

ORDINANCE NO. 4169

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH
AMENDING SECTIONS 3.03.020, 3.03.060 AND 3.03.080 OF CHAPTER 3.03 OF THE
HUNTINGTON BEACH MUNICIPAL CODE RELATING TO
PROFESSIONAL SERVICES CONTRACTS

The City Council of the City of Huntington Beach does hereby ordain as follows:

WHEREAS, Sections 3.03.020, 3.03.060 and 3.03.080 of Chapter 3.03 of the Huntington Beach Municipal Code (HBMC) as well as AR 228 provides the process to enter into Professional Services Contracts in Huntington Beach. Generally, the process requires that prior to entering into a contract, the Director of the Department must request written proposals from not less than three available qualified consultants known as the "RFP" process. The Director must then evaluate the Consultants and can only hire the Consultant after vetting based on criteria established in HBMC Chapter 3.03.

The City Attorney is charged representing the City when the City is a party to litigation. On some occasions, litigation requires the City Attorney to engage professionals in the form of specialized attorneys or subject matter experts to assist in the litigation.

The California Evidence Code, Code of Civil Procedure, Rules of Court and Professional Conduct, the Ralph M. Brown Act as well as a host of other State Law and rules govern the confidentiality of attorney work, including the retention of legal services and experts, which are both subject of attorney-client and attorney work product privileges.

Pursuant to Section 401 of the Charter of the City of Huntington Beach, the City Manager is tasked with ensuring the financial condition of the City and to maintain a centralized purchasing and procurement system for all City offices, departments, and agencies.

Sections 3.03.020, 3.03.060 and 3.03.080 of Chapter 3.03 of the Huntington Beach Municipal Code Chapter contracting rules are being modified to protect attorney-client and attorney work product privileges while still providing for the prudent stewardship of public funds.

SECTION 1. Section 3.03.020 of the Huntington Beach Municipal Code is hereby amended to read as follows:

3.03.020 Definitions

"Consultant" means any provider of services under this chapter as an individual, partnership, corporation or otherwise.

"Director" means the department head or his or her designee as approved by City Council resolution, vested with the authority to administer the provisions of this chapter with respect to contracting for services.

"Professional Services" means those services that involve the exercise of professional discretion and independent judgment based on an advanced or specialized knowledge, expertise or training gained by formal studies or experience or services which are not readily or efficiently procured by competitive bidding pursuant to Chapter 3.02. Such

services shall include but not be limited to those services provided by appraisers, architects, law firms retained for general legal counsel for the handling of lawsuits externally ("Retained Law Firm"), engineers, instructors, insurance advisors, physicians and other specialized consultants.

"Expert Services" means uniquely and singularly qualified legal experts, medical experts, or other experts retained to assist with legal matters handled in-house by the City Attorney's Office.

SECTION 2. Section 3.03.060 of the Huntington Beach Municipal Code is hereby amended to read as follows:

3.03.060 Procedure

The procedure for the contracting of services is as follows:

- A. The director of the department primarily responsible for the particular project shall prepare a written statement defining the necessity and scope of the project, and submit it to the Director of Finance. Upon approval by the City Manager and the Director of Finance, the director shall prepare a written statement of the specifications, conditions and other requirements for the requested services and provide a copy to consultants who may wish to perform the service.
- B. Except as identified in Section 3.03.080, the director, or his or her designee, shall request written proposals from not less than three available qualified consultants. He or she shall thereafter conduct discussions with them regarding the project if such discussions are indicated by the complexity of the project, and based upon the selection guidelines established in Section 3.03.040 and the criteria established by him or her, select the consultant from the responsible proposals submitted to him or her, deemed to be the most highly qualified to provide the services required.
- C. If the procurement has been budgeted, contractual agreement shall be negotiated with the consultant subject to final approval as to form by the City Attorney, and as to content by the City Manager.
- D. If the procurement has not been budgeted, then the director shall prepare a request for appropriation for the City Manager to submit to the City Council in the usual prescribed manner.
- E. The City Attorney shall counsel and advise City officials in the implementation of this chapter.
- F. Retained Law Firm, Professional Services Agreements. The procurement of agreements for retained law firms for handling lawsuits externally shall follow the bid processes set forth in this Chapter and any Administrative Regulations related thereto as outlined in Sections 3.03.040 and 3.03.060(A-E) of the Code.

To best protect the City's interests and confidentiality in legal matters, the following procedures will be utilized for procurement:

- 1. Any such agreement that exceeds \$100,000 shall require City Council authorization, which may be obtained in Closed Session pursuant to the Ralph M. Brown Act.
- 2. Prior to submission to the City Council for review and approval in Closed Session, proposed agreements exceeding \$100,000 must first obtain approval from the Director

of Finance to ensure availability of funds pursuant to the administrative regulations regarding professional services contracts. Executed agreements for Retained Law Firms for general counsel for the handling of lawsuits externally require authorized signatures from the Mayor and City Clerk just as with other professional services agreements that exceed \$100,000.

3. The City Attorney will provide a quarterly report with a list of all Retained Law Firms and Expert Services contracts entered into for that quarter, in Closed Session, pursuant to the Ralph M. Brown Act, in a format and manner consistent with the quarterly reporting of other professional services contracts for the City. To ensure the protection of the City's interests and confidentiality in all legal matters, such quarterly reports will remain in a secure location and deemed Confidential.

4. To ensure the protection of the City's interests and confidentiality in all legal matters, executed Retained Law Firm and Expert Services agreements will remain in a secure location by the City Attorney, City Clerk and Director of Finance.

SECTION 3. Section 3.03.080 of the Huntington Beach Municipal Code is hereby amended to read as follows:

3.03.080 Exempt and Emergency Procedures

The need for certain budgeted and emergency and exempted procurements are recognized.

A. An emergency shall be deemed to exist if:

1. There is a great public calamity.
2. There is immediate need to prepare for national or local defense.
3. There is a breakdown in machinery or an essential service which requires the immediate attention of a professional in order to protect the public health, safety or welfare.
4. An essential, departmental operation affecting the public health, safety or welfare would be greatly hampered if the prescribed procedure would cause an undue delay in the procurement of the needed services.

In the case of an emergency which requires the immediate retention of a professional consultant, the City Manager may authorize the department director to secure by the open-market procedure, at the lowest obtainable price consistent with professional standards, any professional service regardless of the amount of the expenditure.

B. Other Interagency Agreements. Procurements utilizing contractual agreements maintained by other public agencies for the provision of professional services to such agencies are exempt from the requirements of this chapter except that the provisions of Section 3.03.060(C) shall apply in every case and so long as such other agency complied with its own professional services contract requirements as approved by the department director.

C. All contracts for performance of professional services for the City which exceed \$30,000.00 shall be awarded in accordance with the procedures of this Code. All contracts for professional services which do not exceed \$30,000.00, with prior approval of the Director of Finance or his or her designee, may be let without competitive bidding or negotiation.

D. Contracts for Expert Services.

1. The City Attorney is authorized to enter into Expert Service Agreements on behalf of the City, for which an appropriation has been made, and subject to approval by the City Manager and Director of Finance. Such procurements may be let without competitive bidding or negotiation, not to exceed \$100,000, for the contracting of Experts Services to assist with legal matters handled in-house by the City Attorney's Office, with supporting documentation justifying the need for a waiver of competitive bidding requirements for each Expert Service.

2. For procurements with Expert Services exceeding \$100,000, City Council approval is required. City Council approval may be obtained during Closed Session, pursuant to the Ralph M. Brown Act. Executed agreements for Expert Services require authorized signatures from the Mayor and City Clerk just as with other professional services agreements that exceed \$100,000.

SECTION 4. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2018.

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

Don V. Lott
City Attorney

REVIEWED AND APPROVED:

INITIATED AND APPROVED:

City Manager

Sam Anderson
Assistant City Manager