

INTRODUCED: 08/23/2010

REFERRED TO: Rules and Public Policy Committee

SPONSOR: Councillor Brown

DIGEST: amends the Code requiring the Purchasing Division to adopt rules to give a preference to Indiana businesses pursuant to IC 5-22-15-20 and to companies participating in the Indiana Business Plan

SOURCE:

Initiated by: Councillor Brown

Drafted by: Aaron Haith, Democrat Caucus Counsel

LEGAL REQUIREMENTS FOR ADOPTION:
Subject to approval or veto by Mayor

PROPOSED EFFECTIVE DATE:
Adoption and approvals

GENERAL COUNSEL APPROVAL: _____ Date: August 18, 2010

GENERAL COUNSEL COMMENTS: The proposal references the "Indiana Plan" and "Project Labor Agreement," without defining either term. Before adoption, appropriate definitions should be added. Constitutional issues related to local residency quotas should be considered.

CITY-COUNTY GENERAL ORDINANCE NO. , 2010

A GENERAL ORDINANCE to approve the amendment of the Revised Code of the Consolidated City and County by amending Chapter 202, by adding new subsections (e) and (f) to Section 202-204 thereof.

WHEREAS, the Council of the Consolidated City and County recognizes the need and necessity of securing a work force that reflects the human demography of the City and County in the direct labor pool of the skilled trades used on publically financed projects; and

WHEREAS, the Council of the Consolidated City and County recognizes that most highly successful economies, defined by high and rapidly growing living standards, are those that effectively employ as many people in their populations as possible; and

WHEREAS, such highly successful economies engage services and make purchases, using the public's money, subject only to societal choices guided by economic incentives which is as unencumbered by as few artificial barriers as is possible; and

WHEREAS, maximizing potential labor force participation rates, employment rates and productivity per worker by employing people at what they do best and at the highest income per worker possible within this context enables the City and County to realize and to release untapped potential in today's existing workforce, targeting future workforce challenges and capitalizing on the broader economic benefits that more diverse populations have to offer; and

WHEREAS, it is the public policy of the City and County to foster, promote and encourage equal employment opportunity in all city and county jobs without regard to race, color, religion, handicap, national origin, ancestry, age, sex, [sexual orientation](#), [gender identity](#), or veteran status and to utilize businesses owned by minorities, women and persons with disabilities in securing goods and services for the city; and

WHEREAS, it is in the best interest of the City and County to foster, promote and encourage full participation of our residents in the revitalization of the economy and infrastructure through positive and continuing public works programs that give due consideration to resident status and which encourages our youth to seek jobs locally as opposed to taking their talents to other localities; and

WHEREAS, project labor agreements have proven to be of benefit in the furtherance of this public policy objective when used in connection with City and County construction, alteration and repair projects (including closely interrelated projects); and

WHEREAS, in order to insure and further this public policy, labor stability and labor peace on its projects and to the extent that it does not violate state or federal law, the Council of the Consolidated City and County finds that a minimum of sixty seven percent (67%) of the workforce shall be City and County residents and a minimum of sixty percent (60%) of all subcontractors shall be based in the City and County or owned business on all construction projects performed by or for the City and County and each of its Departments, Divisions, Agencies, Municipal Corporations and components; and

WHEREAS, the Council of the Consolidated City and County finds that Project Labor Agreements shall be used on all construction projects with projected costs of \$250,000.00 or more where the City and County or either of its Departments, Divisions, Agencies, Municipal Corporations and components is the owner of the property upon which the construction is to take place (or lessee or the beneficiary of a separate entity which is created to perform construction, alteration or repair work for the benefit of the said agencies), while recognizing that there may be circumstances, where in the case of an individual project, the benefits of proceeding without a Project Labor Agreement may exceed the benefits of proceeding with such an agreement, in which instance a written report shall be prepared by the department involved in such project and such report submitted to the controller for final consideration and decision; and

WHEREAS, the Council of the Consolidated City and County is dedicated to obtaining an economic benefit to its community and its citizens, while at the same time ensuring that its projects have a ready and adequate supply of highly trained and skilled craft workers; and

WHEREAS, the Indiana Plan, endorsed by the state Building and Construction Trades Council, has been effective in training women, minorities and disadvantaged workers for joint apprenticeship programs in the construction trades; and

WHEREAS, the Council of the Consolidated City and County, having been advised by various persons and organizations with respect to the anticipated consequences of such programs and their requirements, now finds that such programs and requirements will serve the public interest by offering the best opportunity to foster, promote and encourage full participation of our residents in the revitalization of the economy and infrastructure through positive and continuing public works programs that give due consideration to resident status and which encourages our youth to seek jobs locally as opposed to taking their talents to other localities, now therefore:

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. Sec. 202-204 of Chapter 202 of the Revised Code of the Consolidated City and County is hereby amended by deleting the text that is stricken through and adding the language that is underlined as follows:

Sec. 202-204. Purchasing division; promotion of supplies manufactured in the United States; and preference for Marion County businesses employing and training Marion County residents.

(a) The office of finance and management shall include a purchasing division, which shall be the purchasing agency, as that term is defined and used in IC 5-22, for the city and county, and for each of their respective departments, divisions, offices and agencies.

(b) The powers and duties of the purchasing division shall include:

(1) Acting as the agent in obtaining materials, supplies, equipment or contractual services, other than personal services, for city and county departments, divisions, offices and agencies. Any such department, division, office or agency shall requisition such materials, supplies, equipment or services from the purchasing agent, who shall, upon determining that appropriations are available for such purposes, acquire the items requisitioned in accordance with public purchase law. All

contracts of purchase shall be made in the name of the city department or division or county office and be subject to the approval of the department, division, office or agency;

- 2) Establishing such purchasing and contractual procedures as may best be suited to obtain the greatest economic value to the city and the county;
- (3) Where bidding and publication of notice are required by law, preparing specifications and notice to bidders and seeing that the required notices are published;
- (4) Ensuring that adequate funds are available prior to making necessary purchases and acquisitions are within the limits of the budget appropriations of the department, division, office or body in need of the material;
- (5) Acting as the agent of any executive department to sell or exchange any personal property ordered to be sold by a city department or division or county office in accordance with procedures prescribed by law; and
- (6) Serving as the repository for all executed contracts of the city, the county, each of the city's and county's respective departments, divisions, offices and agencies, the city-county council except as provided by section 151-93(4) of the Code, the circuit court, Marion Superior Court, and the prosecuting attorney, and maintaining a database on these contracts listing all contracting parties and encumbrances; and
- (7) Exercising any other powers which may be granted by statute or ordinance or delegated by the mayor.

(c) To promote the purchase of supplies manufactured in the United States as set forth in IC 5-22-15-21, the city and county, and each of their respective departments, divisions, offices and agencies, shall specify and purchase supplies manufactured in the United States unless the purchasing agent first determines that any of the following circumstances apply:

- (1) The supplies are not manufactured in the United States in reasonably available quantities;
- (2) The price of the supplies manufactured in the United States exceeds by an unreasonable amount the price of available and comparable supplies manufactured outside the United States;
- (3) The quality of the supplies is substantially less than the quality of comparably priced available supplies manufactured outside the United States; or
- (4) The purchase of supplies manufactured in the United States is not in the public interest.

(d) To promote the policy of the city and county to employ residents of the county who previously were incarcerated for or convicted of a felony, the purchasing division:

- (1) May afford additional weight to the bids or proposals of business enterprises that have programs, or that participate in city and county programs, for the training or hiring of such residents; and
- (2) Shall have authority in requests for bids or quotes to specify targets for performance, sanctions for nonperformance, and criteria for evaluation of bids and quotes consistent with the provisions of this subsection.

The controller shall determine the extent of such additional weight, but may not apply it to instances where the delivery of goods or services by such residents would compromise public safety and security.

(e) To promote the employment and training of Marion County residents, the controller shall employ Project Labor Agreements, to the full extent permitted by I.C. 36-1-12, et seq., on all projects made in furtherance of the revitalization of the economy and infrastructure of the City and County through positive and continuing public works programs projected to cost \$250,000.00 or more where the City and County or either of its Departments, Divisions, Agencies, Municipal Corporations and components is the owner of the property upon which the construction is to take place (or lessee or the beneficiary of a separate entity

which is created to perform construction, alteration or repair work for the benefit of the said agencies), except in such instances where the benefits of proceeding without a Project Labor Agreement exceeds the benefits of proceeding with such an agreement. In furtherance hereof, the controller shall:

- (1) Require that a contractors' work force, at a minimum be comprised of 67% Marion County residents, in all classifications including trainees, on any such contracted project.
- (2) Require that no less than 60% of the subcontractors on each project be Marion County owned or based enterprises.
- (3) Deny contracts to contractors or subcontractors who do not meet the requirements of parts (e)(1) and (e)(2) of this section.
- (4) Require each potential contractor and or subcontractor to send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding a notice advising of the contractor's commitments under this section.
- (5) Establish a monitoring or compliance office to monitor and to cause the enforcement of all provisions of this ordinance.
- (6) Shall not count employees hired under the Indiana Plan for purposes of the 67% goal referred to herein above.
- (7) Receive and consider, as a part of the final decision to engage a contractor, the written report required of and prepared by the department requesting a contract where, in the case of an individual project, the benefits of proceeding without a Project Labor Agreement exceeds the benefits of proceeding with such an agreement.

The city controller shall adopt rules, pursuant to Chapter 141 and this section which comply with the requirements of IC 5-22, et seq. and IC 36-1-12, et seq..

(f) The controller shall require that any contractor submitting a bid for a City and County construction project must subscribe to the Indiana Plan and a joint apprenticeship and training program for that project in which 15% of the contractor's work force, in each initial craft, is comprised of City and County residents.

SECTION 2. Sec. 181-501 and Sec. 181-502, Chapter 181 of the Revised Code of the Consolidated City and County, are hereby amended by deleting the text that is stricken through and adding the language that is underlined as follows:

ARTICLE V. ANNUAL BUDGET SUBMISSION

Sec. 181-501. Definitions.

As used in this division, the following words and phrases are defined as follows:

(a) *Annual budget ordinances* means the ordinance or ordinances adopted by the city-county council in September of one (1) year, establishing the appropriations, tax levies and tax rate for the calendar and fiscal year beginning the following January first, and extending until the next December thirty-first.

(b) *Budget year* means the calendar or fiscal year beginning the following January first, and extending through December thirty-first of that year.

(c) *Current budget* means the budget for the calendar year beginning the first day of January of the current calendar year and extending through December thirty-first of the current calendar year.

(d) *Current year appropriations* means the total appropriations by fund as approved by the state board of tax commissions with respect to the current budget.

(e) *Fiscal officer* means and refers to the controller of the Consolidated City of Indianapolis and Marion County, pursuant to IC 36-1-2-7 and IC 36-3-5-2.5.

(f) *Maximum tax levy* means the maximum permissive ad valorem property tax levy for the budget year computed in accordance with IC 6-3.5-1-3 -1.5, et seq.

(g) *Principal administrative official* shall mean the person required by IC 36-3-6-4 to estimate the necessary expenses for the proposed budget, i.e., the directors of the departments of the City of Indianapolis, every county officer and the supervisor of every other county agency.

(h) *Proposed budget* means the financial data required to be submitted by the operating agencies to the respective fiscal officers prior to the first Tuesday after the first Monday of July of each year estimating the necessary expenditures for such agencies for the fiscal or calendar year beginning January first of the next calendar year.

(i) Utilization report shall mean a survey done by the administrator of the office of minority-owned and women-owned business enterprises which reflects the dollar amount and description of any contract or agreement for public works projects, procurement of goods contracts, and or contracts for services let or awarded to a minority-owned and women-owned business by any division or department or agent of such division or department of the city and county for the twelve (12) month period preceding the first Tuesday after the first Monday of July of each year.

(j) Utilization strategic plan shall mean the proposed plan developed by the principal administrative official, as the latter is defined herein above, and the administrator of the office of minority-owned and women-owned business enterprises, for managing and implementing the minority and women business enterprises programs for the fiscal or calendar year beginning January first of the next calendar year.

Sec. 181-502. General requirement.

(a) To assure that the annual budget ordinances submitted pursuant to IC 36-3-6-4 comply with the tax limitations in IC 6-3.5-2-3, the additional requirements of this division shall be effective beginning with the submission of the proposed budget for the fiscal year beginning January 1, 1983.

(b) To assure that the purposes and goals to utilize minority and women owned enterprises are utilized as per the goals and the purpose specified in Sec. 202-401 are honored and effectuated, the additional requirements of this division shall be effective beginning with the submission of the proposed budget for the fiscal year beginning January 1, 2011.

SECTION 3: This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

The foregoing was passed by the City-County Council this ____ day of _____, 2010, at ____ p.m.

ATTEST:

Ryan Vaughn
President, City-County Council

Melissa Thompson
Clerk, City-County Council

Presented by me to the Mayor this ____ day of _____, 2010, at 10:00 a.m.

Melissa Thompson
Clerk, City-County Council

Approved and signed by me this _____ day of _____, 2010.

Gregory A. Ballard, Mayor