishment of some other lawful public or municipal purpose, regardless of the source or nature of the funds used by the city to make payment and regardless of the form of contract used.

(2) COMMUNITY DEVELOPMENT ITEM means the purchase, by competitive sealed proposal as required in Section 252.021(d) of the Texas Local Government Code, as amended, of goods or services pursuant to a community development program established under Chapter 373 of the Texas Local Government Code, as amended, in which the source of the city expenditure for the purchase is derived exclusively from an appropriation, loan, or grant of funds from the federal or state government for community development purposes.

(3) CONSTRUCTION SERVICES means the following activities, but does not include facility construction:

(A) the construction of capital improvements to city-owned real property or right-of-way, including but not limited to streets, traffic signals, signal systems or control devices, storm drainage facilities, sidewalks, alleys, water or wastewater mains or appurtenances, process plants, or other similar facilities;

(B) the renovation, modification, alteration, or repair of existing capital improvements upon or within city-owned real property or right-of-way; or

(C) other construction, renovation, alteration, modification, or repair activities that are treated or defined under state law as public works.

(4) DIRECTOR means the director of the office of business development and procurement services, or the director's authorized representatives.

(5) FACILITY CONSTRUCTION means the construction, rehabilitation, alteration, or repair of a building or any portion of a building, the design and construction of which is governed by accepted building codes, but does not include construction that is specifically excluded from the definition of "facility" contained in Section 271.111 [442], Texas Local Government Code, as amended.

(6) GENERAL SERVICES means insurance (including insurance-related services such as claims adjustment and policy administration), technical services related to the purchase of a high technology item, or other types of manual, physical, or intellectual labor performed on behalf of the city and purchased for a lawful municipal purpose. The term does not include personal services, professional services, planning services, facility construction, or construction services.

(7) GOODS means supplies, equipment, or other personal property, including but not limited to high technology items, purchased and used for a lawful municipal purpose.

(8) GOVERNMENTAL CONTRACT has the meaning given that term in Chapter 2252, Subchapter A, Texas Government Code, as amended.

(9) HIGH TECHNOLOGY ITEM means an item of equipment, goods, or services of a highly technical nature, including but not limited to:

(A) data processing equipment and software and firmware used in conjunction with data processing equipment;

(B) telecommunications equipment and radio and microwave systems;

(C) electronic distributed control systems, including building energy management systems; and

(D) technical services related to those items listed in Paragraphs (A) through (C) of this subsection.

(10) LOCAL BUSINESS means a business with a principal place of business within the city.

(11) NONRESIDENT BIDDER has the meaning given that term in Chapter 2252, Subchapter A, Texas Government Code, as amended.

(12) [(44)] PERSONAL SERVICES means any service personally performed by the individual with whom the city has contracted.

(13) [(42)] PLANNING SERVICES has the meaning given that term in Section 252.001, Texas Local Government Code, as amended.

(14) PRINCIPAL PLACE OF BUSINESS means:

(A) the headquarters of a business or the primary executive or administrative office of a business from which the operations and activities of the business are directed, controlled, and coordinated by its officers or owners; or

(B) an established office, plant, store, warehouse, or other facility where the majority of the business' operations and activities are conducted and located, except that a location solely used as a message center, post office box, mail drop, or similar service or activity that provides no substantial function to the business is not a principal place of business.

(15) [(43)] PROFESSIONAL SERVICES means those services defined as professional services under state law applicable to municipal purchases or contracts, including but not limited to services provided by accountants, architects, artists, attorneys, auditors, court reporters, doctors, engineers, optometrists, real estate appraisers, land surveyors, scientists, and teachers."

SECTION 2. That Section 2-30, "General Delegation of Contracting Authority," of Division 1, "Purchasing and Contracting Generally," of Article IV, "Purchasing," of CHAPTER 2, "ADMINISTRATION," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 2-30. GENERAL DELEGATION OF CONTRACTING AUTHORITY.**

(a) Pursuant to Chapter XXII, Section 2(b) of the city charter, the city council shall, by ordinance, establish rules under which a contract may be let without city council approval. This section is established for that purpose. To the extent that this section, the city charter, or another provision of this code does not delegate approval authority for a particular contract, contract amendment, or other legal instrument, it is presumed that the contract, contract amendment, or other legal instrument must be approved by the city council.

(b) This section may not be construed to delegate authority to approve, without city council action, any contract, contract amendment, or other legal instrument that is required by state law to be approved by the city council.

(c) This section does not apply to:

(1) the city's furnishing of ambulance service; water, wastewater, storm water drainage, or sanitation utility service; or any other similar municipal service to customers inside or outside of the city;

(2) a contract, contract amendment, or other legal instrument for which approval authority is separately delegated by the city charter or another section of this code; or

(3) the city's grant of, or other action relating to, any license, franchise, permit, or other authorization pursuant to its regulatory powers.

(d) The city manager is authorized to approve the following by administrative action, without further city council action:

(1) A contract for the purchase of goods, general services, construction services, or facility construction, or for any other lawful municipal purpose not specifically described in this subsection, that requires a city expenditure not exceeding \$50,000 [~~25,000~~].

(2) A contract requiring a city expenditure exceeding \$50,000 [~~25,000~~], but not exceeding \$70,000 [~~50,000~~], for the purchase of goods, general services, or construction services required to be procured through competitive bid or competitive sealed proposal in accordance with Chapter 252, Texas Local Government Code, as amended.

(3) A change order to a contract required by state law to be procured through either competitive bid or competitive sealed proposal that increases or decreases the contract price by \$50,000 [~~25,000~~] or less, provided that the original contract price may never be increased by more than 25 percent. This paragraph does not delegate authority to the city manager to approve a change order amending a contract provision or a specification for the purpose of altering an existing payment schedule, payment method, time or date of payment, or interest rate on a payment, regardless of whether the payment obligation under the contract belongs to the contractor or the city and regardless of the amount of the increase or decrease in the contract price.

(4) A contract for personal, professional, or planning services requiring a city expenditure not exceeding \$50,000 [~~25,000~~], except that no formal administrative action is required to execute a contract for real estate appraisal services requiring a city expenditure not exceeding \$50,000 [~~25,000~~].

(5) An amendment to a contract not required by state law to be procured through competitive bid or competitive sealed proposal, which amendment increases the contract price by \$50,000 [25,000] or less or causes any decrease in the contract price, except that approval of the city council is required on an amendment that increases the contract price by \$50,000 [25,000] or less if:

(A) the original contract price does not exceed \$50,000 [25,000] and the amendment increases the total contract price to an amount greater than \$50,000 [25,000]; or

(B) the original contract price exceeds \$50,000 [25,000] and the amendment increases the original contract price by more than 25 percent.

(6) The exercise of a renewal option of a contract required by state law to be procured through either competitive bid or competitive sealed proposal, if the city expenditure required during the renewal term does not exceed \$70,000 [50,000].

(7) The exercise of a renewal option of a contract not required by state law to be procured through competitive bid or competitive sealed proposal, if the city expenditure required during the renewal term does not exceed \$50,000 [25,000].

(8) A contract for facility construction procured pursuant to Chapter 271, Subchapter H, Texas Local Government Code, as amended, that requires a city expenditure exceeding \$50,000 [25,000], but not exceeding \$70,000 [50,000].

(e) All contracts, contract amendments, or other legal instruments (except purchase orders for supplies and equipment and change orders as described by Chapter XXII, Section 1 of the city charter) must be signed by the city manager and approved as to form by the city attorney. Purchase orders for supplies and equipment must be signed by the director. Subject to the restrictions provided by this code, the city charter, or state law, change orders may be approved by formal administrative action or may, as the city manager directs, be signed by the director of the department designated by the city manager to administer the contract that is the subject of the change.

(f) The city manager may delegate the authority granted under this section to the extent allowed by ~~the~~ this code, the city charter, or state law. The city manager may make rules and procedures, which are not in conflict with this code, the city charter, or state law, concerning the form and substance of administrative actions and the administration of contracting and change order processes.

(g) Purchases for the park and recreation department must be made in compliance with Chapter XVII, Section 4 of the city charter and this division [article].”

SECTION 3. That Section 2-31, "Rules Regarding Expenditures Not Exceeding \$25,000," of Division 1, "Purchasing and Contracting Generally," of Article IV, "Purchasing," of CHAPTER 2, "ADMINISTRATION," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 2-31. RULES REGARDING EXPENDITURES NOT EXCEEDING \$50,000 [25,000]."**

(a) Except as otherwise provided by this section, all purchases of goods, general services, facility construction, or construction services under this section must be made by the director after giving reasonable opportunity for competition under procedures that are established by the director, with city manager approval, and that are consistent with the purpose of this section.

(b) If the city expenditure for the purchase of goods, general services, facility construction, or construction services exceeds \$1,000, price quotations from not less than three independent vendors or contractors, if available, must be secured. If three independent vendors or contractors are not available, the director shall secure such price quotations as will, in the director's judgment, ensure that the city is purchasing the property or contracting for the best quality at the lowest possible cost. If the city expenditure for the purchase of goods, general services, facility construction, or construction services exceeds \$3,000, the director shall follow the procedures for contacting disadvantaged businesses prescribed in Section 252.0215 of the Texas Local Government Code, as amended.

(c) The director may, with prior authorization by city council resolution, purchase goods, including high technology items, through a cooperative purchasing program established pursuant to Chapter 271, Subchapter D, F, or G, Texas Local Government Code, as amended, or through a cooperative purchasing program established by interlocal agreement pursuant to Chapter 791, Texas Government Code, as amended. Authorized participation in a cooperative purchasing program satisfies the requirements of this section.

(d) The city manager may establish procedures for purchasing goods, general services, or construction services under this section through electronic means, including but not limited to the Internet, to the extent the procedures do not conflict with state law, the city charter, or other provisions of this code.

(e) A contract for construction services or facility construction that requires a city expenditure not exceeding \$50,000 [25,000] must provide that, in lieu of requiring performance and payment bonds, no money will be paid to the contractor for any work under the contract until the final completion and acceptance of the work by the city."

SECTION 4. That Section 2-32, "Rules Regarding Expenditures Exceeding \$25,000," of Division 1, "Purchasing and Contracting Generally," of Article IV, "Purchasing," of CHAPTER 2, "ADMINISTRATION," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 2-32. RULES REGARDING EXPENDITURES EXCEEDING \$50,000 [~~25,000~~].**

(a) No city expenditure exceeding \$50,000 [~~25,000~~] may be made without advertising for competitive bids or competitive sealed proposals pursuant to Chapter 252, Texas Local Government Code, as amended, and this division [~~article~~], except in cases of facility construction as provided in Section 2-33 [~~32.1~~] of this division, an immediate emergency, or where competitive bidding or sealed proposal is not otherwise required by state law or the city charter. In cases of immediate emergency, the director may make the necessary emergency expenditure, subject to the approval of the city manager or a designee. If an emergency expenditure is made, a written report setting out the emergency purchase, accompanied by a definite statement of the occasion and the reasons for the purchase, must be submitted by the director to the city manager for presentation to the city council for its approval prior to payment for the purchase.

(b) The following rules govern purchases authorized administratively as described in Section 2-30(d)(2) of this division [~~article~~]:

(1) If the purchase is for goods, the director or the director's designee, or the city council if the purchase is being considered under Subsection (b)(5), shall tabulate the bids or sealed proposals and shall select the vendor or contractor with the lowest responsible bid (or with the most advantageous proposal if the purchase is by competitive sealed proposal under Chapter 252, Texas Local Government Code, as amended), or the vendor or contractor who provides the best value if the bid specifications or requirements indicate contract selection on a best value basis.

(2) If the purchase is for general services, the director or the director's designee shall tabulate the bids or sealed proposals and present to the city manager a recommendation as to the lowest responsible bidder (or as to the most advantageous proposal if the purchase is allowed by competitive sealed proposal under Chapter 252, Texas Local Government Code, as amended), or present a recommendation as to who provides the best value if the bid specifications or requirements indicate contract selection on a best value basis. The city manager, or the city council if the contract is being considered under Subsection (b)(5), shall select the contractor that provides the lowest responsible bid, the most advantageous proposal, or the best value, whichever applies.

(3) If the purchase is for construction services, the director or the director's designee shall tabulate the bids and present to the city manager a recommendation as to the lowest responsible bidder. The city manager, or the city council if the contract is being considered under Subsection (b)(5), shall select the contractor with the lowest responsible bid.

(4) If, in the opinion of the city manager, or the city council if the purchase is being considered under Subsection (b)(5), no bid or sealed proposal is satisfactory or it is otherwise in the best interest of the city, the city manager or the city council may reject all bids or sealed proposals, and the director may readvertise for competitive bids or competitive sealed proposals.

(5) A member of the city council may request that a purchase or contract be brought before the city council for consideration any time before 48 hours have elapsed after bid or proposal opening.

(c) The following rules govern competitive bid or sealed proposal contracts requiring a city expenditure exceeding \$70,000 [~~50,000~~]:

(1) The director or the director's designee shall tabulate the bids or sealed proposals.

(2) If the purchase is for goods or general services, the city manager shall recommend to the city council who, in the city manager's opinion, provides the lowest responsible bid; the most advantageous proposal if the purchase is by competitive sealed proposal under Chapter 252, Texas Local Government Code, as amended; or the best value to the city if the bid specifications or requirements indicate contract selection on a best value basis. The city council shall determine which bidder provides the lowest responsible bid, the most advantageous proposal, or the best value, whichever applies, and, if that bidder or proposer is acceptable, approve the contract. If, in the judgment of the city council, no bid or sealed proposal is satisfactory or it is in the best interest of the city, then the city council may reject all bids or sealed proposals.

(3) If the purchase is for construction services, the city manager shall recommend who, in the city manager's opinion, is the lowest responsible bidder. The city council shall determine the lowest responsible bidder and, if that bidder is acceptable, approve the contract. If, in the judgment of the city council, no bid or sealed proposal is satisfactory or it is in the best interest of the city, then the city council may reject all bids.

(4) If all bids or sealed proposals are rejected, the city council may authorize the director to readvertise or proceed otherwise, as may be determined at the discretion of the city council, in accordance with state law. The original specifications, as amended or changed, must be kept on file in the office of the director in accordance with Section 2-29 of this division [~~article~~].



(d) The following additional rules govern all purchases made by competitive bid, including purchases on a best value basis, in accordance with Subsections (b) and (c) of this section:

(1) If there is a single responsive bid, the director, the city manager, or the city council may consider the bid as the lowest responsible bid.

(2) A nonresponsive bid has the effect of being a no bid and may not be considered for any purpose.

(3) A bid that has been opened is not subject to amendment, alteration, or change for the purpose of correcting an error in the bid price. This restriction is not intended to alter, amend, or revoke the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

~~[(4) Where a contract is required to be awarded as prescribed under Section 252.043, Texas Local Government Code, as amended, and a competitive bid is received from a nonresident bidder, the city may not award a governmental contract to the nonresident bidder unless the nonresident's bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located. This requirement does not apply to a contract involving federal funds.]~~

(e) For the purchase of goods and general services (including but not limited to [a] community development items, [a] high technology items, and [or] insurance) requiring a city expenditure exceeding \$50,000 [~~15,000~~], the director may follow the competitive sealed proposal procedures authorized in this division [~~article~~] and in Chapter 252, Texas Local Government Code, as amended. If the director chooses not to follow the competitive sealed proposal process, the purchase must be competitively bid as required by this division [~~article~~] and by Chapter 252, Texas Local Government Code, as amended.

(f) The city manager may establish procedures for purchasing goods, general services, or construction services under this section through electronic means, including but not limited to the Internet, to the extent the procedures do not conflict with state law, the city charter, or other provisions of this code. The city manager may also establish procedures for purchasing goods or general services pursuant to the reverse auction method defined in Section 2155.062(d), Texas Government Code, as amended, to the extent the procedures do not conflict with state law, the city charter, or other provisions of this code.

(g) The director may, with prior authorization by city council resolution, purchase goods, including high technology items, through a cooperative purchasing program established pursuant to Chapter 271, Subchapter D, F, or G, Texas Local Government Code, as amended, or through a cooperative purchasing program established by interlocal agreement pursuant to Chapter 791, Texas Government Code, as amended. Authorized participation in a cooperative purchasing program satisfies the requirements of this section.

(h) Local preferences.

(1) Where a contract is required to be awarded to the lowest responsible bidder and a competitive bid is received from a nonresident bidder, the city may not award a governmental contract to the nonresident bidder unless the nonresident's bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located. This requirement does not apply to a contract involving federal funds.

(2) In a purchase for goods, general services, construction services, or facility construction through competitive bid, if one or more bids are received from a local business whose bid is within five percent of the lowest responsible bid received from a bidder who is not a local business, a contract for construction services or facility construction in an amount less than \$100,000 or a contract for goods or general services in an amount less than \$500,000 may be awarded to:

(A) the bidder with the lowest responsible bid; or

(B) the local business if the city council determines, in writing, that the bid submitted by the local business offers the city the best combination of contract price and additional economic development opportunities for the city created by the contract award, including employment of residents of the city and increased tax revenue to the city.

(3) In a purchase for goods through competitive bid, if one or more bids are received from a local business whose bid is within three percent of the lowest responsible bid received from a bidder who is not a local business, a contract in an amount of \$500,000 or more may be awarded to:

(A) the bidder with the lowest responsible bid; or

(B) the local business if the city council determines, in writing, that the bid submitted by the local business offers the city the best combination of contract price and additional economic development opportunities for the city created by the contract award, including employment of residents of the city and increased tax revenue to the city.

(4) Subsection (h)(2) of this section does not apply to the purchase of telecommunication services or information services, as those terms are defined by 47 U.S.C. Section 153, as amended.

(5) Subsections (h)(2) and (h)(3) of this section do not prohibit the city from rejecting all bids."

SECTION 5. That Section 2-33, "Alternative Methods of Procurement for Facility Construction," of Division 1, "Purchasing and Contracting Generally," of Article IV, "Purchasing," of CHAPTER 2, "ADMINISTRATION," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 2-33. ALTERNATIVE METHODS OF PROCUREMENT FOR FACILITY CONSTRUCTION.**

(a) The city council finds that, in general, the methods of procuring a contractor to perform facility construction established in Chapter 271, Subchapter H, Texas Local Government Code, as amended, provide a better value for the city than the methods set forth in Chapter 252, Texas Local Government Code, as amended. The provisions of Chapter 271, Subchapter H, Texas Local Government Code, as amended, are therefore adopted for use in procuring a contract for facility construction, superseding any conflicting provisions in the city charter.

(b) The city manager is authorized, in accordance with Chapter 271, Subchapter H, Texas Local Government Code, as amended, to choose which method of contractor selection provides the best value for the city on each facility construction project, subject to the applicable provisions of Sections 2-30 through 2-32 of this division. The city manager may, by administrative directive, establish procedures for choosing the method of contractor selection and to conduct the selection process, to the extent the procedures do not conflict with state law or Sections 2-30 through 2-32 of this division.

(c) If, in the case of an individual facility construction project, the city manager finds that there is better value in following the methods of procurement authorized in Chapter 252, Texas Local Government Code, as amended, the city manager is authorized to secure a contractor in accordance with the rules of that state law. If the procedures of Chapter 252, Texas Local Government Code, as amended, are used to procure a facility construction contract, the award of the contract must be to the lowest responsible bidder or to a local business when allowed under Section 2-32(h) of this division. The rules of Section 2-32 (b) and (c) of this division also apply to an award made under this subsection."

SECTION 6. That Article VIII-a, "Claims against the City," of CHAPTER 2, "ADMINISTRATION," of the Dallas City Code, as amended, is amended to read as follows:

**"ARTICLE VIII-a.**

**CLAIMS AGAINST THE CITY.**

**Division 1. Tort Claims.**

**SEC. 2-81. FILING CLAIMS AGAINST THE CITY.**

Any person wishing to file a claim against the city shall file the claim with the office of risk management in compliance with the form requirements and six-month notice requirements set forth in Sections 1, 2, and 3, Chapter XXIII of the city charter.

**SEC. 2-82. HANDLING BY CITY ATTORNEY.**

The city attorney is authorized to investigate, settle, and recommend disposition of all claims against the city that are alleged to have resulted from any act or omission of an officer, servant, or employee of the city.

**SEC. 2-83. HANDLING BY DIRECTOR OF RISK MANAGEMENT.**

The director of risk management is authorized to assist the city attorney in investigating, settling, and recommending disposition of any claim against the city for property damage, personal injury, or wrongful death that is alleged to have resulted from the negligent act or omission of an officer, servant, or employee of the city. The director of risk management is further authorized to investigate, at the request of the city attorney, any other claim against the city.

**SEC. 2-84. PAYMENT OF A PROPERTY DAMAGE, PERSONAL INJURY, OR WRONGFUL DEATH CLAIM WITHOUT PRIOR CITY COUNCIL APPROVAL.**

(a) The city controller shall, without prior city council approval, pay a claim for property damage, personal injury, or wrongful death that has been settled for an amount that does not exceed \$25,000 [~~5,000 for a personal injury claim or \$10,000 for a property damage claim~~] when payment is recommended by the city attorney, or by the director of risk management when assisting the city attorney in handling the claim, and approved by the city manager[~~;~~ ~~provided~~], except that[~~;~~] payment of a meritorious claim, in whatever amount, must be approved by the city council as required by Section 4, Chapter XXIII of the city charter.

(b) For purposes of this section, claims for property damage, ~~[and]~~ personal injury, and wrongful death resulting from the same occurrence may be considered as separate claims.

**SEC. 2-85. NON-WAIVER OF NOTICE OF CLAIM.**

The delegation of authority to the city attorney or the director of risk management prescribed by this division does not grant the city attorney or the director of risk management authority to waive the six months written notice of claim requirement contained in Sections 1 and 2, Chapter XXIII of the city charter.

**Division 2. Breach of Contract Claims.**

**SEC. 2-86. NOTICE REQUIRED FOR CERTAIN BREACH OF CONTRACT CLAIMS.**

(a) In this division ~~[section]~~:

(1) CITY CONTRACT or CONTRACT means a written contract that is properly executed or entered into by the city.

(2) DIRECTOR means the director of the city department that is responsible for administering the city contract that is the subject of a claim filed pursuant to this section, or the director's designee.

(3) PERSON means an individual, corporation, partnership, professional corporation, limited liability company, or any other legally constituted and existing business entity, other than the city.

(b) This section applies to any alleged breach of contract by the city occurring on or after January 30, 2006.

(c) A person may not file or maintain a lawsuit or alternative dispute resolution proceeding to recover damages for the city's breach of a city contract unless, as a condition precedent and a jurisdictional prerequisite to the filing of the lawsuit or proceeding:

(1) the person files a notice of claim with the city manager in writing, in the form prescribed in Subsection (d) of this section, not later than 180 days after the date of occurrence of the event that gives rise to the breach of contract claim; and

(2) the city council, or the city manager in the case where a change order or contract amendment may be authorized by administrative action or administrative change order, neglects or refuses to pay all or part of the claim on or before the 90th day after the date of presentation of written notice in accordance with this section.

- (d) The written notice of claim required under Subsection (c) must:
- (1) state the facts giving rise to the alleged breach;
  - (2) state the legal theory justifying recovery for the alleged breach;
  - (3) state the amount the person seeks in damages; and
  - (4) include supporting documentation indicating how those damages were calculated.
- (e) The city attorney is authorized to investigate, evaluate, and recommend settlement or disposition of any breach of contract claim made against the city pursuant to this section.
- (f) The city manager and the director shall assist the city attorney in the investigation, evaluation, and recommendation processes related to the settlement and disposition of a breach of contract claim made against the city pursuant to this section.
- (g) The delegation of authority conferred under Subsection (e) or (f) does not include the authority to waive any requirements of this section.
- (h) Nothing in this section supersedes, modifies, or excuses compliance with any other requirement for notices established by any city contract, law, or equity.
- (i) A person filing a claim under this section is not entitled to recover attorney's fees, either as a part of the damages calculated in the notice of claim or in any subsequent lawsuit or alternative dispute resolution proceeding.
- (j) Nothing in this section may be construed as waiving the city's governmental immunity from suit or liability.
- (k) The provisions of this section are incorporated by reference into all existing and future city contracts.
- (l) The city manager may, with the concurrence of the city attorney, elect to treat a notice received pursuant to this section as a demand for nonbinding mediation. If the city manager treats the notice as a demand for nonbinding mediation, the city manager shall, within a reasonable time, notify the person filing the claim of that election and of the applicable procedures to be followed. The notice of nonbinding mediation extends by 60 days the applicable period for responding to a claim notice set forth in Subsection (c)(2).

**SEC. 2-87. PAYMENT OF A BREACH OF CONTRACT CLAIM WITHOUT PRIOR CITY COUNCIL APPROVAL.**

The city controller shall, without prior city council approval, pay a breach of contract claim that has been settled for an amount that does not exceed \$25,000 when payment is recommended by the city attorney and approved by the city manager.

**Division 3. Miscellaneous Claims, Fines, Penalties,  
and Sanctions against the City.**

**SEC. 2-88. HANDLING AND INVESTIGATION OF MISCELLANEOUS CLAIMS, FINES, PENALTIES, AND SANCTIONS AGAINST THE CITY.**

(a) The city attorney is authorized to investigate, evaluate, and recommend settlement or disposition of:

(1) any claim made against the city (other than a property damage, personal injury, or wrongful death claim governed by Division 1 of this article or a breach of contract claim governed by Division 2 of this article); or

(2) any fine, penalty, or sanction imposed upon the city.

(b) The city manager or the city manager's designee shall assist the city attorney in the investigation, evaluation, and recommendation processes related to the settlement and disposition of a claim, fine, penalty, or sanction under this division.

**SEC. 2-89. PAYMENT OF A MISCELLANEOUS CLAIM, FINE, PENALTY, OR SANCTION WITHOUT PRIOR CITY COUNCIL APPROVAL.**

The city controller shall, without prior city council approval, pay any claim made against the city (other than a property damage, personal injury, or wrongful death claim governed by Division 1 of this article or a breach of contract claim governed by Division 2 of this article) or any fine, penalty, or sanction imposed upon the city that has been settled for an amount that does not exceed \$25,000 when payment is recommended by the city attorney and approved by the city manager.

**SECS. 2-90 [87] THRU 2-94. RESERVED."**

SECTION 7. That CHAPTER 2 of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance.

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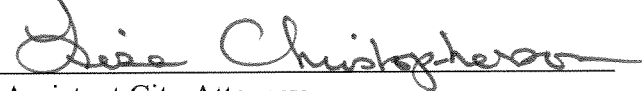
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SECTION 8. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 9. That this ordinance will take effect on September 15, 2012, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By   
Assistant City Attorney

JUN 27 2012

Passed \_\_\_\_\_

LC/DCC/00518A