

**AN ORDINANCE TO REPEAL AND REPLACE CHAPTER 34: FINANCE AND REVENUE FOR THE TOWN OF AWENDAW, SOUTH CAROLINA.**

WHEREAS, Chapter 34, Finance and Revenue, has not been updated since 2001; and

WHEREAS, to make the town more financially stable, procedures need to be updated from time to time to encompass new practices for local governments; and

WHEREAS, the most recent audits of the Town of Awendaw expressed deficiencies with the current procedures; and

WHEREAS, the new procedures proposed address the deficiencies expressed by the auditors.

**NOW, THEREFORE, be it Ordered and Ordained** by the Council of the Town of Awendaw, S. C. that Chapter 34, Finance and Revenue, of the Code of the Town of Awendaw, South Carolina, shall be replaced as follows:

SECTION 1:

*PART 1. GENERALLY*

**Sec. 34.001. Fiscal year.**

The town's fiscal year shall begin each year on July 1 and end on June 30th of the following year.

**Sec. 34.002. Annual budget.**

- (a) *Required.* Pursuant to Article X, Section 7(b), of the South Carolina Constitution, the town council shall prepare, adopt, and maintain an annual budget which provides for sufficient income to meet the town's estimated expenses for the fiscal year.
- (b) *Preparation.* No later than March 1st of each calendar year, the town administrator shall prepare and submit to the town council a recommended budget for the upcoming fiscal year. The recommended budget shall include estimates of the needed and desired expenditures for the upcoming fiscal year as well as estimates of the revenues available to pay for them. Upon receipt of the recommended budget, the town council shall review and, if desired, revise the recommended budget prior to its adoption.
- (c) *Adoption.* The town council shall adopt an annual budget, by ordinance, prior to the beginning of each fiscal year. The town council may, in its discretion, adopt separate budgets for capital expenditures or other specific purposes. Prior to adopting the annual budget ordinance, the town council shall advertise and conduct a public hearing, pursuant to S.C. Code 1976 Sec. 6-1-80.
- (d) *Administration.*

- (1) *Authority; limitations.* Following adoption, the town administrator shall be responsible for administration of the budget. The town council shall have the authority to approve any reasonable unbudgeted expenditure that may exceed a particular budget line-item budget but will not cause the total annual expenditures to exceed the total amount of the annual budget. The town administrator shall have the authority to transfer any sum from one budget line-item to another, or from one department or division to another department or division; provided, however, any transfer between funds must be approved by the town council, and any change in the budget which would increase or decrease the total of all authorized expenditures must also be approved by town council.
  - (2) *Use of funds and excess funds.* Revenues obtained from any source may be used for any appropriation named in the annual budget ordinance; provided, however, this provision shall not apply to revenues which are specifically restricted by the annual budget ordinance, the Town Code, the S.C. Code 1976, or any other applicable law or regulation. Actual revenues in excess of budgeted amounts may be administered by resolution of the town council.
- (e) *Amendment.* The town council may amend the annual budget from time to time. Such amendments shall be made by ordinance.

**Sec. 34.003. Expenditure of funds.**

- (a) *Responsibility.* It shall be the duty of the treasurer to prepare and issue all payments on behalf of the town, in accordance with approved budget allocations, procurement procedures, purchase authorizations, debt obligations, and other applicable policies and procedures. The treasurer is also responsible for the preparation and payment of employee payroll.
- (b) *Methods of expenditure.* The treasurer shall be authorized to expend town funds or town-controlled funds, subject to the following provisions:
  - (1) *Payroll.* The treasurer shall pay, or cause to be paid, all town employees for wages earned during each payroll period. Payments shall be made by direct deposit bi-weekly. The treasurer shall deduct from each employee's gross pay such taxes and other withholdings as may be required by federal and state taxing authorities. The treasurer shall also deduct from each employee's pay the employee's share of any premiums or plan contributions for insurance, retirement, and similar plans that are elected by the employee. The treasurer shall make such other deductions as may be required by law or court order.
  - (2) *Expenditures of \$5,000.00 or less.* For expenditures of \$5,000.00 or less, excluding those specified in subparagraph (4) below, the treasurer may issue payment by any of the following methods, subject to approval by the town administrator:
    - a. Bank draft;
    - b. Check;

- c. Credit or debit card;
  - d. Electronic funds transfer; and
  - e. Petty cash (limited to expenditures of \$100.00 or less).
- (3) *Expenditures greater than \$5,000.00.* For expenditures greater than \$5,000.00, the treasurer shall issue payment by check, subject to approval by the town administrator.
- (4) *Partial payments and installments.* Partial payments and installments made toward a contract or purchase order with a total value greater than \$5,000.00 shall be made by check, subject to approval by the town administrator.
- (c) *Signatures required.* When payment is made by check, the check shall be signed by two authorized parties. For purposes of this section, the term "authorized parties" shall include the following town officials:
- (1) Mayor;
  - (2) Mayor Pro-Tempore;
  - (3) Treasurer; and
  - (4) Any other individual authorized by resolution of town council to sign checks on behalf of the town.

**Sec. 34.004. Forms of payment.**

- (a) *Responsibility.* Except as may otherwise be provided by state or federal law or regulation, the Town Code, or any other ordinance, resolution, or regulation of the town, it shall be the duty of the treasurer to receive all fees for town licenses and permits and water bill payments, and all claims and accounts that may be due and payable to the town and shall deposit all monies belonging to the town in such bank(s) as the town council may direct.
- (b) *Methods of payment.* The treasurer may accept payments made by any of the following methods:
- (1) Bank draft;
  - (2) Cash;
  - (3) Check;
  - (4) Credit or debit card;
  - (5) Electronic funds transfer; and
  - (6) Money order.
- (c) *Agreement for services.* The treasurer is authorized to determine the specific credit cards, bank cards, and electronic transfers that will be accepted as provided in this section and, subject to approval by the town administrator, may enter into a contract or service agreement with a bank or credit card vendor for the acceptance of credit and debit cards.

- (d) *Fees and service charges.* In order to offset charges incurred by the town, the treasurer may impose and collect the following fees:
- (1) *Convenience fee.* The treasurer may collect a fee, not to exceed four percent, on any payment made by credit or debit card. The purpose of this fee is to recoup the actual payment processing charges incurred by the town.
  - (2) *Returned check fee.* The treasurer may collect a \$25.00 fee for any check, draft, or other written order which is returned unpaid by the financial institution upon which the check was drawn. This fee shall be in addition to any other remedy allowed by law.

**Sec. 2-605. Monthly financial statements required; posting.**

The treasurer shall keep an itemized account of all receipts and disbursements and shall prepare, or cause to be prepared, statements of such accounts on a monthly basis. Monthly financial statements shall be made available to the town council no later than the fourth Monday of each month. Monthly financial reports shall also be made available for public inspection in the office of the treasurer and by posting on the town website.

**Sec. 2-606. Annual audit.**

- (a) *Required.* The town council shall provide for an annual independent audit of all financial records and transactions of the town and any agency funded in whole by the town. Such audit shall be made by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the town government or any of its officers.
- (b) *Public record.* Upon completion, the annual audit report shall be made available for public inspection in the office of the treasurer and by posting on the town website.
- (c) *Filing requirement.* The treasurer shall file copies of the annual audit report with all agencies and departments as required by law, including, without limitation, the South Carolina Revenue and Fiscal Affairs Office and South Carolina State Treasurer's Office.

**Sec. 2-607. Investment policy.**

- (a) *Authority.*
  - (1) *State delegation.* Subject to the requirements and limitations of S.C. Code 1976 Secs. 6-5-10, 6-6-30, and 11-1-60, the town council maintains the authority to invest money subject to its control and jurisdiction into certain financial instruments expressly authorized by law.
  - (2) *Investment approval.* Funds which are subject to the town's control and jurisdiction shall not be invested unless the investment is authorized by town council resolution. A resolution authorizing the investment of town funds shall include, at a minimum, the amount to be invested, the investment type and description, the term of the investment, and the funding source(s) to be used to make the investment.

- (3) *Management responsibility.* Management of the town's investment programs is delegated to the treasurer. As administrator of the town's financial program, the treasurer is assigned full discretionary management of the town's investments and shall report all transactions directly to the town administrator in a timely manner. The treasurer shall maintain all written agreements, wire transfer agreements, banking service contracts, and collateral/depository agreements.
  - (4) *Authorization.* No person may knowingly invest town funds except as provided for in this section.
- (b) *Policy objectives.* The primary objectives of the town's investment activities are, in order of priority:
- (1) *Safety.* Safety of principal is the foremost objective of the investment program. Investment of town funds shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The town shall seek to safeguard principal by a careful examination of credit risk and market risk of individual investments.
    - a. *Credit risk.* The risk of loss due to failure of an issuer of a security shall be mitigated by investing in safe institutions and by diversifying funds so that the failure of any one issuer would not unduly harm the town's principal.
    - b. *Market risk.* The risk of market value fluctuations due to overall changes in the general level of interest rates shall be mitigated by limiting the weighted average maturity of the town's fund to less than five years.
  - (2) *Liquidity.* The town's investment portfolio shall remain sufficiently liquid to enable the town to meet all operating expenditure requirements which might be reasonably anticipated.
  - (3) *Return on investment.* The town's investment portfolio shall be designed with the objective of attaining a benchmark rate of return throughout budgetary and economic cycles taking into consideration the town's investment risk constraints and the cash flow characteristics of the portfolio. Whenever possible, consistent with risk limitations and prudent investment principles, the town shall strive to achieve returns at the market average rate of return for each investment type.
- (c) *Ethics and conflicts of interest.* All persons involved in the investment process shall refrain from personal financial activities that could conflict with proper execution of the town's investment program, or which could impair their ability to make impartial investment decisions. All financial interests in financial institutions and/or investments that are, or could be, perceived as a conflict of interest in making impartial investment decisions shall be immediately reported to the town council and town administrator upon recognition of occurrence.
- (d) *Authorized investments.*
- (1) From the town's perspective, special care must be taken to ensure that the list of instruments includes only those allowed by law and those that local investment

managers are trained and competent to handle. No public deposit shall be made except in a qualified public depository as established by state law. The treasurer shall not give full discretionary authority to external investment managers. The treasurer shall not use external investment managers to purchase or sell securities or manage the town's portfolio unless specifically approved by the town council with a contract signed by the town administrator or the council's designee and reviewed by the town attorney.

- (2) Pursuant to S.C. Code 1976 Sec. 11-1-60, the town may invest money subject to its control and jurisdiction in the shares of any federal savings and loan association or in the shares of any building and loan association organized and existing under the laws of this state when such shares are insured by the Federal Deposit Insurance Corporation (FDIC) and also in bonds or debentures issued by any federal home loan bank or in the consolidated bonds or debentures issued by the Federal Home Loan Bank Board.
- (3) S.C. Code 1976 Sec. 6-5-10, limits the investment vehicles available to local agencies. The town's investment policy further restricts the permitted investments to those listed below:
  - a. Obligations of the United States and its agencies, the principal and interest of which is fully guaranteed by the United States, including United States Treasury Bills, Notes and Bonds or those for which the full faith and credit of the United States are pledged for payment of principal and interest. Offerings must be A-rated or better.
  - b. Federal agency or United States government sponsored securities, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States Government sponsored enterprises. Obligations in this category referred to as "federal agencies" include, but are not limited to, issues by the Government National Mortgage Association, Federal Mortgage Association, and Federal Home Loan Mortgage Corporation. Offerings must be A-rated or better.
  - c. Savings and loan associations, to the extent that the same are insured by an agency of the federal government. Offerings must be A-rated or better.
  - d. Certificates of deposit. Certificates of deposit are fixed-term investments that are required to be collateralized depending on the specific security pledged as security. The town shall deposit funds only with financial institutions that operate in the United States of America. The Federal Deposit Insurance Corporation (FDIC) must insure these institutions.
  - e. General obligations of any of the counties, political subdivisions or municipal corporations of any state of the United States of America. Offerings must be A-rated or better.

- f. Revenue bonds of any of the counties, political subdivisions or municipal corporations of any state of the United States of America, if the statute pursuant to which such revenue bonds are issued shall declare them to be legal investments. Offerings must be A-rated or better.
  - g. Stable value money market mutual funds. These types of investments are to be used primarily as overnight or short-term sweep accounts for interest and maturities with the town's custodial agent and the town's bank accounts.
  - h. S.C. Code Sec. 6-6-30, allows for the sale of investments within the State of South Carolina Local Government Investment Pool to all political subdivisions with consent of the governing bodies. Money invested with SCLGIP is pooled with state money in order to earn the maximum rate of return possible in a manner consistent with sound investment practices.
- (E) *Collateralization.* Pursuant to S.C. Code 1976 Sec. 6-5-15, depositories have duties and responsibilities toward public monies on deposit that may differ from their duties relative to nonpublic funds. South Carolina law requires public funds to be collateralized; that is, the depository must secure its public fund accounts by maintaining with the agent of the depository securities having a market value consistent with the current state's policy. If a depository uses mortgage-backed securities as collateral for public funds, the market value of the securities must be consistent with the state's requirement. An independent third party with whom the entity has a current custodial agreement must always hold collateral. A clearly marked evidence of ownership, or a "safekeeping receipt," must be supplied to the town and retained in the office of the treasurer.
- (f) *Safekeeping and custody.*
- (1) *Delivery vs. payment.* All trades of marketable securities shall be executed by delivery vs. payment (DVP) to ensure that securities are deposited in an eligible financial institution prior to release of the town funds.
  - (2) *Safekeeping.* Securities shall be held by an independent third-party custodian selected by the town. The custodian shall provide safekeeping receipts in the town's name and provide an annual financial report.
- (g) *Diversification.*
- (1) *Purpose.* The purpose of diversification is to reduce overall portfolio risk while attaining benchmark average return. Diversification is intended to prevent over concentration in a specific maturity sector and prevent reliance on riskier instruments.
  - (2) The town shall seek to diversify its investments by security type and institution. With the exception of U.S. Treasury securities and the State of South Carolina Local Government Investment Pool, no more than 50 percent of the town's total investment portfolio shall be invested in a single security type, and no more than ten percent of the town's total investment portfolio shall be invested in any specific security.

(h) *Maturities.* To protect public funds from market yield losses resulting from rising interest rates, the town shall limit the maximum term of maturity. To the extent possible, the town shall attempt to match its investments with anticipated cash flow requirements. In order to maintain liquidity, no more than 70 percent of the portfolio shall have a maturity in excess of one year. Unless matched to specific cash flow, the town shall not directly invest in securities maturing more than five years from the date of purchase.

(i) *Internal controls.*

(1) The treasurer is responsible for ensuring compliance with the town's investment policies as well as for establishing systems of internal control to ensure that the assets of the town are protected from loss, theft, or misuse and to regulate the activities of delegated appointees.

(2) The internal control's structure shall address the following points:

- a. Custodial safekeeping;
- b. Avoidance of physical delivery of securities;
- c. Clear delegation of authority to appointees;
- d. Written confirmation of transactions for investments and wire transfers; and
- e. Assurance by the town's external auditor that the portfolio complies with applicable policies and procedures during the annual independent audit.

(j) *Performance standards.*

(1) *Objective.* The investment portfolio shall be designed with the objective of obtaining a rate of return throughout budgetary and economic cycles, commensurate with the investment constraints herein and the cash flow needs of the town.

(2) *Market yield (benchmark).* While the investment policy is designed to provide control, the yield objective is also important. The town's investment strategy is active. The treasurer shall identify a comparable benchmark for each type of investment within the town's investment portfolio to determine whether proper market yields are being achieved. Given the strategy, the town shall strive to achieve returns at the market-average rate of return. The market-average of return is generally defined as the average return on three-month U.S. Treasury Bills, or the South Carolina Local Government Investment Pool administered by South Carolina State Treasurer. These indices are considered benchmarks for lower risk investment transactions and comprise a minimum standard for the portfolio's rate of return. The investment program shall seek to augment returns above this threshold, consistent with authorized type, maturity, collateralization, and diversification limitations identified herein.

(k) *Reporting.*

(1) *Quarterly and annual reporting.* The treasurer shall provide the town council with quarterly updates on the town's overall investment performance. The town council

shall annually review the treasurer's overall administration of the town's investment program in conjunction with the annual audit.

- (2) *Audit reporting.* The town's annual audit report should contain the following information that is subject to this investment policy:
- a. The type of investment, name of the issuer, date of maturity, par, and cost in each investment;
  - b. The weighted average maturity of the investments;
  - c. Coupon, discount, or earnings rate;
  - d. Par value, amortized book value, and market value;
  - e. Percentage of the portfolio represented by each investment category;
  - f. A description of the compliance with the statement of investment policy; and
  - g. Such other information which, in the opinion of the independent auditor, shall be necessary and proper to ensure compliance with current disclosure guidelines, as promulgated by the Government Standards Accounting Board (GASB).

**Sec. 2-608. Fund balance policy.**

- (a) *Purpose.* The town council hereby enacts the following policy in an effort to ensure financial security through the maintenance of a healthy reserve fund that guides the creation, maintenance, and use of resources for financial stabilization purposes. The town's primary objective is to maintain a prudent level of financial resources to protect against service reductions and/or rate and fee increases due to temporary revenue shortfalls or unpredicted one-time expenditures. The town also seeks to maintain the highest possible credit ratings which are dependent, in part, upon the town's maintenance of a healthy fund balance.
- (b) *Definitions.* For purposes of this section, the following definitions shall apply.
- (1) *Fund balance.* Fund equity at the governmental fund financial reporting level is classified as "fund balance." Fund balance is reported in the governmental funds financial statements and generally represents the difference between current assets and current liabilities. Fund balance classifications represent a hierarchy based primarily on the extent to which the town is bound to honor constraints on specific purposes for which amounts in those funds can be spent. Fund balances are classified as follows:
- a. *Non-spendable fund balance.* Fund balances are classified as non-spendable when amounts cannot be spent because they are either: i) in non-spendable form, or ii) they are legally or contractually required to be maintained intact. The town includes items that are not expected to be converted to cash such as inventories and prepaid amounts.

- b. *Restricted fund balance.* Fund balances are reported as restricted when their use is restricted for specific purposes including: i) constraints on funds externally imposed by creditors, grantors, contributors, or laws or regulations of other governments, or ii) constraints imposed by law through constitutional provisions or enabling legislation.
  - c. *Committed fund balance.* Fund balances are reported as committed if their use is for a specific purpose as approved by formal action of the town council (majority vote). Amounts committed cannot be used for any other purpose unless the town council removes or changes the specific use by approving such action through resolution at a town council meeting. Budget resolutions are considered a plan for specific use.
  - d. *Assigned fund balance.* Fund balances are reported as assigned when constrained by the town's intent to use the funds for specific purposes that are neither restricted nor committed. Assigned fund balance includes: i) all remaining amounts (except negative balances) reported in governmental funds, other than the general fund, that are not classified as nonspendable, restricted, or committed, ii) amounts in the general fund intended for a specific use identified by either the town council or treasurer, and iii) amounts appropriated to eliminate a projected budget deficit in the subsequent year.
  - e. *Unassigned fund balance.* Fund balances are reported as unassigned when the balances do not meet any of the above four criterion for classification. The town reports positive unassigned fund balance in only the general fund. Negative unassigned fund balances may be reported in all governmental funds.
- (c) *Appropriate level.*
- (1) *Unassigned fund balance.*
    - a. *Background.* In February 2009, the Governmental Accounting Standards Board (GASB) issued GASB Statement No. 54, Fund Balance Reporting and Governmental Fund Type Definitions. In that statement, the GASB recommended "...at a minimum, that general-purpose governments, regardless of size, maintain unrestricted fund balance in their general fund of no less than two months of regular general fund operating revenues or regular general fund operating expenditures." In its publication entitled Fund Balance Guidelines for the General Fund, the Government Finance Officers Association (GFOA) further recommended that "The adequacy of unrestricted fund balance in the general fund should take into account each government's own unique circumstances. For example, governments that may be vulnerable to natural disasters, more dependent on a volatile revenue source, or potentially subject to cuts in state aid and/or federal grants may need to maintain a higher level in the unrestricted fund balance." Given the town's susceptibility to natural disasters and its limited revenue sources, the town council believes it is appropriate to establish and

maintain a higher threshold for its unassigned fund balance than that recommended by GASB.

- b. *Minimum level.* The town's minimum unassigned fund balance shall be the greater of 50 percent of the current year's budgeted general fund operating expenditures, or \$500,000.00.
  - c. *Maximum level.* The town's maximum unassigned fund balance shall be 100 percent of the current year's budgeted general fund operating expenditures.
- (2) *All other fund balance types.* No minimum or maximum fund balance shall be required, unless required by law.
- (d) *Use of fund balance.*
- (1) *Spending prioritization.* For purposes of fund balance disbursement, unless otherwise approved by the town council, the town shall expend restricted fund balance when an expenditure is incurred for which both restricted and unrestricted fund balance is available. Next, the town shall expend the committed fund balance when an expenditure is paid for that is eligible for unrestricted fund balance. The town would next disburse fund balance assigned for purposes of the fund before disbursing other assigned fund balance amounts. In the general fund, the town would disburse unassigned fund balance before disbursing fund balance assigned for financial policy reserve levels or amounts assigned to eliminate the subsequent year's budget deficit.
  - (2) *Spending of unassigned fund balance.* The town council understands that circumstances may exist that warrant the town's use of funds from the unassigned fund balance on a temporary basis. The town council has established the following instances where it may elect to use these funds, even if such use decreases the fund balance below the minimum percentage established by this policy:
    - a. An economic downturn that results in actual revenues being below budgeted revenues;
    - b. Unexpected and unappropriated costs to service and maintain current town operations;
    - c. Unexpected and non-budgeted costs related to emergencies, natural disasters, and/or litigation;
    - d. Grant matching;
    - e. Early retirement of debt;
    - f. To cover deficits in other funds due to a shortfall in budgeted revenues; and
    - g. Capital asset acquisition, construction, and improvement projects.
- (e) *Replenishment.*
- (1) *Plan required.* If the unassigned fund balance is depleted below the minimum policy level, the town administrator, with consultation from the treasurer, shall develop a plan to replenish the unassigned fund balance to the minimum level. The plan must

be approved by resolution of the town council and may include, as necessary, recommendations for rate and/or fee adjustments, expenditure reductions, transfers from other unrestricted funds, and the use of year-end budget surpluses. The plan should be reviewed and modified on an annual basis until the minimum policy level is achieved. Any increase in discretionary expenditures should be limited until the unassigned fund balance is restored to the minimum policy level.

- (2) *Time.* The town shall endeavor to replenish the unassigned fund balance to the minimum policy level within three years of use.
- (f) *Unassigned fund balance above formal policy requirement.* If, upon completion of the annual audit, the unassigned fund balance exceeds the maximum policy level, the town council may designate or expend such excess funds for capital projects, debt reduction, emergency reserves, and other non-recurring uses deemed appropriate.

**Secs. 2-609—2-620. Reserved.**

*DIVISION 2. PURCHASING REQUIREMENTS*

**Sec. 2-621. Authority and purpose.**

- (a) *State law reference.* This division is adopted pursuant to and in compliance with S.C. Code 1976 Sec. 11-35-5320, and S.C. Code Ann. Regs. 19-445.2155.
- (b) *Purpose.* The purpose of this division is to maximize the purchasing value of public funds, to provide safeguards for maintaining quality and integrity within the procurement system, and to provide for the fair and equitable treatment of all parties in the procurement process.

**Sec. 2-622. Definitions.**

- (a) As used in this division, the following definitions shall apply:
  - (1) *Invitation for bids or IFB* means a written or published solicitation issued by the procurement officer for bids to contract for the procurement or disposal of stated supplies, services, information technology, or construction, which will ordinarily result in the awarding of a contract or purchase order to the responsible bidder making the lowest responsive bid.
  - (2) *Most advantageous* means an offer, proposal, or response which has been judged by the town to be most beneficial based on the evaluation criteria contained within the RFP. In addition to cost, the evaluation criteria may include other factors, including, but not limited to:
    - a. The vendor's qualifications to provide the goods or services;
    - b. The vendor's approach to providing the goods or services;
    - c. The vendor's sufficiency of financial resources;

- d. The vendor's ability to deliver the goods or services in a timely manner;
  - e. The vendor's quality of workmanship;
  - f. The vendor's character, integrity, judgment, reputation, and experience;
  - g. The vendor's history of satisfactory performance with similar projects; and
  - h. The vendor's knowledge of, and ability to comply with, associated legal or regulatory requirements.
- (3) *Procurement* means the process and procedure for buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, information technology, or construction. It also includes all functions pertaining to the obtaining of any supply, service, information technology, or construction, including the description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.
- (4) *Procurement officer* means the person who is authorized by the town to administer the procurement of all supplies, services, information technology, and construction, as well as the management and disposal of surplus supplies and equipment, in accordance with the provisions of this division. The procurement officer shall act under the direction of the town council and shall organize and execute all procurement activities for the town as set forth in this division. For purposes of this division, the town administrator is designated as the procurement officer for the town.
- (5) *Professional services* means unique, technical, and/or infrequent functions performed by an independent contractor qualified by education, experience, and/or technical ability to provide services. In most cases, these services are of a specific project nature and are not a continuing, ongoing responsibility of the town. The services rendered are predominantly intellectual in character, even though the contractor may not be required to be licensed. Professional service engagements may involve partnerships, corporations, or individuals. Examples of professional services may include, but are not limited to, accountants, architects, attorneys, auditors, biologists, engineers, environmental consultants, financial advisors/planners, land use planners, management consultants, marketing and advertising services, physicians, and real estate appraisers.
- (6) *Request for proposals* or *RFP* means a written or published solicitation issued by the procurement officer for proposals to provide supplies, services, information technology, or construction which ordinarily results in the awarding of a contract to the responsible offerer whose proposal is deemed to be most advantageous to the town based on the evaluation criteria contained within the RFP.
- (7) *Request for qualifications* or *RFQ* means a written or published solicitation issued by the procurement officer for the purpose of obtaining qualification and performance data from vendors, including, but not limited to, financial capability, reputation,

experience, and competency, which will ordinarily result in the subsequent issuance of an IFB or RFP to a "short list" of vendors deemed qualified by the town.

- (8) *Responsible bidder or offerer* means a vendor who is determined by the town to have the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.
- (9) *Responsive bidder or offerer* means a vendor who has submitted a bid or proposal which conforms in all material aspects to the invitation for bids, request for proposals, or request for qualifications.
- (10) *Successful bidder* means the vendor whose bid or proposal has been selected as the "lowest responsible" or "most advantageous," depending on the procurement method used.
- (11) *Surplus property* means any materials, supplies, equipment, or other goods which, in the opinion of the procurement officer, have no further beneficial usefulness to the town or cannot economically be made useful to the town.
- (12) *Vendor* means a person, company, or firm who sells goods or services.

( Ord. No. 2022-01 , § 1, 3-22-2022)

#### **Sec. 2-623. Compliance with other laws and regulations.**

- (a) *State and federal law supersedes.* Nothing in this division shall prevent any town official or employee from complying with the terms and conditions of state or federal laws and/or regulations which may be applicable, including those which may be less restrictive than the policies and procedures contained herein.
- (b) *Other requirements.* Procurement which involves the expenditure of federal assistance, contract funds, or any grants, gifts, or bequests, shall comply with such federal and state laws and authorized regulations as are mandatorily applicable, regardless of whether they are presently reflected in this division.

#### **Sec. 2-624. Ethical procurements.**

- (a) *Applicability of State Ethics Act.* The requirements of Title 8, Chapter 13 (Ethics, Government Accountability and Campaign Reform Act), of the S.C. Code 1976, shall be complied with and observed in all actions involving the procurement of goods and services. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee of the town found guilty thereof shall thereby forfeit his or her office or position.
- (b) *Good faith.* Every contract or duty imposes an obligation of good faith in its negotiation, performance, or enforcement. As used in this division, the term "good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

- (c) *Voidability of contracts.* Any violation of this section with the knowledge, whether expressed or implied, of the vendor contracting with the town shall render the contract voidable by the town administrator or the town council.

**Sec. 2-625. Procurement limitations and authorization.**

- (a) *Procurement policy.* It is the town's policy to develop competition to ensure maximum purchasing value for all procurement activities. The procurement officer shall have the discretion to use a more stringent purchasing procedure if he or she determines that doing so would better serve the town's interest. When deemed appropriate, the procurement officer may utilize the services of advisory committees and/or outside consultants to assist with the preparation of IFB's, RFP's and RFQ's; the review and evaluation of bids, proposals, and qualifications; and the review, negotiation, and awarding of contracts and purchase orders. No contract or purchase order may be subdivided to avoid the requirements of this section.
- (b) *Purchasing procedures.* The procurement of goods and services shall be executed as follows:
  - (1) *Under \$5,000.00: Open Market.*
    - a. Competitive bidding is not required.
    - b. The procurement officer shall have the authority to purchase goods and services on the open market using a reasonable effort to obtain pricing at or below prevailing market rates.
  - (2) *\$5,000.00 to \$24,999.99: Written Quotes.*
    - a. Competitive bidding shall be required. The procurement officer shall solicit written quotes from at least three vendors.
    - b. If the purchase was specifically budgeted in the current fiscal year budget and the lowest responsible bid is less than or equal to the amount budgeted, the procurement officer shall have the authority to award a contract or purchase order to the successful bidder.
    - c. If the purchase was not specifically budgeted in the current fiscal year budget or the lowest responsible bid exceeds the amount budgeted, the procurement officer shall obtain prior approval from the town council, subject to the limitations contained in section 2-602(d)(l), before awarding a contract or purchase order to the successful bidder.
  - (3) *\$25,000.00 to \$49,999.99: Informal Solicitations for Bids or Proposals.*
    - a. Competitive bidding shall be required. The procurement officer shall issue a written IFB or RFP, depending on the procurement method used. The procurement officer shall solicit written bids or proposals from at least three vendors.

- b. The procurement officer shall review and evaluate all bids or proposals in a timely manner and shall recommend a successful bidder to the town council.
- c. Subject to the limitations contained in section 2-602(d)(1), the town council shall have the authority to award a contract or purchase order to the successful bidder.

(4) *)\$50,000.00 or Greater: Formal Solicitations for Bids or Proposals.*

- a. Sealed, competitive bidding shall be required.
  - 1. *Invitation.* The procurement officer shall issue a written IFB or RFP, depending on the procurement method used. The procurement officer may, at his or her discretion, issue a written RFQ for the purpose of identifying a "short list" of pre-qualified vendors prior to the issuance of an IFB or RFP. Bid packages shall be advertised in a newspaper of general circulation within the town, on the South Carolina Business Opportunities (SCBO) website, and on the town's website, at least ten days prior to the due date, except in cases with extraneous time constraints. Additional methods of notification may be used at the discretion of the procurement officer.
  - 2. *Bid package.* At a minimum, the bid package shall contain the following:
    - i. Instructions for completing and submitting a sealed bid or proposal, including the deadline for the receipt of all bids;
    - ii. A detailed description of the goods or services to be purchased;
    - iii. An explanation of the criteria to be used in the evaluation of bids and proposals;
    - iv. Whether a bid security is required and the amount of same;
    - v. The date, time and location of the bid opening; and
    - vi. Any other items or information deemed appropriate by the procurement officer.
  - 3. *Bid security.* When deemed necessary by the procurement officer, a bid security, not to exceed five percent of the total bid amount, shall be required. A successful bidder shall forfeit his or her bid security upon failure to enter into a contract with the town within ten days after the issuance of a notice of award; provided, however, the town, in its sole discretion, may waive or reduce this forfeiture.
  - 4. *Submission and sealing.* Bids shall be received by the procurement officer at the designated location no later than the date and time specified in the invitation. Late bids shall not be accepted. Bids shall be securely sealed in an envelope and shall be identified on the envelope in accordance with instructions contained in the bid package.

5. *Opening.* Bids shall be opened and read publicly at the date, time, and location specified in the bid package.
  6. *Tabulation.* A tabulation of all bids received shall be available for public inspection.
  7. *Rejection of bids.* The procurement officer shall have the authority to reject all bids, or parts of bids, when the public interest will be served thereby.
  8. *Bidders in default to the town.* The procurement officer shall have the authority to reject bids from any vendor who is delinquent in the payment of taxes, license fees or other monies due to the town.
  9. *Review and recommendation of bids.* The procurement officer shall review and evaluate all bids or proposals in a timely manner and shall recommend a successful bidder to the Ways and Means subcommittee of the Town Council. The Ways and Means Committee shall review the procurement officer's recommendation and submit a final recommendation of the successful bidder to the town council.
  10. *Award.* The town council shall have the authority to award a contract or purchase order to the successful bidder.
- b. *Performance bonds.* The procurement officer shall have the authority to require a performance bond before entering into any contract. Where required, a performance bond shall be in such form and amount as the procurement officer shall find reasonably necessary to protect the best interests of the town.
  - c. *Exception for construction contracting administration.* Notwithstanding the preceding, procurements involving construction may use a construction contracting administration method which is most advantageous to the town and will result in the most timely, acceptable quality, economical, and successful completion of the construction project. Any request to use an alternate form of construction contracting administration for a particular construction project must receive prior approval by the town council.
- (c) *Exceptions.* Exceptions to bidding include the sole source, professional services, emergency procurements, purchasing cooperatives, and critical procurements as defined below.
- (1) *Sole source.* Sole source procurement is acceptable when, after a good faith review of all possible sources, it is determined by the procurement officer that there is only one viable source from which to obtain the goods or services. Sole source procurements shall be executed as follows:
    - a. For goods and services with an estimated value of less than \$50,000.00, the procurement officer shall submit a written request to the town council outlining the justification for sole source procurement. Subject to the limitations contained in section 2-602(d)(1), the town council shall have the authority to approve the sole source procurement if they deem the request to be justified.

- b. For goods and services with an estimated value of \$50,000.00 or greater, the procurement officer shall submit a written request to the town council outlining the justification for sole source procurement. If the town council determines that the sole source procurement is justified, they shall have the authority to approve the sole source procurement.
- (2) *Professional services.* Contracts for the procurement of professional services are exempt from the provisions of this ordinance. Such contracts may be negotiated on a fee basis rather than competitive bidding. Subject to the limitations contained in section 2-602(d)(1), the town council shall have the authority to approve professional service contracts with a value of less than \$50,000.00. All other professional service contracts shall be approved by the town council.
  - (3) *Emergency procurements.* Notwithstanding the requirements of this division, the council may make, or authorize others to make, emergency procurements where there exists a threat to public health, welfare, or safety under emergency conditions; where normal daily operations are affected or in jeopardy; or when a critical situation exists where time does not permit for ordinary solicitation or re-solicitation.
  - (4) *Purchasing cooperatives.* In the event the town is eligible to purchase goods or services through a "term" contract or purchasing cooperative offered by the State of South Carolina or any of its agencies, Charleston County or other South Carolina Counties, the Municipal Association of South Carolina or other South Carolina municipalities, the U.S. General Services Administration, or other similar public entities, the procurement officer may purchase such goods and services under the "term" contract or purchasing cooperative without seeking competitive bids or proposals; provided, however, if the purchase was not specifically budgeted in the current fiscal year budget or the purchase price exceeds the amount budgeted, the procurement officer shall obtain prior approval from the town council, subject to the limitations contained in section 2-602(d)(1), before purchasing the goods or services.
  - (5) *Purchase and sale of real property.*
    - a. When the town desires to purchase real property for public use, the following procedures shall be followed:
      - 1. The property shall be appraised by a licensed South Carolina certified general real estate appraiser.
      - 2. The town council, or an individual designated by the council, may commence contractual negotiations to purchase the property.
      - 3. Contractual negotiations may be discussed with town council in executive session, as provided for by the South Carolina Freedom of Information Act.
      - 4. Town council shall make the final determination as to whether to contract for purchase of the property.
    - b. When the town desires to sell surplus real property, the following procedures shall be followed:

1. The property shall be appraised by a licensed South Carolina certified general real estate appraiser.
  2. Contiguous property owners shall be informed of the town's intent to sell the property and shall be afforded the opportunity to negotiate a contract to purchase the property.
  3. If more than one of the contiguous property owners desires to purchase the property, the council, or an individual designated by the council, may commence contractual negotiations for the sale of the property to the contiguous property owner making the highest offer above the appraised value.
  4. If none of the contiguous property owners desire to purchase the property or a contract with a contiguous property owner is not successfully negotiated, the procurement officer shall solicit offers to purchase the property by issuing an IFB.
  5. The council, or an individual designated by the council, may commence contractual negotiations with the highest bidder.
  6. Contractual negotiations may be discussed with town council in executive session, as provided for by the South Carolina Freedom of Information Act.
  7. Town council shall make the final determination as to whether to contract for the sale of the real property.
- c. The procedures for the purchase of real property shall not apply to the acquisition of real property to be used by the town for pump stations, lift stations, pressure reducing valve sites, public streets, water lines, sanitary sewer lines, storm drainage lines, monitoring sites, mitigation sites, stormwater projects, and utility easements.

**Sec. 2-626. Protest procedures and remedies.**

- (a) Any prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation of a contract may protest to the procurement officer. No other person or entity shall have right of action resulting from any alleged violation of this ordinance and there is no implied right to protest or right of action for any other person or entity. Any such protest must be delivered in writing within five business days of the issuance of the IFB or RFP, or within five business days of the issuance of any amendment thereto if the amendment is at issue.
- (b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract may protest to the procurement officer. Any such protest must be delivered in writing within five days of the date the notice of award or intent to award is issued by the procurement officer.

- (c) A protest must set forth all specific grounds of protest in detail and explain the factual and legal basis for each issue raised.
- (d) The procurement officer may conduct any inquiries or conduct any hearings he or she deems necessary to reach his or her decision.
- (e) Within ten days of receipt of the written protest, the procurement officer shall issue his or her decision in writing and send copies to all parties to the protest.
- (f) If the procurement officer finds in favor of the protestant, he or she may award the protestant its documented bid preparation costs and other damages, not to exceed a total of \$5,000.00.
- (g) Contracts shall not be stayed pending the decision of the procurement officer. The protestant's remedies set forth herein shall be the protestant's exclusive remedy, including any remedy for violation of this chapter.
- (h) A protestant may appeal the decision of the procurement officer to the town council by requesting a review, in writing, with the town council within five business days of the procurement officer's decision. No new issues will be considered by the town council on appeal. The town council may appoint a special committee to consider any such appeals. The decision of the town council, or any special committee appointed by the town council, shall be final.

**Sec. 2-627. Open records.**

The procurement officer shall keep a record of all open solicitations and bids submitted in competition thereon, and such records shall be open to public inspection in accordance with the South Carolina Freedom of Information Act.

**Sec. 2-628. Disposal of surplus property.**

- (a) *Authority.* The procurement officer shall be responsible for management and disposal of all surplus property, excluding real property. The authority to sell, lease or dispose of real property rests solely with town council.
- (b) *Disposal procedures.* The procurement officer may dispose of surplus property as follows:
  - (1) Items with an estimated value of less than \$500.00 may be sold on the open market without formal advertisement or competitive procedures. Such items may also be donated to local not-for-profit organizations which provide charitable services within community.
  - (2) Items with an estimated value of \$500.00 or more shall be sold using one or more of the following competitive methods: in-house auction, outside auction, formal or informal bidding process, online auction services, broker services, or similar competitive methods recommended by the procurement officer and approved by the town council.

**Section 2. Severability.**

If any section, subsection, paragraph, clause, or provision of this ordinance shall be deemed to be unconstitutional, unenforceable, or otherwise invalid by the final decision of a court of competent jurisdiction, it shall be construed to have been the legislative intent of Town Council to pass said ordinance without such unconstitutional provision, and the validity of all remaining sections, subsections, paragraphs, clauses, or provisions of said ordinance shall not be affected thereby. If said ordinance, or any provision thereof, is held by the final decision of a court of competent jurisdiction to be inapplicable to any person, group of persons, property, kind of property, circumstances or set of circumstances, such holding shall not affect the applicability thereof to any other persons, property or circumstances.

SECTION 3. Conflicting Ordinances Repealed.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

THIS ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON FINAL READING

First Reading:

Public Hearing:

Second Reading:

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Chris Crolley, Mayor

Town of Awendaw

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Attest: Town Administrator