



## Legislation Text

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**File #:** RES 17-0095, **Version:** 1

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**TO:**

Honorable Mayor and Members of the City Council

**THROUGH:**

Mark Danaj, City Manager

**FROM:**

Stephanie Katsouleas, Public Works Director

**SUBJECT:**

Resolution Declaring the City's Intent to Become Subject to the Uniform Public Construction Cost Accounting Act for all Public Projects; Ordinance Adding Chapter 2.37 to the Manhattan Beach Municipal Code and Providing Informal Bidding Procedures (Public Works Director Katsouleas).

**ADOPT RESOLUTION NO. 17-0095**

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**RECOMMENDATION:**

Staff recommends that City Council adopt a resolution declaring its intent to become subject to the Uniform Public Construction Cost Accounting Act (UPCCAA or Act) for all public projects as defined in Public Contracting Code § 22002(c) and introduce an ordinance adding Chapter 2.37 to the Manhattan Beach Municipal Code, providing informal bidding procedures (Attachment 1, Draft Resolution, Attachment 2, Draft Ordinance and Attachment 3 Public Contracting Code § 22022)

**EXECUTIVE SUMMARY:**

The City of Manhattan Beach has a robust Capital Improvement Program (CIP), with 137 public projects valued at \$125 million planned over the next five years. However, the City lacks the authority to employ efficiencies available under the Uniform Public Construction Cost Accounting Act (UPCCAA) for public projects valued between \$5,000 and \$175,000. By adopting a resolution electing to become subject to the UPCCAA procedures, and an ordinance providing informal bidding procedures, staff can save up to three month or more in implementing small capital and repair projects that currently require undertaking formal bidding procedures. This staff report provides an overview of the UPCCAA and its potential benefits, and recommends that City Council adopt the proposed resolution and introduce the proposed ordinance, which if approved, will allow City staff to begin utilizing UPCCAA procedures in September, 2017.

**FISCAL IMPLICATIONS:**

There are no fiscal implication associated with electing to become subject to the Uniform Public Construction Cost Accounting Act and adopting informal bidding procedures, although there are potential future savings in project implementation by adopting the proposed ordinance.

**BACKGROUND:**

### **Public Contracting Code: Bidding Requirements for Public Projects.**

California's Public Contract Code (PCC) § 20160 - 20174 identifies the rules governing contracting by local municipalities and outlines very specific criteria that must be followed when advertising for and awarding public projects valued at over \$5,000 (known as formal bidding procedures). Under this section, "Public project" is defined as:

- (a) A project for the erection, improvement, painting or repair of public buildings and works.
- (b) Work in or about streams, bays, waterfronts, embankments or other work for protection against overflow.
- (c) Street or sewer work except maintenance or repair.
- (d) Furnishing supplies or materials for any such project, including maintenance or repair of streets or sewers.

This definition is sufficiently broad and applicable to the overwhelming majority of public improvement, restoration and repair projects carried out by Public Works staff.

The requirements contained in PCC §20160-20174 and placed on general law cities, such as Manhattan Beach, are very formal and often times cumbersome. They provide virtually no flexibility in obtaining quotes for and expeditiously implementing smaller public projects, such as those repairs and/or improvements valued over \$5,000 but less than \$45,000. The \$5,000 public bidding threshold was established decades ago by the California Legislature and has never been adjusted for inflation. Notably, formally bidding projects with such a low threshold can make it difficult for staff to secure lower value contracts at reasonable prices because some contractors are simply unwilling to expend the time, money and effort necessary to complete all the necessary paperwork and bonding requirements without inflating their profits. Consequently, it is not uncommon for the City to receive inflated bids for solicitations on lower value projects.

To address this challenge, the State Legislature established the Uniform Public Construction Cost Accounting Act (UPCCAA; Public Contract Code § 22000 - 22045) in 1983 to provide alternative bidding procedures with higher dollar thresholds that would account for escalating construction costs over time. More than 225 cities statewide and nearly half of Los Angeles County's general law cities have already elected to adopt the UPCCAA procedures due to the enhanced ability to quickly implement smaller public projects that are valued between \$5000 and \$45,000.

### **What Are UPCCAA Alternative Bidding Procedures?**

Currently, under the UPCCAA, any work that meets the definition of a public project and is valued at \$45,000 or less may be:

- Performed by the employees of a public agency by force account. This gives Manhattan Beach the flexibility to utilize its own staff for repair projects in lieu of bidding.
- By negotiated contract. This means we can obtain spot quotes rather than developing detailed plans and specifications for small repairs and renovations, which can result in addition financial savings to the City and rapid implementation.
- By purchase order. We can simply select someone through an on-call service and issue a purchase order for routine work that falls within the definition of public project (e.g. elevator, electrical and HVAC repairs).

Public projects valued between \$45,000 and \$175,000 may be let to contract using informal bidding procedures set forth in the Act (which allow for advertising to a short list of qualified vendors); and public projects valued at greater than \$175,000 must be formally bid under Public Contracting Code guidelines. These dollar thresholds are reviewed and increased periodically by the State Legislature based on inflation. UPCCAA procedures also:

- Prohibit splitting projects into smaller projects to evade provisions of the code;
- Establish notice and advertising requirements for informal bidding of public projects; and
- Establish criteria for the rejection of bids.

In order for Manhattan Beach to be able to utilize the alternative bidding procedures allowed under the UPCCAA and enjoy the streamlined bid/award process it affords, the City must subscribe to uniform construction cost account policies and procedures developed by the California Uniform Construction Cost Accounting Commission. Specifically, a local agency must (1) adopt a resolution electing to become subject to the UPCCAA and notify the State Controller of that election, and (2) adopt an ordinance enacting the informal bidding requirements set forth in the UPCCAA. The additional administrative requirements outlined in the proposed ordinance will have a minimal impact on staff as most of those requirements are already being implemented (e.g., maintaining a list of qualified vendors, tracking contractor costs, etc.)

#### **DISCUSSION:**

Staff estimates that by adopting this ordinance, a significant number of public projects (namely repairs and renovations) valued under \$45,000 would be implemented up to three months faster than under the City's current bidding procedures. This would provide staff tremendous flexibilities to respond/expedite smaller capital construction and repair projects using expedited procedures not currently available under Manhattan Beach's Municipal Code. Note that the UPCCAA is particularly useful for addressing unanticipated repairs and emergencies, and for building renovations. Examples of such projects that can and often cost more than \$5000 but less than \$45,000 include:

- Replacement of boilers and HVAC units;
- Repairs to and/or replacement of miscellaneous mechanical and building equipment; elevator mechanical and electrical systems; carpet, windows and deteriorated plumbing; sidewalk and concrete; roof structures; minor sewer main work; water valves; pump station mechanical equipment;
- Park fencing replacement; playground equipment upgrades and repairs;
- Exterior building painting; and
- Repair of street depressions, pot holes repairs, striping and minor paving projects.

As proposed, the current thresholds for bidding and awarding contracts for public projects, and their corresponding benefits, would be:

<b><u>Public Project Cost</u></b>	<b><u>Method of Implementation</u></b>	<b><u>Comments</u></b>
<b>Level 1:</b> \$0 - \$45,000	Force account, negotiated purchase order bids/specs,	Allows projects to be spot, contracts or quoted, saving time in preparing

advertising and awarding contracts.

## Level 2

\$45,000 - \$175,000

Informal bidding procedures allowed

City may utilize a pre-determined list of qualified contractors or publish in certain trade journals designated by the Construction Cost Accounting Commission

## Level 3

Over \$175,000

Formal bidding required

No additional benefits

It is worth noting that the California Uniform Cost Accounting Commission (Commission) is charged with reviewing construction costs every five years and periodically recommends increases to the three bidding thresholds listed above to account for inflation. The most recent increase approved occurred six years ago in 2011, which raised the Level 1 rate from \$30,000 to \$45,000 and the Level 2 rate cap from \$125,000 to \$175,000. The proposed draft ordinance recommends that the City Manager be given signatory authority for Level 1 projects consistent with the threshold adopted by the Commission, inclusive of any future increases approved by the Commission. This would allow Manhattan Beach to continue to use the streamlined process and flexibilities of the UPCCAA.

## Design Immunity For Level 1 Public Projects

Design Immunity is codified in Government Code §830.6, which sets forth the design immunity defense for public works projects awarded by the City. That section states:

“Neither a public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been **approved** in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved, if the trial or appellate court determines that there is any substantial evidence upon the basis of which (a) a reasonable public employee could have adopted the plan or design or the standards therefore or (b) a reasonable legislative body or other body or employee could have approved the plan or design or the standards therefore. (Emphasis added).

In order to trigger the design immunity defense, either City Council or a designated staff person must approve the plans and/or designs prior to construction. Currently, City Council fills this role by approving the plans and/or designs at the same time it awards a project. However, such approval could also be delegated to the Public Works Director and/or City Engineer for those projects falling in the Level 1 category described above, because public projects of \$45,000 or less would not require Council action.

Therefore, in order to ensure that the design immunity afforded by section 830.6 attaches to those smaller projects, staff also recommends that the ordinance authorize the Public Works Director

and/or City Engineer to approve plans and designs for those public projects valued at less than \$45,000. In the absence of such a delegation, staff would be required to bring every minor public project to the Council for design approval, resulting in unnecessary delays and negating the core efficiencies that the UPCCAA election provides. As the official charged with overseeing all public works in the City and as a licensed Professional Engineer, the Public Works Director is qualified to exercise discretionary authority over the approval of plans and designs for public projects.

#### **POLICY ALTERNATIVES:**

Do not adopt the proposed ordinance electing to become subject to the Uniform Public Construction Cost Accounting Act for public projects as defined in Public Contracting Code Section 22002(c).

**PROS:** Staff will not have to expend any additional time on this activity.

**CONS:** The City will forego the flexibilities provided in the UPCCAA, thereby increasing the level of effort and time needed to implement small capital projects and repairs.

#### **CONCLUSION:**

Therefore, staff recommends that City Council:

1. Adopt the attached resolution declaring its intention to become subject to the UPCCAA for public projects; and
2. Introduce and waive further reading of the attached ordinance, adding Chapter 2.37 to the Municipal Code and adopting informal bidding procedures, including delegating to the Public Works Director and/or City Engineer authority to approve plans and designs for Level 1 projects (currently, those valued at under \$45,000).

Approval of these recommendations will allow staff to carry out smaller projects much more quickly, which in turn will allow us to dedicate more resources to our larger capital projects. We also believe it will ultimately result in cost savings to the city due to reduced time and expense a contractor will need to invest to prepare a bid response and provide the corresponding bid bond.

#### **PUBLIC OUTREACH/INTEREST**

No public outreach was conducted on this topic.

#### **ENVIRONMENTAL REVIEW**

The City has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA. Thus, no environmental review is necessary.

#### **LEGAL REVIEW**

The City Attorney has reviewed this report and provided the legal analysis necessary to adopt the

proposed resolution and draft ordinance.

**Attachment/Attachments:**

1. Resolution No. 17-0095
2. Draft Ordinance
3. UPCCAA Frequent Asked Questions
4. List of Participating Agencies (Web-Link Provided)
5. PowerPoint Presentation