

# SPECIAL CALL TOWN THE COUNCIL

Municipal Center The Council Chambers

March 17, 2025, 9:00 am

## Minutes

I. **Call to Order:** *Mayor Belt called the meeting to order at 9:00 am.*

II. **Pledge of Allegiance:**

III. **Roll Call:**

**Present at the Meeting:** Bradley Belt, *Mayor*  
Russell Berner, *Mayor Pro Tem*  
Council Member Farrell, *Council Member*  
Council Member Kaye, *Council Member*  
Council Member Spencer, *Council Member*

**Also Present:** Stephanie Tillerson, *Town Administrator*  
Nick Nicholson – *HSB Procurement Attorney*

**Also Present via Zoom:** Ross Appel – *Consulting Attorney*

IV. **Citizens' Comments (Agenda Items Only):**

None

V. **Old Business:**

None

VI. **New Business:**

A. To Consider Approval of **Ordinance 2025-07** - An Ordinance to Repeal and Replace Article 4 – Finance and Taxation, Chapter 4. – Purchasing – **First Reading**

Mayor Belt introduced Ordinance 2025-07, which aims to replace the current Procurement Code. The ordinance addresses concerns regarding the current purchasing ordinance's clarity, complexity, and inconsistencies. The Town Attorney's firm, Haynsworth Sinkler Boyd, represented by Mr. Nicholson, is a resident expert at the firm, having done this on behalf of other municipalities, assisted in developing the new procurement ordinance, and can answer any questions that may arise.

### **Guiding Principles and Reporting Requirements**

Mayor Belt stated that while reviewing the draft policy, he noticed that the reporting to Council provision only required reporting to the Council of any contract exceeding \$100,000 without requiring Council approval. The Mayor further noted that the current policy does not require Council approval of any particular contract. It was his view that the Council should maintain a continuing approval role in contracts exceeding a certain threshold.

Mayor Belt stated that South Carolina state statutes require a municipality to adopt an ordinance or procedure that embodies sound principles of appropriately competitive procurement. No other state law requirements. He reviewed the framework for this procurement policy:

- All procurements and services should be subject to some competitive bidding or review process, except those where that does not necessarily make sense.

- The general exceptions for competitive bidding are the sole sourcing provision, small purchases, and emergency procedures.
- Professional services like legal and auditing are exempted.
- Allows the Council to determine if competitive procedures are unnecessary for specific projects.

Mayor Belt indicated that Mayor Pro Tem Berner had issues with the numerous references to the mayor and the mayor's involvement in making decisions regarding a wide range of these procurements. He stated that somebody has to be ultimately responsible or accountable for the administration of these policies and procedures. In our form of government, it is defined as the mayor.

***Mayor Pro Tem Berner made a motion to approve the first reading of Ordinance 2025-07 to repeal and replace Article 4 – Finance and Taxation, Chapter 4. – Purchasing. Council Member Kaye seconded the motion.***

### **Concerns About Authority**

Mayor Pro Tem Berner stated that, at the outset, his comments were directed at the title of the mayor, not the person. He expressed an overarching concern that there are too many references, giving the mayor too much control, and creating the impression that one could lead to collusion on bids. The examples he noted were:

- The mayor has the right to reject any and all bids without cause.
- The mayor has the right not to accept any bid, a unilateral decision made by the mayor.
- The mayor determines if there is only one source for the required supply

Mayor Pro Tem Berner expressed considerable concern about the amount of control held by this one position in the government. He proposed that “a committee” have the right to reject any and all bids without cause.

Mayor Belt acknowledged the concerns and explained the historical context of “the town” in relation to current procurement policies and a host of other ordinances. He then pointed out that in this form of government, the authority of “the town” is reflected through the chief administrator, the mayor or his designee.

The discussion included the practicality of having a committee to review contracts, which Mayor Belt believes could slow down the process.

Mr. Nichol森 reiterated the Mayor’s earlier statement, which cited a state statute requiring municipalities to adopt an ordinance embodying sound principles of appropriately competitive procurement, noting that appropriate means what is appropriate for the Town of Kiawah, and who decides what is appropriate, the Council. He would argue that what the Council is doing right now demonstrates that the ordinance is grounded in reasonableness because members are thoughtful and intentional in their approach to passing it.

### **Proposed Solutions and Practical Considerations**

Mayor Pro Tem Berner suggests creating a checklist that requires at least three independent sign-offs to prevent collusion. He pointed out that this would bypass any meeting delays.

Council Member Spencer pointed to establishing a selection committee and asked if it constituted the committee mentioned. Mayor Belt explains the various procurement processes, including an invitation to bid, a Request for Proposal (RFP), and a Request for Qualifications (RFQ), clarifying that an RFP and an RFQ embody the concept of a selection committee.

The Council members discussed the practicality of setting up a committee, as currently, Mayor Belt is the only one who executes contracts, and the potential need for an audit trail. The conversation also

touched on the importance of having checks and balances to prevent fraud and ensure transparency. However, currently, the policy and procedures being examined are to establish a competitive process for identifying the good or service and acquiring it.

Mr. Nicholson stated that the statement “the mayor has the right to reject any and all bids, with or without cause” is very broadly worded; it gives the town as much flexibility as possible while still having guidelines to ensure the appropriate course is followed. He noted that most procurement policies have a designated individual who makes the ultimate decision in larger municipalities and counties, typically the procurement director or deputy administrator.

The discussion includes examples of how other municipalities handle procurement and the importance of having a clear and practical policy.

### **Clarification of Procurement Processes**

The Council discussed the differences between sealed bids and RFPs, with Mayor Belt reviewing the various procurement processes, including an invitation to bid, a request for qualifications, and a request for proposals.

The Council discussion emphasized the importance of clear definitions and descriptions for each procurement process. Members engaged in an in-depth discussion of each process and the practical implications of using different procurement methods for different types of projects.

### **Addressing Specific Concerns and Proposed Amendments**

The Council discussed the need for clear language and definitions in the ordinance to prevent confusion. Specific amendments are proposed, including clarifying the use of "may" versus "shall" in certain sections.

### **Change Order Process and Approval**

The Council discussed establishing a process for contract modifications, guidelines for renewing existing open-ended contracts by expanding their scope of work, and the approval process for change orders.

Council Members Farrell and Spencer discussed the importance of having a clear policy for change orders and modifications. Council Member Farrell suggested setting the change order process and approval as a takeaway for further discussion.

Ms. Tillerson discussed the change order and approval process established in the construction of the Municipal Center. In this process, the Municipal Committee reviewed and approved change orders up to a specific limit.

### **Source Selection Methods and Criteria**

Council Member Farrell reviewed the seven methods for source selection, including reverse auctions, pre-qualifications, and qualifications-based selection.

Mayor Pro Tem Berner and Mayor Belt discussed the sole-source procurement process and the need for additional language to justify sole-source decisions. *“Written documentation must include the determination and recently detailed basis for the proposed sole source procurement.”*

The Council debates the merits of using a committee for sealed bids to ensure bidder responsibility and responsiveness, agreeing to add the language “The mayor assigns a committee.”

### **Qualifications-Based Selection and Repeat Contracts**

Council Member Kaye raised the issue of revisiting projects with firms that have previously done the work, such as environmental studies.

The Council Member Farrell suggested using the qualifications-based selection method for repeat contracts if the previous work was satisfactory. Mr. Nicholson pointed out the option to exempt certain projects, by ordinance, from procurement if the Council deems it necessary.

The Council discussed the legal implications of exempting projects from procurement and the need for transparency and public comment.

### **Final Considerations and Proposed Amendments**

The town's policy should be to report any contractual obligation over \$20,000 to the Town Council. Council Member Farrell asked, before or after initiation.

The Council discussed the ambiguity in the current reporting language and agreed to report contractual obligations to the Ways and Means Committee prior to execution.

Council Member Farrell asks how the Council will know whether the mayor or his designee is making decisions. Mayor Belt suggests creating written administrative policies and procedures to document delegations of authority.

Mayor Pro Tem Berner suggested deleting the word "building" from certain sections to make them more generic and inclusive.

Mayor Pro Tem Berner stated that public announcements, advertisements, or RFPs should be allowed outside the state.

Mayor Pro Tem Berner emphasizes the importance of having explicit evaluation factors in RFPs. The Council debates using numerical weightings versus qualitative evaluations for selecting architects and other service providers. Mayor Belt points out language that states, "The Request for Proposal shall state the relative importance of each evaluation factor."

Mayor Pro Tem Berner proposed that bidders be allowed to withdraw their bids when they make a Scriveners error for all of the source selection methods. The Council agreed to include a clause allowing bid withdrawals, provided written approval is obtained from the mayor. Also, add language stating that the next lowest bid would be selected.

***Council Member Farrell made a motion to approve the first reading of Ordinance 2025-07 with the various modifications discussed during the course of the special call meeting. Council Member Kaye seconded the motion, and it was unanimously approved.***

***Council Member Spencer made a motion to go into Executive Session to receive legal advice with regard to a pending legal matter concerning Captain Sam's Spit. Council Member Kaye seconded the motion, and it was unanimously approved.***

## **VII. Executive Session:**

- A.** Executive Session to receive legal advice protected by the Attorney-Client Privilege (S.C. Code Ann. 34-4-70-(a)(2)) concerning matters related to Captain Sams Spit.

The Council may take action after the Executive Session.

***Council Member Spencer made a motion to exit the Executive Session and return to the Regular Session. Council Member Kaye seconded the motion, and it was unanimously approved.***

Mayor Belt stated that the Council had discussed pending litigation involving Captain Sam's Spit. No decisions were made, and no actions were taken.

Mayor Belt stated that the Town, along with the co-plaintiffs in the ARDA litigation against the Partners, have agreed to enter into a mediation process involving those three parties, the current landowner, and the State of South Carolina. The mediation process will include a separate legal matter initiated by the current landowner against the state. The mediation process is confidential, so only a limited amount of information can be reported about the mediation discussions, and the Town will do its best to keep the community apprised of the developments.

**VIII. The Council Member Comments:**

None

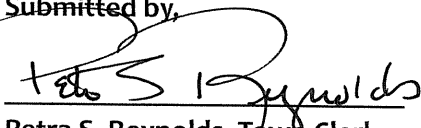
**IX. Citizens' Comments:**

None

**X. Adjournment:**

*Council Member Kaye made a motion to adjourn the meeting at 11:01 am. Mayor Pro Tem Berner seconded the motion, and it was unanimously approved.*

Submitted by,

  
Petra S. Reynolds, Town Clerk

4/2/2025  
Date