

CITY OF MILWAUKEE

Form CA-43

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
PATRICK B. McDONNELL
LINDA ULISS BURKE
Deputy City Attorneys



OFFICE OF CITY ATTORNEY
800 CITY HALL
200 EAST WELLS STREET
MILWAUKEE, WISCONSIN 53202-3551
TELEPHONE (414) 286-2601
TDD (414) 286-2025
FAX (414) 286-8550

July 15, 2005

THOMAS O. GARTNER
BRUCE D. SCHRIMPF
ROXANE L. CRAWFORD
SUSAN D. BICKERT
HAZEL MOSLEY
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
MICHAEL G. TOBIN
DAVID J. STANOSZ
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BEHLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
MELANIE R. SWANK
JAY A. UNORA
DONALD L. SCHRIEFER
EDWARD M. EHRlich
LEONARD A. TOKUS
VINCENT J. BOBOT
MIRIAM R. HORWITZ
MARYNELL REGAN
G. O'SULLIVAN-CROWLEY
DAWN M. BOLAND
KATHRYN M. ZALEWSKI
MEGAN T. CRUMP
ELOISA DE LEÓN
ADAM STEPHENS

Assistant City Attorneys

Alderman Michael McGee, Jr.
City Hall, Room 205

Alderman Michael J. Murphy
Chair, Finance & Personnel Committee
City Hall, Room 205

Re: Participation in or Profits Derived from Slavery by Contractors

Dear Aldermen:

In June of 2005, both Alderman McGee and the Finance and Personnel Committee requested our review of Common Council File Number 050284, an ordinance relating to disclosure of participation in or profits derived from slavery by contractors, for legality and enforceability. Although we conclude that such a provision could be drafted in a legal and enforceable manner, we must also conclude that the current draft must be rewritten to correct certain deficiencies.

We stress that the version of the ordinance currently before the Council is significantly different, and much more punitive, than any other slavery-disclosure ordinance we have been able to locate.

Both requestors forwarded a memo from the Legislative Reference Bureau regarding measures of this type enacted in the cities of Chicago, Illinois; Los Angeles, California; Detroit, Michigan; and Philadelphia, Pennsylvania; as well as similar laws enacted in the states of California, Illinois, and Iowa. The memo drafted by Legislative Research Analyst Amy E. Hefter summarizes the genesis and substance of these provisions, as well as the resulting information obtained

Alderman Michael McGee, Jr.
Alderman Michael J. Murphy
July 15, 2005
Page 2

since their enactment. We have had the opportunity to review these provisions and could locate no legal challenge brought in response to them.

The closest court decision we could locate which might bear on the legality and enforceability of such a provision involved a California statute requiring disclosure of information about Holocaust-era insurance policies. *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003). In *Garamendi*, the United States Supreme Court struck down the statute as violative of the foreign affairs power after concluding that the statute conflicted with the President's foreign policy, embodied in executive agreements with Germany, Austria, and France. *Id.* at 401. However, there is, to our knowledge, no comparable problem with respect to the slavery disclosure provisions cited in the LRB memo.

We have concluded that the Commerce Clause of the United States Constitution presents no impediment to this ordinance because that clause generally does not apply when a governmental unit is acting as a "market participant," rather than a "market regulator." *Trojan Technologies, Inc. v. Commonwealth of Pennsylvania*, 916 F.2d 903, 910 (3rd Cir. 1990).

Finally, we considered whether a challenge to this type of ordinance could be made on the basis of preemption by the state. We believe an ordinance of this type adopted by the City would survive such a challenge. The Wisconsin legislature has not enacted this type of provision, and we can locate no other provision in state law that could be said to conflict with it.

To summarize then, as a general matter, were the City to enact a provision of the type enacted in the cities of Chicago, Los Angeles, Detroit, and Philadelphia, we are of the opinion that it would be legal and enforceable.

However, as mentioned above, the proposed ordinance here differs in significant respects from the ordinances cited in the LRB memo. The ordinance before the Council not only requires disclosure and penalizes false disclosures, it imposes an almost confiscatory economic sanction on companies that disclose truthfully. **None** of the other ordinances or statutes cited in the LRB memo attempt to impose an economic sanction on contractors that disclose ties to slavery, except in

Alderman Michael McGee, Jr.
Alderman Michael J. Murphy
July 15, 2005
Page 3

instances where a contractor has been determined to have been untruthful in its disclosure. (For your convenience, we have attached copies of the four ordinances cited in the LRB memo.) The attempt to do so here would be subject to attack on multiple grounds.

This provision could successfully be challenged on equal protection grounds. The ordinance creates a classification – contractors that have had, directly or indirectly, ties to slavery – and treats them differently from other contractors on that basis. This is not a “suspect” classification, such as distinctions based on race, sex, or national origin, and therefore, a reviewing court would apply the “rational basis” test, typically applied in examining legislation with an economic or social purpose, in determining whether this classification violates the equal protection clauses of either the Wisconsin or United States Constitution. *Doering v. WEA Ins. Group*, 193 Wis. 2d 118, 130-32 (1995).

Under the “rational basis” test, a provision will survive an equal protection challenge if the means the legislature chose are rationally related to a legitimate governmental purpose. *Id.* at 131-32. The stated purpose of the proposed ordinance “is to promote full and accurate disclosure to the public about any slavery policies sold by any companies, or profits from slavery by industries, or their predecessors, who are doing business in the city.” We are of the opinion that this is a “legitimate governmental purpose.” Moreover, we are of the opinion that requiring contractors with whom the City enters into contracts to disclose ties to slavery furthers the purpose of such disclosure. However, requiring such contractors to deposit any sum of money into an account to fund scholarships, job training, and entrepreneurship programs does not further this purpose, and thus, is not “rationally related.” In fact, the provision which would penalize a contractor that disclosed ties to slavery could act as a disincentive to “full and accurate disclosure.”

In addition, the provision for the deposit of an amount equal to 100% of the dollar amount of the contract by contractors that have disclosed ties to slavery could lead to widely varying penalties, and thus, to another equal protection challenge. For instance, a company that derived \$1.00 of profit from slavery could potentially be asked to deposit millions of dollars, whereas a company that owned 1,000 slaves

Alderman Michael McGee, Jr.
Alderman Michael J. Murphy
July 15, 2005
Page 4

could be asked to deposit a few thousand dollars, depending upon the amount of the contract at issue. Thus, the provision is problematic in that it does not apply equally to all members of the classified group. See *Omernik v. State*, 64 Wis. 2d 6, 19 (1974).

We also believe it is possible such a provision could be challenged as "retroactive legislation" violative of the due process clauses of the Wisconsin and United States Constitutions. We must therefore conclude that this provision for the deposit of 100% of the dollar amount of the contract if a contractor discloses ties to slavery could be successfully challenged as unconstitutional.

The provision providing for a forfeiture of 100% of the dollar amount of the contract in the event of fraud, misrepresentation, or evasion of the requirements of the ordinance also distinguishes it from the ordinances cited in the LRB memo and would constitute a fine which the City is not empowered to levy. First, it is well established that an ordinance may not prescribe a greater forfeiture than the fine the state imposes on the same conduct. *Madison v. McManus*, 44 Wis. 2d 396, 402 (1969). The forfeiture scheme proposed here could lead to forfeitures in the millions. In contrast, for a violation of Wis. Stat. sec. 943.39, proscribing "Fraudulent Writings," a Class H felony, the maximum monetary penalty is a \$10,000 fine. Obviously, depending upon the contract, the forfeiture proposed here could be substantially higher than that amount.

In addition, § 939.12, Stats., provides:

A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by a forfeiture is not a crime.

As the Wisconsin Supreme Court noted:

Wisconsin municipalities cannot create crimes; therefore they cannot impose either a fine or imprisonment as a sanction for violation of a municipal ordinance.

Alderman Michael McGee, Jr.
Alderman Michael J. Murphy
July 15, 2005
Page 5

State v. Thierfelder, 174 Wis. 2d 213, 222 (1993) (citation omitted). The Court explained the distinction between fines and forfeitures this way:

Punishment for a crime whether by imprisonment or fine is an end in itself and has for its object punishment and the deterrent effect. Forfeiture for an ordinance violation is not a criminal penalty and cannot be justified on the ground of punishing people. In theory at least, forfeitures are to pay the cost of efficiently enforcing... ordinances and regulations.

McManus, 44 Wis. 2d at 402.

The proposal to place the forfeiture for providing false, misleading, or fraudulent information at the dollar amount of the contract could lead to a potential forfeiture of millions of dollars. A forfeiture in this amount would be "so extreme and so divorced from the Government's damages and expenses as to constitute punishment." *Thierfelder*, 174 Wis. 2d at 228 (citation omitted). In addition, it could be challenged because violators engaging in the same illegal behavior would be subject to widely divergent penalties.

This is not to say, however, that the City could not impose a forfeiture for failure to comply with the dictates of the ordinance. For instance, § 360-09, Milwaukee Code of Ordinances, imposes a forfeiture of not less than \$2,000 nor more than \$5,000 for the failure to comply with the dictates of the Emerging Business Enterprise Program ordinance. Although this forfeiture is relatively high in relation to many other ordinance violations, it is probably possible to justify a similarly high forfeiture for failure to comply with the dictates of a slavery disclosure ordinance given the likely cost of monitoring and enforcing the enactment. Furthermore, the ordinance could further provide that those contractors that have been found to have submitted false, misleading, or fraudulent information are disqualified from future bidding, similar to the provision in § 310-13-9-d regarding living wage requirements.

Therefore, we are of the opinion that the ordinance may not impose a monetary penalty when a contractor discloses ties to slavery, and that the ordinance must be

Alderman Michael McGee, Jr.
Alderman Michael J. Murphy
July 15, 2005
Page 6

redrafted to provide for a lesser penalty in the event of fraud, misrepresentation, or evasion of the dictates of the ordinance.

Additionally, we would like to point out a few more minor problems with the current draft.

As currently drafted, it is unclear whether any contractor who attempts to procure a contract needs to comply with the ordinance, or whether it only applies to contractors who are ultimately executing a contract. If the latter was intended, (as appears to have been the case in the Chicago, Los Angeles, Detroit, and Philadelphia ordinances), then the language in 310-14-2-a which provides "Any contractor attempting to procure a contract with the city" should be deleted in favor of language which, for example, would provide: "Each contractor with whom the city enters into a contract...."

Furthermore, there are several terms used in the ordinance which need to be defined. For instance, "the slavery era" could be defined in a variety of ways, (before 1865 or between 1745 and 1865, etc.). In this regard, we direct your attention to the Los Angeles ordinance for their extensive definition section. The lack of clearly defined terms could subject the ordinance to a challenge on vagueness grounds. In addition, the ordinance should clarify which City department will be charged with monitoring and enforcing the ordinance.


As a practical matter, if the ordinance is to provide that the contract is void, (as opposed to voidable, as do the Chicago, Los Angeles, and Detroit ordinances), then it might make sense to require that the affidavit be submitted prior to or at the time of execution of the contract, rather than within 90 days of execution, as it will certainly be less disruptive if the contract is voided prior to partial performance, and possibly payment, which the City would then have to recover.

Finally, the Council should create a record and draft findings to support the need for and purpose of such legislation.

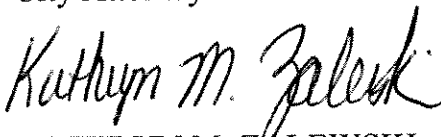
Alderman Michael McGee, Jr.
Alderman Michael J. Murphy
July 15, 2005
Page 7

We hope this answers your question. Should you require any additional information, or require our assistance in drafting a legal and enforceable ordinance, please contact us.

Very truly yours,



GRANT E. MANGLEY
City Attorney



KATHRYN M. ZALEWSKI
Assistant City Attorney

KMZ:kmz
1128-2005-1734:94869
cc: Ron Leonhardt
City Clerk

funds administered by the United States Department of Transportation, except to the extent Congress has directed that the Department of Transportation not withhold funds from states and localities that choose to implement selective purchasing policies based on agreement to comply with the MacBride Principles for Northern Ireland, or to the extent that such funds are not otherwise withheld by the Department of Transportation.

(Added Coun. J. 2-10-93, p. 29116; Amend Coun. J. 3-31-04, p. 20916, § 4.4)

2-92-585 Slavery Era Business/Corporate Insurance Disclosure.

This section shall be known and cited as the "Business, Corporate and Slavery Era Insurance Ordinance." The purpose of this section is to promote full and accurate disclosure to the public about any slavery policies sold by any companies, or profits from slavery by other industries (or their predecessors) who are doing business with the city.

Each contractor with whom the city enters into a contract, whether subject to competitive bid or not, must complete an affidavit verifying that the contractor has searched any and all records of the company or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit. The chief procurement officer shall make the information available to the public and provide an annual report to the city council.

Failure to comply with this section shall deem the contract voidable on behalf of the city.

(Added Coun. J. 10-2-02, p. 94889, § 1)

2-92-586 Contracts--Firms owned or operated by individuals with disabilities.

(a) Whenever used in this section, unless the context otherwise requires, the following words and phrases have the following meanings:

(1) "Firm owned or operated by individuals with disabilities" means an entity, except for those entities that constitute an established business based on the size standards set forth in Section 2-92-420 of the Municipal Code, or individual that is certified by the chief procurement officer as meeting one of the following criteria:

(i) A for-profit corporation, partnership, association, business trust, estate, or other legal entity that is either owned (directly, indirectly or beneficially) 51 percent or more by one or more individuals with disabilities and whose management and daily business operations are controlled by one or more individuals with disabilities; or

(ii) A nonprofit corporation that employs individuals with disabilities, pays them an hourly wage that is not less than the federal minimum wage and not on a piece work basis, and a) whose management and daily business operations are controlled by one or more individuals with disabilities, and b) whose corporate purpose includes providing, directly or indirectly, services to individuals with disabilities; or

(iii) An individual with a disability who is contracting with the city as a sole proprietorship or individually.

(2) "Disability" means, with respect to an individual:

(i) A medically diagnosed severe physical or mental impairment that

**ARTICLE 15
REGULATIONS REGARDING PARTICIPATION IN OR
PROFITS DERIVED FROM SLAVERY BY ANY COMPANY
DOING BUSINESS WITH THE CITY**

Section

10.41 Definitions.

10.41.1 Purpose of Slavery Era Business Corporate/ Insurance Disclosure.

10.41.2 [Affidavit Required.]

10.41.3 Exceptions.

10.41.4 Administration.

10.41.5 Application of This Article.

Sec. 10.41. Definitions.

A. “Awarding Authority” means a subordinate or component entity or person of the City, such as a City Department or Board of Commissioners, that has the authority to enter into a Contract or agreement for the provision of goods or services on behalf of the City of Los Angeles.

B. “Company” means any person, firm, corporation, partnership or combination of these.

C. “Contract” means any agreement, franchise, lease or concession including an agreement for any occasional professional or technical personal services, the performance of any work or service, the provision of any materials or supplies or rendering of any service to the City of Los Angeles or the public, which is let, awarded or entered into with or on behalf of the City of Los Angeles or any Awarding Authority of the City.

D. “Designated Administrative Agency (DAA)” means the Department of Public Works, Bureau of Contract Administration.

E. “Enslaved Person” means any person who was wholly subject to the will of another and whose person and services were wholly under the control of another and who was in a state of enforced compulsory service to another during the Slavery Era.

F. “Investment” means to make use of an Enslaved Person for future benefits or advantages.

G. “Participation” means having been a Slaveholder during the Slavery Era.

H. “Predecessor Company” means an entity whose ownership, title and interest, including all rights, benefits, duties and liabilities were acquired in an uninterrupted chain of succession by the Company.

I. “Profits” means any economic advantage or financial benefit derived from the use of Enslaved Persons.

J. “Slavery” means the practice of owning Enslaved Persons.

K. “Slavery Era” means that period of time in the United States of America prior to 1865.

L. “Slaveholder” means holders of Enslaved Persons, owners of business enterprises using Enslaved Persons, owners of vessels carrying Enslaved Persons or other means of transporting Enslaved Persons, merchants or financiers dealing in the purchase, sale or financing of the business of Enslaved Persons.

M. “Slaveholder Insurance Policies” means policies issued to or for the benefit of Slaveholders to insure them against the death of, or injury to, Enslaved Persons.

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 8-16-03.

Amended by: Subsec. D., Ord. No. 176,155, Eff. 9-22-04.

Sec. 10.41.1. Purpose of Slavery Era Business Corporate/Insurance Disclosure.

Many early American industries including, but not limited to, insurance, banking, tobacco, cotton, railroads, and shipping, realized enormous Profits by utilizing the uncompensated labor of Enslaved Persons. Many individuals and business enterprises were directly enriched by the labor of Enslaved Persons or benefitted from insurance policies insuring Enslaved Persons.

The City of Los Angeles, whose citizenry includes descendants of Enslaved Persons, is entitled to full disclosure of any Participation in or Profits derived through Slavery by Companies seeking to do business with the City.

The State of California has implemented Insurance Code Sections 13810-13813 requiring insurance companies to provide information to the California Department of Insurance regarding Slaveholder Insurance Policies sold during the Slavery Era as part of its licensing and renewal procedure.

In further support of this legislative act and to further promote the ideals the act embraces, this ordinance requires those seeking to do business with the City to fully and accurately disclose any and all Participation in or Profits derived from Slavery.

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 8-16-03.

Sec. 10.41.2. [Affidavit Required.]

Each Awarding Authority, shall require that any Company that enters into a Contract with the City, whether the Contract is subject to competitive bidding or not, shall complete an affidavit, prior to or contemporaneous with entering into the Contract, certifying that:

A. The Company has searched any and all records of the Company, or any Predecessor Company, regarding records of Participation or Investments in, or Profits derived, from Slavery, including Slaveholder Insurance Policies issued during the Slavery Era; and

B. Disclosed any and all records of Participation in or Profits derived by the Company, or any Predecessor Company, from Slavery, including issuance of Slaveholder Insurance Policies, during the Slavery Era, and identified the names of any Enslaved Persons or Slaveholders described in the records.

The Awarding Authority may terminate the Contract if a Company fails to fully and accurately complete the affidavit.

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 8-16-03.

Sec. 10.41.3. Exceptions.

This article shall not be applicable to the following Contracts:

A. Contracts for the investment of:

- (1) City trust moneys or bond proceeds;
- (2) pension funds;
- (3) indentures, security enhancement agreements for City tax-exempt and taxable financings;
- (4) deposits of City surplus funds in financial institutions;

(5) the investment of City moneys in securities permitted under the California State Government Code and/or the City's investment policy;

(6) investment agreements, whether competitively bid or not;

(7) repurchase agreements;

(8) City moneys invested in United States government securities; and

(9) Contracts involving City moneys in which the Treasurer or the City Administrative Officer finds that the City will incur a financial loss or forego a financial benefit, and which in the opinion of the Treasurer or the City Administrative Officer would violate his or her fiduciary duties.

B. Grant funded Contracts if the application of this article would violate or be inconsistent with the terms or conditions of a grant or Contract with an agency of the United States, the State of California or the instruction of an authorized representative of any of those agencies with respect to any grant or Contract.

C. Contracts with a governmental entity such as the United States of America, the State of California, a county, city or public agency of one of these entities, or a public or quasi-public corporation located in the United States and declared by law to have a public status.

D. Contracts awarded on the basis of exigent circumstances whenever any Awarding Authority finds that the City would suffer a financial loss or that City operations would be adversely impacted unless exempted from the provisions of this article. This finding must be approved by the DAA prior to Contract execution.

E. Contracts with any Company that has been designated as a non-profit organization pursuant to the United States Internal Revenue Code Section 501(c)(3).

F. Contracts for the furnishing of articles covered by letters patent granted by the government of the United States or where the goods or services are proprietary or only available from a single source.

G. Contracts awarded on the basis of urgent necessity in accordance with Charter Section 371(e)(5).

I. Contracts entered into pursuant to Charter Section 371(e)(6).

J. Contracts entered into pursuant to Charter Section 371(e)(7).

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 8-16-03.

Sec. 10.41.4. Administration.

A. The DAA shall promulgate rules and regulations to implement this article within sixty days after the effective date of this ordinance.

B. The DAA shall develop an affidavit to be used by Awarding Authorities within sixty days after the effective date of this ordinance.

C. The DAA shall administer the requirements of this article and monitor compliance, including investigation of alleged violations.

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 8-16-03.

Sec. 10.41.5. Application of this Article.

A. This article shall be applicable to Contracts entered into after the rules and regulations have been promulgated by the DAA.

B. This article shall be applicable to Contract amendments entered into after the rules and regulations have been promulgated by the DAA where the initial Contract was not subject to the provisions of this article.

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 8-16-03.

DIVISION 7. SLAVERY ERA RECORDS AND INSURANCE DISCLOSURE

Sec. 18-5-91. Scope.

- (a) This division shall apply to each contractor for goods or services with which the City enters into a contract, whether or not the contract is subject to competitive bid.
 - (b) Each contractor shall be responsible for searching and disclosing records of the entity which proposes to enter into a contract with the City as well as all records of any predecessor entity that are within the possession or knowledge of the contractor regarding records of investments or profits from the slave industry, including records of any insurance policies issued to slave holders which provided coverage for injury, death, or other loss related to slaves who were held during the slavery era in the United States.
- (Ord. No. 20-04, § 1, 6-23-04)

Sec. 18-5-92. Affidavit of disclosure required.

- (a) As part of its contract package, each contractor with which the City enters into a contract shall submit to the Finance Department Purchasing Division prior to the submission to City Council for approval of such contract, an affidavit that discloses the information indicated in Subsections (b) and (c) of this section. The affidavit shall be on a form provided by the Finance Department Purchasing Division.
 - (b) The affidavit shall verify that the contractor has searched all records of the entity which proposes to enter into a contract with the City, as well as all records of any predecessor entity, that are within the possession or knowledge of the contractor regarding records of investments or profits from the slave industry, including records of any insurance policies issued to slave holders which provided coverage for injury, death, or other loss related to slaves who were held during the slavery era in the United States.
 - (c) The affidavit shall disclose any information discovered during the search regarding investments or profits from slavery or slave holder insurance policies which accrued to the current entity or to any predecessor entity, including the names of any slaves or slave holders that are described in such records or are otherwise within the knowledge of the contractor.
- (Ord. No. 20-04, § 1, 6-23-04)

Sec. 18-5-93. Voidability of contract.

- (a) Failure to comply with this division shall render the contract voidable by the City.
 - (b) A determination to void the contract for failure to comply with this division shall be made by the Director of the Finance Department at any time after reviewing, or becoming aware of, information which indicates that a contractor has failed to comply with this division.
- (Ord. No. 20-04, § 1, 6-23-04)

Sec. 18-5-94--18-5-99. Reserved.



CITY OF PHILADELPHIA CITY COUNCIL

[HOME](#)
[About the City Council](#)
[Council District Maps](#)
[Find Your Council District](#)

[Standing Committees](#)
[Council Meeting Notices](#)
[City Council Bills Introduced](#)

[PATRICIA RAFFERTY,](#)
Chief Clerk

District Members of Council

- [1st FRANK DICICCO](#)
- [2nd ANNA C. VERNA](#)
- [3rd JANNIE L. BLACKWELL](#)
- [4th MICHAEL A. NUTTER](#)
- [5th DARRELL L. CLARKE](#)
- [6th JOAN L. KRAJEWSKI](#)
- [7th RICHARD T. MARIANO](#)
- [8th DONNA REED MILLER](#)
- [9th MARIAN B. TASCO](#)
- [10th BRIAN J. O'NEILL](#)

At-Large Members of Council

- [DAVID COHEN](#)
- [W. WILSON GOODE, JR.](#)
- [JACK KELLY](#)
- [JAMES F. KENNEY](#)
- [JUAN RAMOS](#)
- [BLONDELL REYNOLDS BROWN](#)
- [FRANK RIZZO](#)
- [Link to www.phila.gov](#)

2/19/2004
BILL NO. 040133

Introduced February 19, 2004
Councilmembers Reynolds Brown and Goode
Referred to the Committee on Finance

WARNING:

This bill is shown in the form in which it was first introduced in Council. It may have since been amended by Council, and the bill as shown here **DOES NOT INCLUDE ANY SUCH AMENDMENTS.**

To determine whether this bill has been amended, and to obtain a current version of this bill that includes any amendments, contact the Office of the Chief Clerk, Room 402 City Hall, Philadelphia, PA 19107 (Telephone: 215-686-3410).

BILL NO. 040133

Introduced February 19, 2004
Councilmembers Reynolds Brown and Goode
Referred to the Committee on Finance

AN ORDINANCE

Amending Section 17-104 entitled "Prerequisites to the Execution of City Contracts" by adding a new subsection (2) entitled "Slavery Era Business/Corporate Insurance Disclosure" to promote full and accurate disclosure to the public about any slavery policies sold by any companies or profits from slavery by other industries (or their predecessors) who are doing business with the City of Philadelphia and recodifying Section 17-104 by incorporating various technical changes; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:
SECTION 1. Section 17-104 of The Philadelphia Code is hereby amended to read as follows:

§17-104. Prerequisites to the Execution and Validity of City Contracts.
[(2) Prohibited Contracts]

[(a)](1) Definitions. For the purpose of this subsection, the following definitions shall apply:

[(.1)a) Business Entity Any individual, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, joint venture, or unincorporated association, including any parent company, subsidiary, exclusive distributor or company affiliated therewith, engaged in a business or commercial enterprise;

[(.2)b) City. The City of Philadelphia;

[(.3)c) City Agency. The City of Philadelphia, its departments, boards and

commissions;

([.4]d) City-related Agency. All authorities and quasi-public corporations which either:

([i].1) receive appropriations from the City; or

([ii].2) have entered into continuing contractual or cooperative relationships with the City; or

([iii].3) operate under legal authority granted to them by City ordinance.

([.5]e) Department. The Procurement Department.

(2) Slavery Era Business/Corporate Insurance Disclosure.

(a) Business, Corporate and Slavery Era Insurance Ordinance. This subsection shall be known and cited as the "Business, Corporate and Slavery Era Insurance Ordinance." The purpose of this subsection is to promote full and accurate disclosure to the public about any slavery policies sold by any companies, or profits from slavery by other industries (or their predecessors) who are doing business with any City Agency or City-related Agency.

(b) Each contractor with whom a City Agency enters into a contract, whether subject to competitive bid or not, within the first 90 days after the contract's execution, shall complete an affidavit verifying that the contractor has searched any and all records of the company or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

(c) The Department shall make the information contained in the affidavit available to the public, including but not limited to making the information accessible on the City's internet accessible world wide web home page and provide an annual report to the City Council.

(d) Any contract between a City Agency and a contractor which fails to provide the requisite affidavit within ninety (90) days of the contract's execution or which includes material false information on such affidavit shall be rendered null and void .

(e) City Related Agencies. Any contract, lease, grant condition or other agreement entered into by the City with any City-related Agency shall contain a provision requiring the City-related Agency, in the procurement of goods and services purchased pursuant to such contract, lease, grant condition or other agreement with the City, to abide by the provisions of subsection 17-104(2).

(3) Prohibited Contracts

([b])

* * *

[[c]]

[[d]]

[[e]]

[[f]]

[[g]]

[[h]]

[[i]]

[[j]]

[[k]]

[[l]]

[[m]]

SECTION 2. This ordinance shall take effect 90 days after final passage.

Explanation:

[Brackets] indicate matter deleted.
Italics indicate new matter added.

◀ BACK TO LIST

▲ BACK TO TOP