

ORDINANCE No. 15-0030

AN ORDINANCE AMENDING ORDINANCES NO. 05-0019, 05-0020, AND 11-0006 – REGARDING LOCAL HIRING, FEMALE AND MINORITY HIRING AND CITY CONTRACTING

WHEREAS, the public policy of the City of East Chicago is to provide all of its residents with equal employment opportunities; and

WHEREAS, the local populace is a diverse and talented community of skilled workers, crafts persons and laborers, available for work in the construction trades, yet minorities, females and residents of the City of East Chicago are under represented in the workforce of many Contractor by comparison to the workforce available; and

WHEREAS, the City of East Chicago encourages the utilization of minorities, females and local residents in City construction projects where more than one hundred thousand dollars (\$100,000.00) of public funds are expended; and

WHEREAS, the Common Council has enacted Ordinances 05-0019, 05-0020 and 11-0006 in order to encourage and promote the utilization of minorities, females and local residents in City construction projects where one hundred thousand dollars (\$100,000.⁰⁰) or more of public funds are expended; and

WHEREAS, where inconsistencies have been identified in Ordinances 05-0019, 05-0020 and 11-0006 which hamper the effective administration or enforceability of said ordinances, or frustrate the public policy intent behind such Ordinances, the present Ordinance is intended to correct such inconsistencies and remove barriers to enforcement; and

WHEREAS, amendments to the East Chicago Municipal Code contained in this Ordinance contemplates that certain publicly funded construction projects may be determined to be “specialty” contracts, as defined below, or may be funded by sources that do not allow application of this Ordinance, thus exempting them from the utilization requirements set forth herein; and

WHEREAS, the purpose of this Ordinance is to enhance the means by which the City may enforce and monitor compliance with the requirements of the Code, and monitor and report the degree to which minorities, females and local residents are hired into such construction projects of the City of East Chicago; and

NOW THEREFORE, BE IT ORDAINED by the COMMON COUNCIL of the CITY OF EAST CHICAGO that all of the aforesaid reasons, the following sections of 05-0019, 05-0020, 11-0006, contained in Sections 39.01 through 39.99 of the East Chicago Municipal Code are hereby amended as follows:

SECTION I. Ordinance No. 05-0019, Ordinance No. 05-0020, Ordinance No. 11-0006 and East Chicago Municipal Code Chapter 39 is hereby amended to read as follows

Section 39.02 of the Municipal Code is hereby amended to read as follows:

§ 39.02 DEFINITIONS

The following definitions shall apply to Chapter 39 ,which includes Sections 39.01 through 39.99 of the East Chicago Municipal Code:

1. **ACTUAL RESIDENTS DEFINED.** For the purposes of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.
2. **“City”** means the City of East Chicago and all of its agencies, districts, and departments and utilities.
3. **“City Construction Agreement”** means any written contract between a contractor and the City for the construction, rehabilitation, alteration, demolition, conversion, extension or repair of buildings, sidewalks, grounds, parking lots, or other improvements to real property.
4. **“Construction Projects Valued at One Hundred Thousand Dollars or Greater”** means any City public works project for which the estimated cost is equal to or greater than one hundred thousand dollars (\$100,000.00).
5. **“Compliance Officer”** means the person, persons, department or agency designated by the City so monitor compliance with Chapter 39, Sections 39.01 through 39.44 of this Code, advise and assist the City regarding enforcement of these sections.
6. **“Specialized Construction Project”** or **“Exempt Construction Project”** means any public works project within the City that, in whole or in part, requires a skill set beyond that of the average construction contract or requires specialty licensing, rendering the contract one that is exempt from the requirements set forth in this Ordinance. The determination of whether a project is exempt, in whole or in part, is to be determined by the East Chicago City Council. An Exempt Construction Project could also mean a project funded by federal, state money, or funds from a private company or foundation where the grant or outside funding agency expressly or impliedly prohibits the use of this Ordinance.

7. **“Contractor”** means a person, association, partnership, corporation, limited liability company or other legal entity that proposes to undertake a Construction Projects and includes every subcontractor hired or engaged by the Contractor under such contract.
8. **“Construction Site”** means the primary geographic location of construction activity for a Construction Project.
9. **“Certified Payroll”** means Federal Form WH-347, defined in the C.F.R. at 29 CFR 5. This is the form which Contractors must use Form WH-347 to certify their payrolls to the US Department of Labor. Labor classifications, definitions and exemptions contained in 29 CFR 5 shall apply to Chapter 39 of the Municipal Code, unless otherwise explicitly provided. If the form designated by 29 CFR 5 to certify payrolls changes, or WH-347 is changed by the US Department of Labor, then the City may designate that new Federal Certified Payroll form be used.
10. **“Workforce Employment Connection”** is a program designed to connect potential workers to employment opportunities in East Chicago. Contractors awarded contracts in the City are required to register on the website <http://jobs.eastchicago.com>.
11. **“Minority”** means a member of a minority group as specified in Indiana Code 4-13-16.5-1. The term “other”, as referred to in the statute, shall be used to include qualified individuals with disabilities who meet legitimate skill, experience, education or other requirements of employment positions held or sought and who perform the essential function with or without reasonable accommodation and other groups of other individuals found by the City to be socially and economically disadvantaged or to have suffered actual racial or ethnic discrimination and decreased opportunities to compete in the East Chicago area market.
12. **“Proof of Minority or Gender Status”** Proof of minority and gender status must be secured on the certified payroll, defining the employee’s social security number, address, trade classification, race, ethnicity, disability and gender. Where codes or abbreviations are utilized to demonstrate these factors, a corresponding key must come with each submission.
13. **“Proof of Compliance”** means documentation, including names and addresses of all employees demonstrating that the requirements of this Chapter have been met. Proof of minority and gender status must be secured on the certified payroll, defining the employee’s social security number, address, trade classification, race, ethnicity, disability and gender. Where codes or abbreviations are utilized to demonstrate these factors, a corresponding key must come with each submission.

14. "**Awarding Agency**" is the Board, Department District, utility, or political subdivision of the City which awards any qualified or non-qualified Construction project.
15. "**Indiana Plan**" – Contractors awarded contracts in the City are required to sign up with the Indiana Plan at the website www.indianaplan.org. If the State of Indiana replaces or renames the Indiana Plan or changes its website, Contractors are required to sign up with the successor agency or organization.
16. "**Petition for Exemption**" is the Petition that the Awarding Agency or Contractor must file with the East Chicago Common Council, at the earliest the need becomes apparent, if it believes an exemption from this Ordinance is warranted in keeping with § 39.30 of this Code. The Petition shall cite whether the request is based on the Specialized needs of the Construction Project or based on the source of funding. If the Awarding Agency claims that the exemption is based on the source of funding, the Petition shall be accompanied by a statement from the granting unit that the funding expressly or impliedly prohibits application of this Ordinance.
17. "**Non-trade Employees**" include owners, managers, secretaries, supervisors and other employees that do not satisfy the workforce requirements as set forth and defined in 29 CFR 5, et seq. Non-trade employees do not count toward the Equal Employment Opportunity requirements.
18. "**Award Criteria Worksheet**" is the Worksheet that Contractors must submit with every bid solicitation and/or contract, indicating the projected workforce to be used on the Construction Site. The Award Criteria Worksheet should realistically delineate commitments in the area of minority and female workforce hours. It shall also state the minimum requirements that are to be imposed on each contract. Failure to complete the formula may be cause for rejection of the Bidder's proposal, regardless of applicability of this Ordinance. Said Worksheet shall be provided by the City.

§ 39.03 of the Municipal Code is hereby amended to read as follows

§ 39.03 MINIMUM PERCENTAGE.

(A) Minimum Requirements do not preclude additional utilization of minority and female employees, or residents of the City. This minimal percentage of residents, minorities and females shall not be understood as limiting or deterring the fuller

utilization of those groups beyond this level, but is intended instead as minimum requirements.

(B) Waivers or Reductions. Upon demonstration by the Contractor of impracticability or excessive cost of complying with the specified percentages, a waiver or reduction from the requirements of Sections 39.01 through 39.28 of this code may be deemed appropriate by the City if the Contractor and/or its subcontractor has unsuccessfully solicited a sufficient number of residents of the City, female or minority candidates to perform work under the contract, and the Contractor and/or its subcontractor has provided documented of such efforts to the City. Any Contractor and/or subcontractor seeking a waiver or reduction shall provide timely written notice of the need for qualified residents of the City, female or minority candidates to an appropriate source of referrals, which source shall be entitled to comment on any application for waiver or reduction. The City may determine, in its sole discretion and in keeping with Section 39.30 of this Code whether the efforts of the Contractor and/or its subcontractor are sufficient to justify a waiver, and whether the waiver is in the best interests of the City.

Any waiver or reduction, if granted by the City in its sole discretion, shall be in writing and be specific regarding the exact provision, percentage or requirement for which the waiver or reduction is granted.

§ 39.07 (A) (2) of the Municipal Code is hereby amended to read as follows:

§ 39-07 (A)

(2) Monitoring of compliance with the requirements of Chapter 39 of this code shall be done by the Compliance Officer designated by the City.

§ 39.06 of the Municipal Code is hereby amended to read as follows:

§ 39.06 AFFIDAVIT OF EAST CHICAGO RESIDENCY HIRING

(A) The Contractor shall submit with its bid solicitation and/or contract document the affidavit of East Chicago Residency Hiring, copies of which shall be available in the office of the City Clerk.

(B) Failure by the Contractor to fully complete and submit the forms, including providing figures, signing or attesting to each form as required shall not waive any requirement of this code.

(C) Any attempt by a Contractor to unilaterally waive any requirement of this section by altering contract language or forms to shall be ineffective. Waivers from requirements of

this code shall only be granted in writing, after written request by the Contractor, and properly reviewed by the City, in compliance with § 39.30 of this code and other applicable sections.

§ 39.07 of the Municipal Code is hereby amended to read as follows at the below listed sections:

§ 39.07 CONTRACTS-FORMS-DRAFTING AUTHORITY.

All contracts awarded by the city, a political subdivision of the city or any department of the city shall be on forms prescribed and approved by the City Council and by the Law Department of the city. Such forms may be periodically revised by the Law Department to ensure compliance with City, State and Federal Law and regulations, and City policy.

(A)(2) Monitoring of compliance with the local hiring ordinance will be done by the Compliance Officer.

§ 39.07 (B)(2) of the Municipal Code is hereby replaced in its entirety with the following:

(B) (2) (a) **Reporting Requirements.** The contractor shall submit, and shall ensure that all of its subcontractors working on the site submit two copies of Certified Payrolls for the payment period to the city or its designated representative every week to the City, through its Compliance Officer each week from the start of the project until the project is 100% completed, and the project is closed out.

(B) (2) (b) The Contractor shall have a duty to submit said form on a weekly basis, without demand by the City or its Compliance officer, but if a demand for said forms are made by the City or its Compliance Officer, the contractor shall certify and submit its Certified Payroll forms within three days of the demand.

(B) (2) (c) **Certified Payrolls.** Certified Payrolls shall be submitted to the City through its Compliance Officer on U.S. Department of Labor Form WH-347, with supporting documentation. The method of submission, (i.e. hard copy or electronic format) shall be determined by the city. Labor classifications, definitions and exemptions contained in 29 CFR 5 shall apply. The Contractor and subcontractors must submit the identical WH-347 form certified and submitted to the US Department of Labor. Where the contractor for any reason fails to submit Form WH-347 or its equivalent to the US Department of Labor, the Contractor shall still complete and certify the Form WH-347 Certified Payroll Form to the City of East Chicago's Compliance Officer within the deadlines provided in this chapter.

(B) (2) (d) **Supporting Documentation to be submitted with the Certified Payroll.** In addition to Certified Payroll Form WH-347, the contractor and all of its subcontractors shall identify clearly the actual residence of every employee on each submitted certified payroll, the first time that an employee's name appears on a payroll, the date that the company hired the employee should be written in after the employee's name. Whereby contractor has identified an employee as a city resident, at least two of the following

forms of documentation shall accompany the certified payroll whereby the employee's name first occurs:

- (I) A copy of the employee driver's license;
- (II) A valid state ID, or other valid government issued identification card;
- (III) A copy of a current utility bill in the employee's name.
- (IV) A copy of the individual voter's registration card.

All payrolls must be identified with the Contractor and/or subcontractor's name and contract name and number, and must be sequentially numbered. The contractor shall ensure that its payrolls and its subcontractor's payrolls are submitted until all work by the contractor and/or subcontractor is completed. If there are periods of no work by the contractor and/or subcontractor, a payroll labeled "NO WORK" shall be submitted. The final payroll shall be labeled "FINAL." Certified Payrolls are required to assure workforce hiring compliance as well as wage compliance. Race, ethnicity, worker classification, Social Security number and gender must be clearly marked for each employee on the certified payroll along with all additional information required by the city. An employee's address should appear every time his or her name appears on the payroll. The contractor must submit the certified payrolls and additional information regarding workforce hiring and wage compliance by providing a payroll summary report in the form required by the city. The payroll summary report form required by the city and the U.S. Department of Labor must be submitted by contractor and each subcontractor, reflecting fully the periods of work covered by the partial payment request.

§ 39.07 (C) (6) of the Municipal Code is hereby amended to read as follows at the below listed sections:

(6) Nothing herein provided shall be construed to be a limitation upon or exemption from any other affirmative action requirements under the regulations promulgated by applicable federal, state or local authorities.

§ 39.20 of the Municipal Code is hereby amended to read as follows at the below listed sections. Note that the table which lists percentages for Journey worker(s), Apprentice(s) and Laborer(s) shall remain unchanged:

§ 39.20 EQUAL EMPLOYMENT OPPORTUNITY GOALS.

For all non-specialized construction contracts and nonexempt specialized contracts, as determined by the Board of Public Works, and approved by the Common Council (if required) in keeping with the requirements of this code, having an estimated contract value of \$100,000 or more, and where not otherwise

explicitly prohibited by federal, state or local law effective the date this subchapter is approved, the below listed Equal Employment Opportunity goals reflected in the following percentages of for Construction projects funded in whole or in part by City funds, as reflected in the aggregated work hours in each of the categories of construction:

§ 39.23 of the Municipal Code is hereby amended to read as follows at the below listed sections. Note that the first paragraph of § 39.23; the table which lists goals, percentages and formulas, as well as § 39.23 (B), (C) and (C) shall remain unchanged:

§ 39.23 FORMULA section (A)

(A) Award Criteria Worksheet. The Award Criteria Worksheet delineates the bidder's voluntary commitment to utilizing minorities and females on the work site. Failure to complete the formula may provide a basis for rejection of the Bidder's proposal. Furthermore, failure by the bidder to fully complete and submit forms required, including the Award Criteria Worksheet, including providing figures, signing or attesting to each form shall not waive any requirement of this code. Any waiver of requirements must be granted by the City in writing in compliance with this code.

(1) Lines 2, 4 and 6 in the formula shall not be greater than 50% in each category for purposes of award criteria only. Similarly, lines 8, 10 and 12 shall not be greater than 10% in each category for the purpose of award criteria only. The 50% and 10% goals are not intended to restrict the total number of minority and female employees to be used on the project, but only to establish limiting figures for use in the formula. Journey workers includes but is not limited to: truck drivers, tile setters, finishers, electrical grounds workers and elevator construction helpers, workers from the major trades listed herein and the Teamsters.

(2) If a Contractor fails to meet the minimum commitment pledged in any category, the penalty will be based upon the percentages. If the Contractor leaves any line or category blank, or fails to sign the form, the minimum requirement provided in § 39.20 shall be imputed. If the Contractor pledges below the minimum requirement provided in § 39.20 of this code, and on the Award Criteria Worksheet, the minimum requirements will be applied even if the bid is erroneously awarded.

(3) The Award Criteria Worksheet shall state the minimum requirements which bidders must meet on each project which are set forth as follows:

§ 39.26 of the Municipal Code is hereby amended to read as follows. The heading of this section shall be changed to read "CONTRACTOR'S SUBMISSIONS, REPORTING AND

COMPLIANCE". The following language is hereby added as the first paragraph of § 39.26. Note that § 39.26 (A) shall remain unchanged.

§ 39.26 CONTRACTOR'S SUBMISSIONS, REPORTING AND COMPLIANCE

All contracts awarded by the city, a political subdivision of the city or any department of the city shall be on forms prescribed and approved by the City Council and by the Law Department of the city. Such forms may be periodically revised by the Law Department to ensure compliance with City, State and Federal Law and regulations, and City policy.

Monitoring of compliance with the Equal Employment Opportunity Goals contained in § 39.20 through §39.28 of this Code will be done by the Compliance Officer.

§ 39.26 (B) of the Municipal Code is hereby amended to read as follows:

§ 39.26 (B) The *Compliance and Reporting* requirements contained in § 39.07 (B) (2) (b) through § 39.07 (B) (2) (d) shall apply to Contractor Submissions, and other reporting requirements contained in § 39.20 through § 39.44 of this code.

§ 39.30 of the Municipal Code is hereby amended to add the following:

§ 39.30 (C) Awarding Agency. If the Board of Works is not the entity which bids or awards the contract, and the contract meets the criteria set in sections § 39.01 through § 39.28 of this code, then the City department, commission or authority which actually bid and / or awards such contract is Awarding Agency. Where necessary, the Awarding Agency shall notify the Board of Works and the Common Council if the proposed contract is a "Specialized" construction contract which warrants a waiver of the minority and /or residential hiring requirements

§39.45 of the Municipal Code is hereby added, and shall read as follows:

§ 30.45 Severability of Provisions

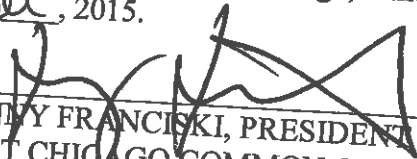
If any section subsection, sentence, clause, portion, or phrase of this Chapter, including sections 39.01 through 39.99 is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Chapter. The City Council hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of the Chapter would be subsequently declared invalid or unconstitutional.

SECTION II. Effective Date and References to previously deleted sections of the Municipal Code.

Effective Date. This Ordinance shall be effective upon passage and approval by the Mayor and applicable to all Construction Projects for which the City thereafter solicits for bid or awards.

References to previously deleted sections of the Code. References to the Human Rights Department or Commission, which were eliminated under a previous Council Ordinances, and the Human Rights Compliance Officer, shall be deleted from Sections 39.01 through 40.99 of the East Chicago Municipal Code, and be replaced with reference to the Compliance Officer, as appropriate.

PASSED and ADOPTED by the Common Council the City of East Chicago, Lake County, Indiana, on this the 28 day of December, 2015.


LENZY FRANCISKI, PRESIDENT
EAST CHICAGO COMMON COUNCIL

PASSED and ADOPTED by the Common Council of the City of East Chicago this 28 day of December 2016

Attest:



MARY MORRIS LEONARD
CITY CLERK

DEC. 09, 2015

PRESENTED by me to the Mayor for his approval and signature on this 29 day of December, 2015.


MARY MORRIS LEONARD
CITY CLERK

APPROVED and SIGNED by me on this 29th day of December, 2015.

FILED IN CLERK'S OFFICE
DEC 29 2015

Clerk, East Chicago City Court


ANTHONY COPELAND MAYOR
CITY OF EAST CHICAGO