

ORDINANCE O-4586

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PURCHASING AND BONDING POLICY.

1 WHEREAS, Kirkland Municipal Code ("KMC") Section 3.85.230
2 relates to the public works project bonding and retainage policies of the
3 City of Kirkland ("City"); and
4

5 WHEREAS, KMC Section 3.85.230(a)(2) generally requires that
6 City public works project contractors post performance and payment
7 bonds equal to 100% of the public works project contract; and
8

9 WHEREAS, KMC Section 3.85.230(b) allows City public works
10 project contractors to choose, in lieu of the posting of performance and
11 payments bonds, to instead allow the City to retain a certain specified
12 percentage of the public works project contract amount until final
13 acceptance and project close-out for contracts valued below a specified
14 threshold amount; and
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16 WHEREAS, KMC Section 3.85.230(a)(2) also requires that
17 sureties issuing performance and payment bonds maintain specified
18 minimum bonding company ratings; and
19

20 WHEREAS, Senate Bill ("SB") 5734 enacted by the Washington
21 legislature in 2017 controls various public works purchasing and bonding
22 policies of public entities including cities; and
23

24 WHEREAS, SB 5734 provides that cities may require that public
25 works project contractors post performance and payment bonds equal
26 to 100% of the public works project contract amount for all contracts in
27 in an amount equal to or less than \$150,000; and
28

29 WHEREAS, SB 5734 provides that cities, at the request of a
30 contractor, may choose, in lieu of the posting of performance and
31 payments bonds, to instead retain 10% of the public works project
32 contract amount until final acceptance and project close-out related to
33 contracts in an amount equal to or less than \$150,000; and
34

35 WHEREAS, SB 5734 further provides that the recovery of any
36 unpaid wages and benefits must be the first priority for any actions filed
37 against retainage held by a city; and
38

39 WHEREAS, RCW 60.28.011 requires that sureties issuing
40 performance and payment bonds maintain minimum A.M. Best financial
41 strength rating as long as the minimum rating does not exceed A-.
42

43 NOW, THEREFORE, the City Council of the City of Kirkland do
44 ordain as follows:

45 Section 1. Kirkland Municipal Code Section 3.85.230 is amended
 46 to read as follows:

47
 48 **3.85.230 Bonding policy**

49 (a) For all public works contracts, the following minimum bonding
 50 requirements shall be met for each procurement:

51
 52 (1) A bid deposit in the form of a bid bond, cashier's check or certified
 53 check in an amount equal to at least five percent of the total bid must
 54 be enclosed with the submitted sealed bid if the bid is in excess of sixty-
 55 five thousand dollars or in excess of forty thousand dollars if only a
 56 single craft or trade is involved with the public works or the public works
 57 project is for street signalization or street lighting.

58
 59 (2) A performance bond and a payment bond for one hundred percent
 60 of the total contract price shall be received from the successful
 61 contractor prior to contract execution for all contracts except as
 62 otherwise provided for in this section in excess of thirty five thousand
 63 dollars. The surety issuing the bond must have an A. M. Best financial
 64 strength rating of A- A:VII or better. If the surety does not have an A.
 65 M. Best rating of at least A- A:VII, the city's risk/safety analyst is to be
 66 consulted prior to approval.

67
 68 (b) On public works contracts of one hundred and fifty thirty-five
 69 thousand dollars or less, at the option of the contractor, the city may,
 70 in lieu of a performance and payment bond, retain ten fifty percent of
 71 the contract amount for a period of thirty days after date of final
 72 acceptance, or until receipt of all necessary releases from the
 73 Department of Revenue and settlement of any liens fixed under Chapter
 74 60.28 RCW, whichever is later. The recovery of unpaid wages and
 75 benefits must be the first priority for any actions filed against such any
 76 retained amounts.

77
 78 (c) If the limited public works process allowed under Section
 79 3.85.170(b) is used, the city may waive the requirements for
 80 performance and payment bonds and/or retainage.

81
 82 (d) The purchasing agent, in consultation with the project manager,
 83 city attorney's office and risk/safety analyst as needed, shall have
 84 authority to determine amounts of protective bid guarantees for all
 85 purchases in the best interests of the city.

86
 87 Section 2. If any provision of this ordinance or its application to
 88 any person or circumstance is held invalid, the remainder of the
 89 ordinance or the application of the provision to other persons or
 90 circumstances is not affected.

91
 92 Section 3. This ordinance shall be in force and effect five days
 93 from and after its passage by the Kirkland City Council and publication,
 94 as required by law.

95
 96 Passed by majority vote of the Kirkland City Council in open
 97 meeting this 2nd day of August, 2017.

Signed in authentication thereof this 2nd day of August, 2017.



Amy Walen, Mayor

Attest:



Kathi Anderson, City Clerk

Publication Date: August 7, 2017

Approved as to Form:



Kevin Raymond, City Attorney

PUBLICATION SUMMARY
OF ORDINANCE O-4586

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO
PURCHASING AND BONDING POLICY.

SECTION 1. Amends the bonding policy for all public works
contracts.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. Authorizes publication of the ordinance by
summary, which summary is approved by the City Council pursuant to
Section 1.08.017 Kirkland Municipal Code and establishes the effective
date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to
any person upon request made to the City Clerk for the City of Kirkland.
The Ordinance was passed by the Kirkland City Council at its meeting
on the 2nd day of August, 2017.

I certify that the foregoing is a summary of Ordinance O-4586
approved by the Kirkland City Council for summary publication.


Kathi Anderson, City Clerk