

ORDINANCE 216-2
AN ORDINANCE OF THE CITY OF BANE BERRY, TENNESSEE
REPLACING ORDINANCE 93-4 AND REVISING BANE BERRY'S PURCHASING, INVENTORY AND
DISPOSITION PROCEDURES FOR THE PROCUREMENT OF REQUIRED MATERIALS, CONTRACTS, ETC.

WHEREAS, Tennessee Code Annotated Title 6, Chapter 56, the Municipal Purchasing Act of 1983, authorizes cities to establish by ordinance competitive bidding and advertising limits, up to a specified amount; and

WHEREAS, the Charter of the City of Baneberry, codified as TCA 6-19-104, provides that the City may establish competitive bidding and advertising limits of up to ten thousand dollars (\$10,000); and

WHEREAS, a previous ordinance of the City of Baneberry established such limits at five thousand dollars (\$5,000) in 1993, and also provided that purchases between this amount and five hundred dollars (\$500) shall be competitively bid; and

WHEREAS, purchasing power has decreased significantly in the more than 20 years since 1993, and therefore such ordinance is in need of further revision;

NOW, THEREFORE, BE IT ORDAINED by the City of Baneberry that Ordinance 93-4 is hereby repealed and replaced in its entirety by this ordinance as follows:

Section 1. PROCEDURES ESTABLISHED. The purchasing, contracting, and property control procedures, conditions and limits for the City are hereby established by this ordinance.

Section 2. IMPLEMENTATION. Nomenclature, procedures, and definitions, as required for the implementation of this ordinance are as follows:

2-101. PURCHASING AGENT: The City Manager, or an officer of the City designated by the City Manager, shall be the purchasing agent for the City.

Except as otherwise provided in this policy, all supplies, materials, equipment and services of any nature whatsoever shall be approved and acquired by the purchasing agent or his/her representative.

The purchasing agent shall be responsible for:

1. The purchase of supplies, materials and equipment and contractual services required by any commission, office, department or agency of the City.
2. The storage and distribution of all supplies, materials and equipment required by any commission, office, department or agency of the City.
3. Establishing written specifications, whenever practicable, for supplies, materials and equipment required by any commission, office, department or agency of the City. Such specifications shall be definite and certain and shall permit competition.

4. Maintaining, whenever practicable, a perpetual inventory record of all materials, supplies or equipment stored in store rooms or warehouses.
5. Soliciting and maintaining an up-to-date list of qualified suppliers who have requested their names to be added to a "bidders list." The purchasing agent shall have authority to temporarily remove the names of vendors who have defaulted on their quotations, attempted to defraud the City, or who have failed to meet established specifications or delivery dates.
6. Obtaining as full and open competition as possible on all purchases, contracts and sales.

2-102. GENERAL PROCEDURES: Competitive bids on all supplies, materials, equipment, services and contracts for public improvements, except those specified elsewhere in this policy, shall be obtained, whenever practicable, and the purchase or contract awarded to the lowest responsible bidder, provided that any or all bids may be rejected as prescribed by this policy.

2-103. REJECTION OF BIDS: The purchasing agent shall have the authority to reject any and all bids, parts of all bids, or all bids for any one or more supplies or contractual services included in the proposed contract, when the public interest will be served thereby. The purchasing agent shall not accept the bid of a vendor or contractor who is in default on the payment of taxes, licenses, fees, or other monies of whatever nature that may be due the City by said vendor or contractor.

2-104. CONFLICT OF INTEREST: All officials, officers, employees and/or volunteers who participate in any phase of the purchasing function are to be free of interests or relationships which are actually or potentially detrimental or conflictual to the best interests of the City, and shall NOT engage in or participate in any commercial transaction involving the City, in which they have a significant interest.

No member of the City Council, officer, employee or volunteer of the City shall have a financial interest in any contract or in the sale to the City or to a contractor supplying the City of any land or rights or interests in any land, material, supplies, equipment, or services; except when a majority of the City Council determines such exception is in the best interest of the City; provided, that no councilmember whose interest is involved shall vote on the question. Any willful violation of this section shall constitute malfeasance in office, and any officer, employee or volunteer of the City found guilty thereof shall there by forfeit his office or position. Any violation of this section with the knowledge, expressed or implied, of the person or corporation contracting with the City shall render the contract voidable by the City Manager or the City Council.

2-105. PURCHASES FROM EMPLOYEES: It shall be the policy of the City to **NOT** purchase any goods or service from any City official, employee, volunteer, or a close relative of any official, employee or volunteer without prior unanimous approval of the City Council.

2-106. SEALED BID REQUIREMENTS - \$10,000.00 OR GREATER: On all purchases and contracts estimated to be in excess of ten thousand dollars (\$10,000), except as otherwise provided for in this policy, formal sealed bids shall be required to be submitted at a specified time and place to the purchasing agent. The purchasing agent shall submit the bids for award by the City Council at

the next regularly scheduled council meeting or at a specially-called council meeting together with the recommendation as to the lowest responsible bidder. **No contract or purchase shall be subdivided to avoid the requirements of this section.**

Prior to advertising an Invitation to Bid, the City Manager shall verify applicable account balances for all purchases over ten thousand dollars (\$10,000.00).

A notice inviting bids shall be published once in a newspaper of general circulation in Jefferson County at least five (5) days before the last day of the bids. The newspaper notice shall contain a general description of the article(s) to be purchased or services to be contracted; list the final bid due date and time; state where the written specifications may be obtained; and list the time and place where City Council will open the bids.

In addition to publication in a newspaper, the purchasing agent may take other actions deemed appropriate to notify all prospective bidders of the Invitation to Bid. This may be accomplished verbally, or by direct delivery, parcel deliver, US mail, e-mail, and/or by posting notice in a public place.

2-107. SEALED BID PROCEDURES: Procedure for sealed bids shall be as follows:

1. **Sealing.** Bids shall be submitted to the purchasing agent, prior to the date and time deadline, securely sealed in an envelope, and shall be identified on the envelope in accordance with bid instructions.
2. **Opening.** Bids shall be opened in public at the time and place stated in the public notices.
3. **Tabulation.** A tabulation of all bids received shall be available for public inspection.

A written record shall be required for all sealed-bid purchases and available for inspection showing how and when sealed bids were obtained, when opened, who received award, and the basis of the award (selection decision).

2-108. COMPETITIVE BIDDING - \$4,000.00 - \$10,000.00: All purchases of supplies, equipment, services and contracts estimated to be in excess of four thousand dollars (\$4,000.00) but less than ten thousand dollars (\$10,000.00), shall be by competitive bidding and may be awarded to the lowest responsible bidder. Before any purchases or contracts exceeding \$4,000 are made, the purchasing agent shall give ample time for competitive bidding. A written record shall be required and available for inspection showing that competitive bids were obtained by direct mail, telephone bids, or public notice; who received award; and the basis of the award (selection decision). Such bids shall be received by the purchasing agent who shall award the bid to the lowest responsible bidder. **No contract or purchase shall be subdivided to avoid the requirements of this section.**

Prior to a purchase or contract obligation, the City Manager shall verify account balances for all purchases over one thousand dollars (\$1,000.00) and less than ten thousand dollars (\$10,000).

2-109. PURCHASES AND CONTRACTS LESS THAN \$4,000.00: The purchasing agent is expected to obtain the best prices and services available for purchases and contracts that are less than \$4,000.00, but is exempted from the formal bid requirements mentioned in the two previous sections.

2-110. BID DEPOSIT: When deemed necessary, bid deposits may be prescribed and noted in the public notices inviting bids. The purchasing agent shall determine an appropriate deposit amount that will ensure that the winning bidder will undertake the contract under the terms at which they bid. Unsuccessful bidders shall be entitled to return of the deposits where such has been required. A successful bidder shall forfeit any required deposit upon failure on his part to enter into a contract with the City within ten (10) days after the award.

2-111. PERFORMANCE AND PAYMENT BONDS: The purchasing agent shall have the authority to require a performance bond, before entering into a contract, in such form and amount as he shall find reasonably necessary to protect the best interests of the City in accordance with the penalties provided by Tennessee Code Annotated. The purchasing agent may also require a payment bond and a labor and material bond, before entering into a contract, in such form and amount as he or she shall deem necessary to protect the best interest of the City.

2-112. RECORD OF BIDS: The purchasing agent shall keep a record of all open market orders and the bids submitted in competition thereon, including a list of the bidders; the amount bid by each; and the method of solicitation and bidding, and such records shall be open to public inspection and maintained in the City Manager's office.

The bid file shall contain the following information:

1. Request to start bid procedures.
2. A copy of the advertisement.
3. A copy of the specifications.
4. A list of bidders and their responses.
5. A copy of the purchase order.
6. A copy of the invoice.

2-113. CONSIDERATIONS IN DETERMINING BID AWARD:

1. The ability, capacity and skill of the bidder to perform the contract or provide the material or service required.
2. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference.
3. The character, integrity, reputation, judgement, experience, and efficiency of the bidder.
4. The previous and existing compliance, by the bidder, with laws and ordinances relating to the contract or service.

5. The quality of performance of previous contracts or services.
6. The sufficiency of the financial resources and ability of bidder to perform the contract or provide the service.
7. The ability of the bidder to provide future maintenance and service for the use of supplies or services contracted.
8. Terms and conditions stated in the bid.
9. Compliance with specifications.
10. Total cost of the bid including expected life, maintenance costs, and performance.

2-114. STATEMENT WHEN AWARD NOT GIVEN TO LOW BIDDER: When the award for purchases and contracts in excess of \$4,000.00 is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere, shall be prepared by the purchasing agent or department head and filed with all the other papers relating to the transaction.

2-115. AWARD IN CASE OF TIE BIDS:

1. If all bids received are for the same amount, quality service being equal, the purchase contract shall be awarded to a local bidder.
2. Where a local vendor has not bid or where his bid is not the lowest tie bid, the purchasing agent shall award the purchase or contract to one of the bidders by drawing lots in public.

2-116. BACK ORDERS: All orders must be completed, whether through complete fulfillment of the purchase order or through closing the purchase order with items not received. The non-delivered items will be cancelled from the purchase order and a check will be issued to the equal amount of the purchase order.

2-117. EMERGENCY PURCHASES: When, in the judgement of the purchasing agent, an emergency exists, the purchasing provisions of this policy may be waived, provided, however, that the purchasing agent shall report the "emergency" purchases/contracts to the City Council at the next regular council meeting stating the item; the amount paid; from whom the purchase was made; and the nature of the emergency. **POOR PLANNING AND MANAGEMENT DO NOT CONSTITUTE AN EMERGENCY.**

2-118. WAIVER OF COMPETITIVE BIDDING: Upon recommendation of the City Manager, that it is clearly to the advantage of the City, to **NOT** purchase or contract by competitive bidding, the requirements of competitive bidding may be waived under the following circumstances:

1. **Single source of supply** – The availability of only one vendor of a required product or service within a reasonable distance of the City as determined after a documented, thorough search

by the using department or the purchasing department. A written, “sole-sourcing” statement must be filed verifying the reality of a single-source supplier.

2. **State Department of General Services** – Purchases that are made through or in conjunction with the State Department of General Services (state contracts). Municipalities may take advantage of these so-called “state prices” regardless of any charter or general law requirements. (TCA 12-3-1001). These bids may be viewed on the file received from the state.
3. **Purchases from other governments** – Any municipality may purchase from any federal, state or local government unit or agency, second-hand articles of equipment or other materials, supplies, or commodities. The purchasing agent, all department heads, and City staff will be authorized to sign for these purchases. These purchases may be made without competitive bidding and public advertising regardless of charter requirements. (TCA 12-2-1003)
4. **Purchases from non-profit corporations** – Any purchase from any non-profit corporation whose sole purpose is to provide goods and services specifically to municipalities, such as Local Government Data Processing. (TCA 6-56-302)
5. **Purchases from Tennessee State Industries.**
6. **Purchases from Instrumentalities created by two or more co-operating governments.** (TCA 12-9-101)
7. **Certain Insurance** – Municipalities may purchase tort liability insurance, without competitive bidding from the Tennessee Municipal League (TML), or any other plan authorized and approved by any organization of government entities representing cities and counties. (TCA 29-20-407)
8. **Investments in or purchases from the pooled investment fund** established pursuant to TCA 9-17-105.
9. **Purchases of fuels, fuel products, or perishable commodities.**
10. **Professional Service Contracts** – Any services of a professional person or firm, including attorneys, accountants, physicians, architects, and consultants required by the City, whose fee is \$1,000.00 or more, shall be evidenced by written contract. The contract will be awarded on the basis of recognized competence and integrity, rather than on competitive bids. Competitive bidding shall be prohibited for such services. (TCA 29-20-407)
11. **City Council Approval** – In those cases where City Council indicates, by formal unanimous resolution of those present at the meeting, based on the recommendation of the City Manager, that it is clearly to the advantage of the City **NOT** to contract with competitive bidding, noncompetitive purchasing/contracting may be authorized.

2-119. PROPERTY CONTROL: A physical inventory of the City's fixed assets must be taken annually.

A system of fixed asset records provides a simple method of positive identification for each piece of equipment and:

1. Prevents the purchase of unneeded and duplicate assets
2. Provides a basis for insurance claims
3. Reduces theft and negligence of equipment
4. Establishes replacement schedules for equipment
5. Records transfers and/or disposals of surplus property

To be classified as a ***fixed asset***, an item must:

1. Be tangible,
2. Have a life longer than the current year, and
3. Have a value over one hundred dollars (\$100.00).

Any property and equipment that meets these criteria must have an asset number (affixed with a property sticker), a property card, and be inventoried annually. Such records shall be controlled and maintained by the City Manager.

2-120. DISPOSAL OF SURPLUS PROPERTY: The purchasing agent shall be in charge of the transfer, disposal and disposition of surplus property, equipment and materials and shall make a full report to the City Council after items are disposed of.

“Surplus property” is used herein to generically describe any City property, equipment, supplies, or material that is no longer needed or usable by the holding department and declared “surplus” by the City Council.

When a department head determines there is surplus property within the department, he/she will notify the City Manager in writing of any such equipment. The purchasing agent may transfer surplus property from one department to another.

2-121. SUPPLIES UNSUITABLE FOR PUBLIC USE, SALE OR EXCHANGE: The purchasing agent with the approval of the City Manager shall have the authority to sell all supplies which have become unsuitable for public use, or to exchange the same for, or trade in the same on, new supplies. Such sales shall be made to the highest bidder. All monies received from such sales shall be paid into the appropriate fund of the City.

2-122. ITEMS ESTIMATED TO HAVE MONETARY VALUE: When disposing of items estimated to have monetary value, the purchasing agent shall adhere to the following procedures:

1. Obtain a resolution from City Council, declaring said item(s) as surplus property and fixing the date, time, and place for the purchasing agent to receive bids.
2. A copy of the resolution shall be posted in three (3) locations in the City.
3. The purchasing agent may advertise the surplus items being dispositioned using the most cost-effective advertising media that will be advantageous to the City.
4. Such equipment or materials shall be sold to the highest bidder. In the event the highest bidder is unable to pay within twenty-four hours, the item shall be awarded to the second highest bidder.
5. All pertinent dispositioning information will be noted in the fixed asset records of the City as to the disposal of the items.
6. The advertisement, bids, and property cards shall be retained for a minimum period of five (5) years.

2-123. SURPLUS PROPERTY PAINTED WITH CITY COLORS OR WITH CITY EMBLEMS: No surplus City property painted with City colors and/or with a City emblem shall be disposed of unless it is repainted with colors other than those of the City and/or the emblem(s) removed.

2-124. RECYCLING: Surplus property deemed to have no further utility within the City; of no practical value to other authorized agencies; and no practical resale or trade-in value, shall be recycled to the fullest extent possible.

2-125. ITEMS CONSUMED IN THE COURSE OF WORK OR THOUGHT TO BE WORTHLESS: City property which may be consumed in the course of normal City business and items thought to be worthless shall be disposed of in a like manner as any other refuse. These items shall be charged off as a routine cost of doing business.

2-126. EMPLOYEES PARTICIPATING IN THE DISPOSAL OF SURPLUS PROPERTY: No City official, officer, employee, volunteer, their relatives, or representatives acting on the behalf of these same City officials, officers, employees, volunteers, or their relatives are permitted to purchase NON-COMPETITVELY or otherwise receive for ownership purposes, property of the City – surplus or otherwise.

City officials, officers, employees, volunteers, and their relatives or representatives are authorized to participate in any **public sale** of surplus property.

2-127. SURPLUS PROPERTY:

Purpose:

1. To set forth the City of Baneberry's administrative policy for the transfer and disposition of surplus property, equipment and materials.
2. To set forth the City of Baneberry's administrative policy for scrapping and recycling of scrap and recyclable surplus property, equipment and materials and disposing of same.
3. To ensure the receipt of all revenues from the disposal of surplus property, equipment and materials and scrap or recyclables.
4. To explain disciplinary consequences which may result should an elected official, employee or volunteer violate the policy and procedures set forth below.

Definitions:

1. The term, "Surplus property", is used generically herein to describe any City property, equipment or material that is no longer needed or usable by the holding department. For purposes of this policy all surplus property including scrap, recyclables, trash, and/or junk disposed, discarded or abandoned on City premises, including all surplus property placed in storage or collection containers of any kind, including containers or facilities located on premises leased from the City by City tenants, is hereby deemed to be City property and not property of any City official, officer, employee or volunteer.
2. The terms "scrapping" and "recycling" as used herein refer to the act of transferring discarded surplus property, including scrap or recyclables, to a vendor for use, salvage or resale.
3. The terms "scrap" or "recyclables" as used herein refer to surplus property that (a) may be reused "as is" or after repair, or (b) may be salvaged for its mineral value after treatment or processing.
4. The term "trash" or "junk" as used herein refers to surplus property which has no practical salvage or recyclable value.

This policy is designed to address two categories of scrapping and recycling:

- (A) Management-directed scrapping, recycling and handling of trash or junk, i.e., authorized disposal.
 - (B) Personal scrapping, recycling or handling of trash or junk, i.e., unauthorized disposal.
5. Employee's Personal Property. For purposes of this policy an employee's personal property is:

- (A) That property in the possession of an employee which was the property of the employee prior to it having been brought onto or placed upon City premises, or
- (B) That property lawfully acquired from its prior owner or his/her authorized representative by an off-duty employee while on City premises after having been brought to City premises by its owner where such property remains in the possession of the employee as his or her property, after transfer to said employee.

Each employee is responsible for determining that any property which he or she may take possession of or acquire while on City premises has been obtained or acquired from an individual lawfully authorized by its owner to make the transfer to the employee.

This definition of “personal property” applies to all elected officials, officers, employees and volunteers.

2-128. METHODS OF TRANSFER AND DISPOSITION:

All surplus property is disposed of “as is” and “where is,” with no warranty, guarantee, or representation of any kind, expressed or implied, as to the condition, utility or usability of the property offered unless expressly authorized by the City Council.

1. Transfer to another Department. Surplus property may be transferred between City departments.
2. Trade-In. Property declared as surplus may be offered as a trade-in for credit toward the acquisition of new property.
3. Return to Manufacturer. Surplus property may, when possible, be returned to the manufacturer for buy-back credit.
4. Disposal. Surplus property may be offered for sale by the City. Appropriate methods of sale are as follows:
 - (A) Auction. Surplus property may be sold at public auction. Auctions may be conducted by City staff, or the City may contract with a professional auctioneer or electronic auction site.
 - (B) Sealed Bids. Sealed bids may be solicited for the sale of surplus property. Surplus property disposed of in this manner shall be sold to the highest responsible bidder.
 - (C) Selling for Scrap. Surplus property may be sold as scrap if the City deems that the value of its parts exceeds the value of the surplus property as a whole.
 - (D) No Value Item. Where the City determines that property is surplus and of minimal value to the City due to spoilage, obsolescence or other cause or where the City determines that the cost of disposal of such property would exceed the recovery value, the City shall

dispose of the same in such a manner as they deem appropriate and in the best interest of the City.

5. Donation. Surplus property may be donated to any other public agency or charitable organization exempt under Section 501(c)(3) of the Internal Revenue Code. "Public agency" means the State or any agency or subdivision thereof, any city, county, special district, or school district.

2-129. TRANSFER AND DISPOSITION POLICY:

Consistent with Tennessee Code Annotated, the City Council sets forth the policy of the City for disposal or destruction of surplus property.

1. City Manager Directed Transfer and Disposal (Authorized).
 - (A) Property with an Estimated Market Value Exceeding \$10,000. Transfer or disposition of surplus property with an estimated market value exceeding \$10,000 per item shall be determined specifically by the City Council.
 - (B) Property with an Estimated Market Value Less than \$10,000. The City Manager may direct the transfer and disposition of surplus property with an estimated market value not to exceed \$10,000 per item.
 - (C) Transfer and disposition of surplus property may include:
 - (i) All surplus property will first be considered for transfer between departments for the benefit of the City of Baneberry.
 - (ii) All surplus property not needed by the City of Baneberry may be offered for sale for the highest estimated market value. Surplus property may be sold by public auction, electronic auction site, or sealed bid.
 - (iii) Surplus property may be donated or sold at less than estimated market value to public agencies and nonprofit organizations.
 - (D) Scrapping/Recycling/Junking.
 - (i) Such activities may involve the sale of surplus property at public auction or through sealed bids to public bodies, organizations, or vendors including scrap dealers or recycling centers.
 - (ii) It is the policy of the City of Baneberry that no official, officer, employee or volunteer may engage in any sale, scrapping or recycling or other disposal of City property, as defined herein, unless specifically directed to engage in such activity by the City Manager who has been lawfully and duly authorized and designated to direct such activity.

- (E) Real Estate. All activity involving the declaration and sale of surplus real estate shall require authorization by the City Council regardless of the actual or estimated value.
2. Proceeds from Transfer and Disposition of Property. When so authorized to transfer, sell, donate, recycle, and scrap City property, the official, officer, employee or volunteer directed to undertake such activity shall remit the entire proceeds from any such activity to the City by check or money order made payable to the City of Baneberry, and such proceeds shall be deposited into the appropriate fund.
 3. Personal Scrapping, Recycling or Disposal of Trash or Junk (Unauthorized). Trans-ferring, selling, donating, scrapping, recycling or disposing of City property, as defined herein (regardless of monetary value), by any City official, officer, employee or volunteer for personal gain or to benefit the interest of any person or party other than the City of Baneberry, including handling or disposal of trash or junk except as directed by City management person(s) lawfully and duly authorized and designated to direct such activity, is strictly forbidden.
 4. City officials, officers, employees and volunteers are prohibited from claiming ownership of, giving away, recovering, or salvaging for personal use, or the use or interest of any person other than the City of Baneberry, any materials abandoned, disposed or stored upon City premises, including trash or other materials, placed in, upon or in the vicinity of recycling or collection cans, dumpsters or bins located on City premises, or collection or debris piles, or other City storage or disposal facilities or refuse sites, and including any such facility or site belonging to any City tenant.

Furthermore, City officials, officers, employees and volunteers are prohibited from taking possession of any surplus property or the proceeds from the sale of surplus property designated for disposal as trash, scrap, or as recyclables, except as lawfully authorized by persons designated with such authority by the City Manager.

This prohibition includes giving any such surplus property or the proceeds from the sale of such surplus property to any person or party other than for the duly authorized benefit and interest of the City of Baneberry, or authorizing any other person or party to accept, receive or take any such surplus property to benefit their own interest, except as provided hereinabove.

5. Any transfer and/or disposal of surplus property authorized by the City Manager shall be reported to the City Council.

2-130. DISCIPLINARY ACTIONS:

Appropriate disciplinary action, up to and including removal from office, employment termination, and removal from assigned volunteer position shall be taken should an official, officer, employee or volunteer be found, through proper investigation, to:

1. Having failed to promptly remit to persons officially designated to receive proceeds, including cash or other consideration, from the sale of City property, as defined herein, including the

proceeds from the sale, scrapping or recycling of any such property belonging to City tenants; and/or

2. Having failed, in the performance of their duties, to promptly place in appropriate City containers, bins, dumpsters, or other collection facilities, equipment or containers, or having received, taken, given away, collected, stored or retained in other than appropriate City containers, bins, or collection facilities, or dump sites, City scrap, recyclables, trash or any such surplus property belonging to City tenants; and or
3. Having engaged in selling, scrapping, recycling or handling of City property in violation of this chapter or the procedures set forth herein, including having engaged in any such activity for their personal interest or gain, or in aid of others doing the same for their respective interest or gain; and/or
4. Having used City vehicles, facilities or equipment to collect, store, or transport surplus property to sites, locations, or facilities, including the facilities of scrap vendors or recycling centers, except as specifically directed by authorized City management, in accordance with the procedures set forth herein; and/or
5. Having failed to notify his/her department director in a prompt and timely manner after having observed any individual engaging in any of the above-described act(s) or having learned that such act(s) were being committed by other City officials, officers, employees or volunteers.

2-131. PROCEDURES:

All surplus property is disposed of “as is” and “where is,” with no warranty, guarantee, or representation of any kind, expressed or implied, as to the condition, utility or usability of the property offered unless specified by the City Council. It is critical to maintain a trail of documentation for audit purposes regarding the disposition of property of the City of Baneberry.

The City Manager or his/her designee is authorized to declare property, equipment and materials surplus.

1. Identifying Excess Property. Each department head is responsible to identify excess property regularly.

Each department head will evaluate the operational status of the excess property and notify the City Manager in writing.

The City Manager will circulate the excess property notification between the other departments within the City.

2. Transfer Excess Property between Departments. Department heads may request the transfer of excess property by making request to the City Manager. Both department heads must

agree when the excess property cost was in excess of \$2,500. Transfers between departments are contingent upon approval of the City Manager.

Notification will be provided to the City Manager in writing of any transfer of excess property to a different location or department ownership.

3. Transfer Surplus Property for Trade-In or Return to Manufacturer.

- (A) Department heads may offer property for trade-in toward the purchase of new property and equipment with the approval of the City Manager. Department heads will attach trade-in information to the procurement documents. Department heads will notify the City Manager of the procurement and disposition of property and equipment.
- (B) Department heads may offer property and equipment for buy-back credit to the manufacturer with approval of the City Manager. Department heads will forward buy-back credit documents to the City Manager. Department heads will notify the City Manager of this disposition of property and equipment.
- (C) Department heads will inform the City Manager of all trade-ins and credits since it is critical for budgeting and asset tracking. If surplus property is to be applied to a purchase order, the trade-in value and/or credit shall be itemized on the purchase order. The amount charged against the appropriation code will be the value of the purchase before application of the trade-in credit.

4. Disposal of Surplus Property.

- (A) Excess property as shown on applicable notifications, that is not transferred among departments or for trade-in or manufacturer's credit, will be declared surplus by the department head or City Manager.

The department head will determine the estimated market value and the most fiscally advantageous method of disposal.

For surplus property with an estimated market value in excess of \$10,000, the method of disposal will be determined by the City Council.

- (i) In determining the estimated market value, the department head shall document the methods used to make such determination including tools such as Kelly Blue Book, classified advertisements, and local vendors with similar products available.
- (ii) The estimated market value will consider a computation of expenses associated with the disposal of surplus property. These expenses may include advertising, auction costs, storage, and other costs.
- (iii) For surplus property in volume with unit values less than \$2,500, if the aggregate total of the property exceeds \$2,500, then estimated market value will be by group.

(B) Method of Disposal. Sale of surplus property shall be to the highest bidder or for the highest market value and may be disposed of by sale by public auction, or sealed bid.

- (i) **Auction.** Surplus property may be sold at public auction. Public auctions may be conducted by City staff, or the City may contract with a professional auctioneer or electronic auction site.

Sale of surplus property at public auction conducted by City staff must be after giving publication in the official newspaper of the City no later than 10 days prior to such auction. The department head shall reserve the right to reject any and all bids received for any item.

In the event the department head rejects any and all such bids so received, the item may not be disposed of for a lesser value of the lowest bid rejected.

Abandoned bicycles and unidentified bicycles in possession of the Police Department for six months may be sold at public auction conducted by the Police Department.

All unclaimed property may be sold at public auction after the period of six months.

- (ii) **Sealed Bid.** Sealed bids may be solicited for the sale of surplus property. The department head shall reserve the right to reject any and all bids received for any item.

In the event the department head rejects any and all such bids so received, the item may not be disposed of for a lesser value of the lowest bid rejected.

- (iii) **Selling for Scrap.** Surplus property may be sold as scrap if the department head deems that the value of its parts exceeds the value of the surplus property as a whole after approval of the City Council. For-profit vendors shall include scrap dealers and recycling centers.

- (iv) **No-Value Item.** Where the department head determines that property is surplus and of minimal value to the City due to spoilage, obsolescence or other cause or where the department head determines that the cost of disposal of such property would exceed the recovery value, he/she shall dispose of the item in such a manner as they deem appropriate and in the best interest of the City considering the ability to recycle. Disposal of no value items must be approved by the City Council.

- (v) **Donation.** Surplus property may be donated to any other public agency or charitable organization exempt under Section 501(c)(3) of the Internal Revenue Code.

- (a) "Public agency" means the State or any agency or subdivision thereof, any city, county, special district, or school district.
- (b) Non-profit organizations are recognized as charitable organizations exempt under Section 501(c)(3) of the Internal Revenue Code.

5. Accounting for the Disposition of Surplus Property.

- (A) The department head will notify the City Manager in writing of the disposition of all surplus property and attach all supporting documentation.
- (B) The Finance Department shall make adjustments to their inventories/assets lists showing the disposition of excess property.
- (C) Copies of all records documenting the surplus property process will be kept on file with the City Manager.

6. Transfer of Ownership and Title. Delivery of the surplus property together with transfer of ownership and title passes upon receipt of the proceeds.

The City Manager shall cause licenses and title documents to be executed and transferred upon verification of receipt of funds.

7. Surplus Property and Employees. City officials, officers, employees and/or volunteers shall not be the purchasers of any surplus real or personal property of the City.

This disqualification shall extend to the family members of such officials, officers, employees and/or volunteers and any third persons acting at the direction or request of a disqualified official, officer, employee or volunteer where the purchase or sale is intended for the benefit of such employee.

Any exceptions to this policy will only be made at the direction of the City Manager.

Violation may result in disciplinary action up to and including discharge.

2-132. DEFINITIONS: Provided at appendix "A".

Section 3. FUNDS APPROPRIATED AND AVAILABLE. This ordinance shall authorize only the purchase of materials and supplies and the procurement of contracts for which funds have been appropriated and are within the limits of the funds estimated for each department in the annual budget or which have been authorized and lawfully funded by the City Council.

The Municipality shall have no liability for any purchase made in violation hereof. In the event any provision of this ordinance shall be construed to be in conflict herewith, then the provisions of this section shall prevail.

Section 4. FORMS AND PROCEDURES. The City Manager is authorized to develop additional procedures and forms in furtherance of these policies.

Section 5. STANDARDS OF CONDUCT. In all actions involving procurement of supplies, services, or construction for the City, and the use and disposition of supplies, materials, time, property and equipment, the provisions of Ordinance 207-1 – An Ordinance Adopting “Code of Ethics” for the City of Baneberry shall be complied with in full.

Section 6. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Section 7. CONFLICTS. All other Baneberry City ordinances or resolutions or parts of either found to be in conflict herewith are hereby repealed.

Section 8. PRIOR ACTIONS. No past purchasing, contracting, or property, material, supplies or equipment dispositioning actions by the City of Baneberry, its elected officials, officers, employees and/or volunteers or their representatives will be brought into question based on differences between this ordinance and the ordinances, regulations, policies and practices in existence prior to the adoption of this ordinance.

Section 9. ADOPTION. This ordinance shall take effect fifteen (15) days from and after the date it shall have been passed, properly signed, certified, and having met all other legal requirements, and as otherwise provided by law, the general welfare of the City of Baneberry requiring it.

This ordinance is complete in seventeen (17) pages of text and one (1) appendix, consisting of:

(A) Appendix A – Definitions; 5 pages

Clint Hurley, Mayor

ATTEST: _____
Janice Hobson, City Manager

Passed first reading: _____

Passed second reading: _____

Public Hearing: _____

APPENDIX A

DEFINITIONS

When used in the context of this ordinance and in the authorization of the purchase order, contractual agreements, invitations to bid, or other pertinent documents, the words, conditions and phrases below shall have the following meanings:

1. **Accept:** To receive with approval or satisfaction.
2. **Acknowledgement:** Written confirmation from the vendor to the purchaser of an order implying obligation or incurring responsibility.
3. **Agreement:** A coming together in opinion or determination; understanding and agreement between two or more parties.
4. **All or None:** Baneberry reserves the right to award each item or to award all items on an "all or none basis".
5. **Annual:** Recurring, done or performed every year.
6. **Appropriations:** Public funds set aside for a specific purpose.
7. **Approved:** To be satisfied with; admit the propriety or excellence of; to be pleased with; to conform; to ratify.
8. **Approved equal:** Alike; uniform; on the same plane or level with respect to efficiency, worth, value, amount, or rights.
9. **Attest:** To certify to the verity of a public document formally by signature; to affirm to be true or genuine.
10. **Award:** The presentation of a contract to a vendor; to grant; to enter into with all required legal formalities.
11. **Awarded Bidder:** Any individual, company, firm, corporation, partnership, or other organization to whom an award is made by the City.
12. **Back Order:** The portion of a customer's order undelivered due to temporary unavailability of a particular product or material.
13. **Bid:** A vendor's response to an Invitation for Bids; the information concerning the price or cost of materials or services offered by a vendor.

14. **Bidder:** Any individual, company, firm, corporation, partnership or other organization or entity bidding on solicitations issued by the purchasing agent and offering to enter into contracts with the City. The term "bidder" as used throughout this ordinance shall be construed to mean "offeror" where appropriate.
15. **Bid Bond:** An insurance agreement in which a third party agrees to be liable to pay a certain amount of money should a specific vendor's bid be accepted and the vendor fails to sign the contract as bid.
16. **Bid File:** A folder containing all of the documentation concerning a particular bid. This documentation includes: the names of all vendors to whom the Invitation to Bid was mailed, the responses of the vendors, the bid tabulations form and any other information as may be necessary.
17. **Bid Opening:** The opening and reading of the bids, conducted at the time and place specified in the Invitation for Bids and in the presence of anyone who wishes to attend.
18. **Bid Solicitation:** Invitations for Bids.
19. **Blanket Bid (order):** A type of bid used by buyers to purchase repetitive products. The City establishes its need of a product for a specified time. The vendor is then informed of the City's expected usage duration of the contract. The City will order small quantities of these items from the vendor over the life of the contract.
20. **Business:** Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or legal entity through which business is conducted.
21. **Cancel:** To revoke a contract or bid.
22. **Capital Items:** Equipment which is tangible; has an expected lifespan of one year or longer; and a value (usually) in excess of \$1,000.00.
23. **Cash Discount:** A discount from the purchase price allowed to the purchaser, if payment is made within a specified time.
24. **Caveat Emptor:** Let the buyer beware; used in proposals or contracts to caution a buyer to avoid misrepresentation.
25. **Certify:** To testify in writing; to make known or establish as a fact.
26. **Competitive Bidding:** Bidding on the same undertaking or material items by more than one vendor.

27. **Conspicuously:** To be prominent or obvious; located, positioned, or designed to be noticed.
28. **Construction:** The building, alteration, demolition or repair (including, but not limited to, dredging, excavating and painting) of public buildings, structures and highways, and other improvements or additions to real property.
29. **Contract:** An agreement, grant or order for the procurement, use, or disposal of supplies, services, construction, insurance, real property or any other item.
30. **City:** Baneberry, Tennessee.
31. **Data:** Recorded information, regardless of form or characteristic.
32. **Delivery Schedule:** The required or agreed upon rate of delivery of goods or services.
33. **Discount for prompt payment:** A predetermined discount offered by a vendor for prompt payment. (See payment terms.)
34. **Encumber:** Reserve funds against a budgeted line item; to charge against an account.
35. **Evaluation of Bid:** The process of examining a bid to determine a bidder's responsibility, responsiveness to requirements, or other characteristics of the bid that determine the eventual selection of a winning bid.
36. **Fiscal Year:** An accounting period of 12 months; July 1 through June 30.
37. **F.O.B. Destination:** An abbreviation for "free on board" that refers to the point of delivery of goods. The seller absorbs transportation charges and retains title to and responsibility for the goods until Baneberry has received and signed for the goods.
38. **Goods:** All materials, equipment, supplies, and printing.
39. **Invitation for Bid:** All documents utilized for soliciting bids.
40. **Invoice:** A written account of merchandise and process, delivered to the purchaser; a bill.
41. **Lead Time:** The period from date of ordering to date of delivery which the buyer must reasonably allow the vendor to prepare goods for shipment.
42. **Life Cycle Costing:** A procurement technique which considers the total cost of purchasing, maintaining, operating and disposal of a piece of equipment when determining low bid.

43. **Material Receiving Report:** A form used by the purchasing function of an agency to inform others of the receipt of goods purchased.
44. **Payment Terms:** The conditions under which a vendor completes a sale. Payment terms cover: (1) When payment is expected; (2) Any conditions on that payment, and (3) Any discounts the buyer will receive.
45. **Performance Bond:** A bond given to the purchaser by a vendor (or contractor) guaranteeing the performance of certain services or delivery of goods within a specified time. The purpose is to protect the purchaser against a cash loss which might result if the vendor did not deliver as promised.
46. **Pre-bid Conference:** A meeting held with potential vendors after an Invitation for Bids has gone out to promote uniform interpretation by all prospective contractors of the solicitation's scope, work statements and specifications.
47. **Procurement or Purchasing:** Buying, renting, leasing, or otherwise obtaining supplies, services, construction, insurance or any other item. It also includes all functions that pertain to the acquisition of such supplies, services, construction, insurance and other items, including description of requirements, selection and solicitation of sources, preparation and award of contract, contract administration, and all phases of warehousing and disposal.
48. **Public:** Open to all.
49. **Public Purchasing Unit:** Means the State of Tennessee, any county, city, town, governmental entity, or other subdivision of the State of Tennessee, or any public agency or public authority.
50. **Purchasing Order:** A legal document used to authorize a purchase from a vendor. A purchase order, when given to a vendor, should contain statements about the quantity, description, and price of goods or services ordered; agreed terms of payment, discounts, date of performance, transportation terms, and all other agreements pertinent to the purchase and its execution by the vendor.
51. **Reject:** Refuse to accept, recognize, or make use of; repudiate, to refuse to consider or grant.
52. **Responsive Bidder:** One who has submitted a bid which conforms in all material respects to the invitation for bids.
53. **Sealed:** Secured in any manner so as to be closed against inspection of contents.

54. **Sealed Bids:** Written proposals or offers which are submitted by potential vendors before a certain date to a purchasing agent who has provided complete information regarding specifications and quantities required.
 55. **Sole Source Procurement:** An award for a commodity which can only be purchased from one supplier, usually because of its technological, specialized, or unique character.
 56. **Specifications:** Any description of the physical or functional characteristics of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.
 57. **Standardization:** The making, causing, or adapting of items to conform to recognized qualifications.
 58. **Telephone Bids:** Contacting one or more vendors to obtain oral quotes for items of a value less than \$4,000.00.
 59. **Vendor:** The person who transfers property, goods, or services by sale.
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