



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano
Julia H. Cooper

SUBJECT: SEE BELOW

DATE: September 13, 2021

Approved

Date

09/24/21

SUBJECT: AMENDMENT TO CHAPTER 4.10 OF THE SAN JOSE MUNICIPAL CODE RELATED TO THE DEBARMENT OF CONTRACTORS

RECOMMENDATION

- (a) Approve an ordinance amending Chapter 4.10 of the San José Municipal Code to consolidate, streamline, update and clarify the manner in which the City will conduct contractor debarments.
- (b) Adopt a resolution repealing Resolution No. 70592, which established procedures for administrative debarment hearings that have been incorporated into Chapter 4.10, as amended, and are therefore no longer needed.

OUTCOME

Approval of the recommendation will consolidate under a single Chapter of the San José Municipal Code ("Municipal Code") all requirements for conducting contractor debarments, streamline the process, and clarify and update certain language to make the Municipal Code for how to conduct contractor debarments easier for staff and the contracting community to understand.

BACKGROUND

Debarment is an administrative determination that a contractor is barred from doing business with the City for a specific length of time. The intent is to protect the integrity of the City's contracting process and ensure the proper expenditure of public funds by disqualifying contractors who do not meet the standards of doing business with the City of San José. The process to debar a contractor may be initiated for a number of serious causes, including the submittal of a false claim, failure to comply with terms of a contract, violation of law, lack of

financial responsibility, and lack of business integrity or honesty. Contractors who have been debarred by the City are prohibited from bidding on City contracts for the length of the debarment.

The City cannot debar a contractor without providing the contractor with certain due process protections. The minimum due process protections include notice of the reasons for debarment, the opportunity to contest the debarment and a written determination of the basis for the debarment.

The current Municipal Code provisions regarding contractor debarment were adopted in 1998 and have not been amended since that time. The provisions allow debarment for up to three (3) years. Debarment provisions apply to all City procurements, including Capital Improvement Project (“CIP”) procurements conducted by the Department of Public Works; supplies, materials, equipment, and services procurements conducted by the Department of Finance; and department-led consulting procurements. A supplementary resolution, Resolution No. 70592, established procedures for administrative debarment hearings was adopted in 2001.

In 2019, the Department of Public Works undertook its first formal debarment proceedings since 1998 using the procedures identified in Chapter 4.10 of the Municipal Code and in Resolution No. 70592. Before 2019, the City had successfully negotiated settlements that included provisions prohibiting the contractor from doing business with the City for a fixed period of time. The Public Works Department’s experience using Chapter 4.10 resulted in it identifying several ways in which the current provisions could be streamlined, updated and clarified, which forms the basis of the recommendations in this memo.

ANALYSIS

The proposed ordinance changes the debarment process in several ways, the most significant of which are as follows:

- A. *Additional City officials may commence debarment proceedings*: The current ordinance requires the City Manager commence all debarment proceedings. As a practical matter, the City Manager would rely on the recommendation of City staff to start a debarment proceeding.

The proposed ordinance would also authorize City department heads and City Council Appointees to commence debarment proceedings related to contracts that they are authorized to award or execute or are responsible for administering and managing. This change is intended to streamline the process and enable City officials most familiar with the contracts and contractors in question to determine whether proceedings should be initiated.

B. *An informal administrative hearing has been added:* The proposed ordinance adds a requirement for the City official who has initiated debarment proceedings to meet informally with the contractor in question before the formal administrative hearing takes place. The informal meeting allows both sides an opportunity to resolve the issue(s) at the heart of the proposed debarment without need for further debarment proceedings. This type of informal meeting is used by the City in other areas, such a prevailing wage enforcement.

C. *The appeal to Council has been eliminated:* The current ordinance allows the contractor to appeal the hearing officer's decision to the City Council, and requires the appeal be a *de novo* hearing, meaning the appeal must start from scratch. The contractor can seek judicial review of the debarment only after the City Council's *de novo* hearing.

Under the proposed ordinance, the hearing officer's decision is the final administrative determination by the City. There would be no right to appeal to Council. This means the contractor could seek judicial review of the debarment following the hearing officer's decision. This change is intended to streamline the debarment process while providing contractors with the necessary due process. It should be noted that the proposed ordinance retains a provision allowing a debarment to be modified during the debarment period, should the facts surrounding the debarment change.

D. *The procedures for administrative debarment hearings have been incorporated into the Municipal Code:* Currently, the procedures for administrative debarment hearings are listed separate from Chapter 4.10, in Resolution No. 70592. Consolidating the hearing procedures with the rest of the debarment procedures in Chapter 4.10 – and clarifying much of the language – is intended to make the process easier for both City staff and contractors to understand.

E. *Increased Debarment Period:* The current ordinance allows for debarment for a period of up to three (3) years. The proposed ordinance would allow for debarment for a period of up to five (5) years.

CONCLUSION

The Department of Public Works, the Finance Department, and the City Attorney's Office continue to find ways to modernize, streamline, and clarify procurement processes. The proposed ordinance would implement changes to Chapter 4.10 of the Municipal Code, making process improvements to the way in which the City handles contractor debarments.

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EVALUATION AND FOLLOW-UP

No additional follow up action with the City Council is expected at this time.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the October 5, 2021 Council Meeting.

COORDINATION

This proposed ordinance and memorandum has been coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

The proposed recommendation has no fiscal impact.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

/s/
MATT CANO
Director of Public Works

/s/
JULIA H. COOPER
Director of Finance

For questions, please contact Matt Loesch, Assistant Public Works Director, at (408) 975-7381.