

ORDINANCE NO. 2552 (N.C.S.)

AN ORDINANCE OF THE CITY OF SALINAS AMENDING ARTICLE III OF CHAPTER 12
OF THE SALINAS CITY CODE RELATING TO THE ESTABLISHMENT OF A LOCAL
PREFERENCE IN THE PURCHASE OF GOODS AND SERVICES

City Attorney Summary

The City of Salinas currently provides a local preference for the purchase of certain goods and services. Since its adoption the current local purchasing preference has rarely been utilized and has not realized the originally intended purpose of increasing local sales tax revenue and higher local employment rates. This ordinance is an update to the City's existing local purchasing preference which broadens its applicability to more categories of goods and services and includes public works contracts. This ordinance also requires the City to complete annual reporting and record-keeping so the City can more effectively monitor the application of the local purchasing preference and evaluate its effectiveness in meeting its intended purpose. The regulations established pursuant to this ordinance would be enforced under the Salinas City Code.

WHEREAS, the City of Salinas is a charter city organized and operating pursuant to article XI, section 7 of the California Constitution and by virtue of its status as a charter city is authorized to adopt this ordinance; and

WHEREAS, according to the California Employment Development Department the unemployment rate in the Salinas Metropolitan Statistical Area (Monterey County) was 6.9 percent in August 2014 (15,800 people unemployed out of a labor force of 228,200 people); and

WHEREAS, policies which favor local vendors can provide significant economic benefit to a local economy by increasing the capture of municipal revenues and adding local jobs from both the utilization of the local business itself, as well as from the multiplier effect which perpetuates additional jobs from the new local spending that is created; and

WHEREAS, the City of Salinas endeavors to secure equipment, materials, supplies, and services and to have its public works projects constructed at a competitive cost commensurate with the highest quality; and

WHEREAS, local businesses and local professionals provide employment opportunities for residents and consumers of the community; and

WHEREAS, the Salinas City Council has set as a priority and a goal the promotion of economic diversity and prosperity; and

WHEREAS, the California Environmental Quality Act (CEQA) Guidelines include the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment (CEQA Guidelines section 15061). Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the City Council's adoption of this ordinance and the implementation of this ordinance do not cause a direct or any reasonably foreseeable indirect physical change on or in the environment, this matter is not a project.

Now, therefore, be it ordained by the Council of Salinas as follows:

SECTION 1. Section 12-27.1 of the Salinas City Code is hereby repealed in its entirety.

SECTION 2. Article III-A is hereby added to Chapter 12 of the Salinas City Code and shall read as follows:

Article III-A. Local Purchasing Preference.

Sections:

Sec. 12-28.010. Purpose

Sec. 12-28.020. Definitions

Sec. 12-28.030. Application of local purchasing preference—Procurement of goods, supplies, equipment, materials, services where price is the determining factor

Sec. 12-28.040. Application of local purchasing preference—Procurement of services where price is not the determining factor

Sec. 12-28.050. Application of local purchasing preference—Public Works contracts

Sec. 12-28.060. Minimum purchase or contract value

Sec. 12-28.070. Exceptions to local purchasing preference

Sec. 12-28.080. Authority of City Council to purchase

Sec. 12-28.090. No exemption from local sales tax

Sec. 12-28.100. Violations and sanctions

Sec. 12-28.110. Reporting and record-keeping

Sec. 12-28.010. Purpose.

Local businesses contribute significantly to the economic health of the city and to the quality of life of the city's residents and visitors. The Salinas City Council encourages the growth of local businesses by means of increasing the participation of local businesses in the City's purchasing

of goods and services through the adoption and the implementation of local purchasing regulations. Current purchasing regulations maximize competition and allow the City to obtain the best price and value for its purchases and contracts and allow for efficient procurement of goods and services with a minimum expenditure of administrative resources. Open competition is a fundamental component of the City's procurement process and this will continue through implementation of the City's local purchasing regulations.

Sec. 12-28.020. Definitions.

- (a) "Bid" or "Bids" shall include any competitive bid submitted at the invitation of the City.
- (b) "Bidder" shall mean any person, including any corporation or other business entity, who submits a response to a competitive invitation from the City.
- (c) "City" shall mean the City of Salinas acting through the City Council, the City Manager, the Purchasing Agent or such other person who is authorized under the City Code or otherwise duly designated to procure and execute contracts on behalf of the City.
- (d) "Local business enterprise" means a business enterprise, including but not limited to, a sole proprietorship, partnership or corporation, which has a legitimate business presence in the city of Salinas. Evidence of a legitimate business presence in the city of Salinas shall include
 - (1) Having a current City of Salinas business license;
 - (2) Having its principal business office within the city of Salinas and employing at least one full-time employee within the city of Salinas;
 - (3) Being current on all City of Salinas taxes, fees, assessments, and fines;
 - (4) Not subject to enforcement action by the City or in litigation with the City;
 - (5) Began doing business within the city of Salinas at least one year prior to the City's inviting bids or quotations for the respective purchases OR is a newly established business enterprise which is owned by an individual(s) formerly employed by a local business enterprise, as defined in this subsection, for at least two (2) years immediately prior to the issuance of either a request for competitive bids or request for qualifications from the City; and
 - (6) Submitting a declaration of local business enterprise on a form provided by the City.
- (e) "Purchase" shall mean the acquisition of those supplies, materials, equipment or service bought in a single transaction from a single vendor.
- (f) "Responsible" shall mean a bidder's quality, fitness, and capacity to perform or otherwise meet the particular requirements of the proposed work or service.
- (g) "Responsive" shall mean a bidder's compliance with the solicitation instructions.

Sec. 12-28.030. Application of local purchasing preference—Procurement of goods, supplies, equipment, materials, services where price is the determining factor.

For purchases and procurements of goods, supplies, equipment, materials, and services where price is the determinative factor, the local preference established under this article shall be applied as follows:

- (a) In determining the lowest responsible, responsive bidder, bidders who qualify as a local business enterprise shall receive a ten percent preference. If application of the ten-percent preference results in a responsible, responsive local business enterprise's bid being at or lower than the non-local business enterprise, the contract shall be awarded to the local business enterprise at the local business enterprise's bid amount.
- (b) If equal bids are submitted by a local business enterprise and a non-local business enterprise, the contract shall be awarded to the local business enterprise.

Sec. 12-28.040. Application of local purchasing preference—Procurement of services where price is not the determining factor.

Where competitive bidding is utilized for those services where price is not the determining factor and where such services would otherwise be excepted from the competitive bidding requirements pursuant to City Code section 12-25, including but not limited to contracts covered by the Little Brooks Act (California Government Code section 4525, et seq.) the local preference established under this article shall be applied as follows:

- (a) In determining the best-qualified and responsible, responsive bidder, bidders who qualify as a local business enterprise shall receive a credit of ten-percent of the total points.
- (b) If equal scores result from the evaluation process for a local business enterprise and a non-local business enterprise, the contract shall be awarded to the local business enterprise.

Sec. 12-28.050. Application of local purchasing preference—Public Works contracts.

Notwithstanding what is otherwise provided in this article and where not otherwise excepted as set forth in this article and consistent with the competitive bidding requirement of Charter section 81, a local preference shall be applied to public works contracts as follows:

(a) For purposes of this section only and the application of the local preference for public works contracts, a local business provider shall be defined as:

- (1) Having a current City of Salinas business license;
- (2) Having its principal business office established at an office space and not a personal residence located within the tri-county area (Monterey County, San Benito County, Santa Cruz County) and employing at least one full-time employee within the tri-County area;
- (3) Being current on all City of Salinas tax, fees, assessments, and fines;
- (4) Not subject to enforcement action by the City or in litigation with the City;
- (5) Began doing business within the tri-County area at least two years prior to the City's inviting bids or quotations for the respective project OR is a newly established business enterprise which is owned by an individual(s) formerly employed by a local business enterprise, as defined in this section, for at least two (2) years immediately prior to the issuance of either a request for competitive bids or request for qualifications from the City;
- (6) Submitting a declaration of local business enterprise on a form provided by the City.

(b) In determining the lowest responsible, responsive bidder, bidders who qualify as a local business enterprise shall receive a five-percent preference. If application of the five-percent preference results in a responsible, responsive local business enterprise's bid being at or lower than the non-local business enterprise, the contract shall be awarded to the local business enterprise at the local business enterprise's bid amount.

(c) If equal bids are submitted by a local business enterprise and a non-local business enterprise after application of the five-percent local preference, the contract shall be awarded to the local business enterprise.

Sec. 12-28.060. Minimum purchase or contract value.

The provisions of this article and the local purchasing preference established pursuant to this article shall be applicable to purchases or contracts in excess of five thousand dollars (\$5,000).

Sec. 12-28.070. Exceptions to local purchasing preference.

The local preferences established in this article shall not be applicable to:

1. Public works contracts where the funding or applicable regulations prohibit the use of preferences.

2. Grant agreements where use of a preference is prohibited.
3. Agreements for the design, fabrication or installation of art.
4. Sole source purchases where the supplies, materials or equipment can be obtained from only one (1) vendor or manufacturer.
5. Unique services purchases where the purchasing agent and the City Council determine that an unusual circumstance or situation exists that make the application of the local preference contrary to the public interest.
6. Leases, licenses or other interests in property.
7. Cooperative purchasing.
8. Emergency purchases.
9. Purchases where the funding source prohibits the use of preferences.

Sec. 12-28.080. Authority of City Council to purchase.

Notwithstanding what is otherwise set forth in this article, pursuant to the authority granted pursuant to City Code section 12-27, upon approval of the City Council, the purchasing agent shall have the power to purchase for and on behalf of the City any supplies, material, equipment or contractual service without application of the local preference.

Sec. 12-28.090. No exemption from local sales tax.

The application of a local preference as set forth in this article shall not exempt any local business enterprise to which a contract is let or awarded from having to pay all applicable federal, state or local sales tax.

Sec. 12-28.100. Violations and sanctions.

Any person that submits false information or fails to disclose material information in order to qualify for the local preference pursuant to this article shall:

- (a) Pay the City any difference between the contract amount and what the City's cost would have been if the contract had been properly awarded; and
- (b) Be prohibited from bidding on any City contract or receiving any City contract for a period of three years of the discovery of facts supporting the same.
- (c) Any person who is sanctioned pursuant to this section may appeal the sanction to the City Council. Appeals shall be in writing, shall be submitted to the City Clerk within ten days of the date of the sanction, and shall clearly state the basis of the appeal. Grounds not stated in the appeal may not be considered.

Sec. 12-28.110. Reporting and Record-Keeping.

- (a) No less than annually, City staff will report to the City Council the total number and dollar amounts of contracts awarded and the dollar percentage of distribution between no-local and local vendors. When the contracts are presented to the City Council for approval, City staff will indicate in its report whether the vendor selected is local or non-local.

- (b) Any person claiming to be a local business enterprise as defined in this article shall so certify in writing under penalty of perjury on a declaration of local business enterprise form provided by the City that they meet all the criteria listed in City Code section 12-28.020, subsection (d). A local business enterprise shall be required to submit such declaration on an annual basis and shall immediately notify the City's Finance Director if there is any change in circumstances which would disqualify it from application of the local preference. The City shall not be responsible or required to verify the accuracy or any such certifications and shall have sole discretion to determine if a person meets the definition of "local business enterprise."

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held invalid by a court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases, be declared invalid.

SECTION 4. Effective Date. This ordinance shall become effective on the thirty-first day following its adoption.

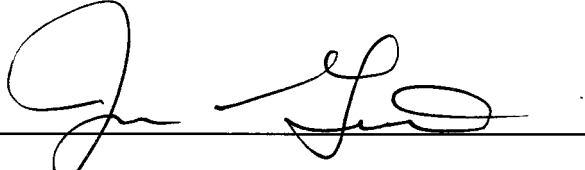
PASSED AND ADOPTED this 21st day of October 2014, by the following vote:

AYES: Councilmembers: Barrera, Castañeda, Craig, De La Rosa, Lutes, McShane and Mayor Gunter

NOES: None


ABSENT: None

ABSTAIN: None




Joe Gunter, Mayor

ATTEST:



Patricia M. Barajas, City Clerk

APPROVED AS TO FORM:



Christopher A. Callihan, City Attorney

Proof of Publication

(2015.5 C.C.P.)

CITY OF SALINAS

NOV 04 2014

CITY CLERKS OFFICE

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**State Of California ss:
County of Monterey**

Advertiser: SALINAS, CITY CLERK
200 LINCOLN AVE
SALINAS, CA 93901:

Patricia Barajas

RE: Public Notice City of Salinas Article
Ord 2552

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I hereby certify that the attached advertisement appeared in said newspaper on the following dates:

Newspaper: Salinas Californian

10/30/2014

I acknowledge that I am a principal clerk of the printer of said paper, which is published in the City of Salinas, County of Monterey, State of California. The Salinas Californian is printed and published daily, except Sunday and has been adjudged a newspaper of general circulation by the Superior Court of the County of Monterey, State of California. El Sol is printed and published weekly on Saturday and has been adjudged a newspaper of general circulation by the Superior Court of Monterey, State of California.

I certify (or declare) under penalty of perjury that the foregoing is true and correct. Executed on this 30 day of Oct, 2014 at Salinas, California.

C. Clark

Declarant

Our Order # 0000292705
Net Order Cost \$ 108.90

Public Notice
City of Salinas

Article III of Chapter 12 of the Salinas City Code is hereby amended relating to the City's existing local purchasing preference broadening its applicability to more categories of goods and services including public works contracts. Ordinance 2552 was passed and adopted by the Salinas City Council on October 21, 2014. For additional details concerning the amendment or to view the ordinance in its entirety, contact the City Clerk's Office at 200 Lincoln Avenue, Salinas, CA 93901, (831) 758-7381. Hearing impaired or TTY/TDD text telephone users may contact the City by dialing 711 for the California Relay Service (CRS) or by telephoning any other service providers' CRS telephone number.

Oct. 30, 2014 (292705)