

researching procurement authorizations, it has come to our attention that the 1990 and 1988 Resolutions are outdated and need to be updated to reflect contemporary and longstanding practices.

A. City Manager Delegation:

Resolution No. 1453 adopted by City Council in 1990 delegates certain contracting matters to the City Manager. Staff recommend updates to the resolution that address public works contracts and property disposition as described below.

1. Public Works Contracts:

City Council has delegated authority for the purchase of goods, services, insurance and construction to the Purchasing Agent consistent with the State procurement law. However, in Resolution 1453 and in City Council Section 3-3-5, City Council reserved unto itself the authority to approve and authorize the execution of “public improvement and public works contracts”. It is unclear from the resolution or the Code what the difference is between all contracts for goods and services and public improvement and public works contracts. Therefore, there is ambiguity that needs to be resolved.

Currently, City Council approves the Capital Improvement Plan authorizing the funding for all projects which is updated through monthly reports to City Council. City Council approves the funding for the project which authorizes the project to move forward. The Purchasing Agent then goes through a process for acquiring the services that is regulated by the State and local procurement law and has very little discretion. Since City Council has the authority to fund or not fund the project, it still holds the ultimate authority regarding whether the City funds are spent or not. Council also establishes policies and plans that form the policy basis for many construction projects, as well as major vertical construction projects (recreation centers, fire stations, etc.) often require Council approved Development Special Use Permits (DSUPs).

Therefore, staff recommends removing the references to the reservation of the City Council authority in the Resolution and deleting Section 3-3-5 of the City Code to make it clear that City Council has delegated the ability to award public improvement and public works contracts to the Purchasing Agent. Other contract approval authority otherwise not reserved for the Purchasing Agent would remain with the City Manager (or his designee) as is now the case. This change to the City Code is proposed as part of the proposed ordinance to update to the procurement law being introduced on the same docket as these resolutions.

2. Leases of Public Property:

The State Code requires certain actions by the City Council in order to dispose of public property including a public hearing followed by either an ordinance or a resolution by City Council for the sale of City property and a public hearing held by City Council for the lease of public property for any number of years. Therefore, these items may not be delegated to the City Manager and are not delegated in the current Resolution 1453. Staff recommends one clarifying change to the Resolution which makes clear that since all leases and licenses need to have a public hearing before City Council, there is no need to delegate leases of three years or less to the City Manager.

3. Property Acquisition:

City Council has the authority to acquire private property for public use. There are no actions other than a legislative action required by City Council in order to effect these types of transactions. Currently, the City Council has reserved unto itself the authority to acquire public property. This includes the acquisition of easements on private property for public parks, open space, ingress and egress for the public, sewers, etc. Typically, City Council reviews and accepts these types of easements through land use approvals. However, there are circumstances where a private entity may want to transfer an easement to the City when only a site

plan approved by Planning Commission is required or when a land use approval is not required. If any costs are associated with acquisition these easements, the cost would either need to be approved by City Council in an appropriation or already within a budgeted item approved by City Council, therefore, City Council retains the ability to decide whether the City is willing to take on any monetary burden. Therefore, Staff recommends that City Council delegating the acceptance of easements granted to the City on private property to the City Manager.

B. City Attorney Delegation:

Resolution No. 1329 approved by City Council in 1988 and not amended since then delegates certain authority to settle litigation to the City Attorney. Staff recommends amending this resolution to update the maximum amount that the City Attorney is authorized to settle a case for consistent with increased costs of damages.

Resolution No. 1329 currently delegates to the City Attorney the authority to enter into settlements for \$10,000 or less. The intent of this delegation of authority was to allow the City Attorney to have the ability to enter into small settlements where it is in the City's best interest to do so. However, in the almost 30 years since this resolution was passed, the costs of damages such as medical costs or values of real estate have increased significantly making it unlikely for a case to settle for less than \$10,000. Additionally, when a case is being negotiated for settlement if the claimant knows they need to go to City Council to get approval anyway, then they may be inclined to ask for as much as they can. On the other hand, if the limit was increased to \$50,000 there is room for negotiation that may keep the settlement lower.

As an example, the City has on average about 8 to 10 personal injury or property damages cases a year. Of those cases, about 2 to 4 of the cases are settled rather than going to litigation. Approximately 1 to 2 of the cases settle for under \$10,000. Another 1 to 2 settle for under \$50,000.

Therefore, in order to continue to allow the City Attorney to have the ability to address the smaller claims made against the City, the maximum should be increased to \$50,000 consistent with the increase in costs over the years.

CONCLUSION: Staff believes the suggested updates to these Resolutions will (1) bring them into alignment with the current practices and allow staff to follow through with the intent of the delegations, (2) and in the case of settlements, increases the delegated amount to a more appropriate level.

FISCAL IMPACT: The increase in the settlement delegation amount may result in lower settlement amounts in some cases.

ATTACHMENTS:

1. Proposed Resolution delegating authority to the City Manager
2. Resolution 1453 (1988)
3. Proposed Resolution delegating authority to the City Attorney
4. Resolution 1329 (1990)

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