



Legislation Text

File #: 191098, **Version:** 1

191098 SUBSTITUTE 1

ALD. ZIELINSKI AND STAMPER

A substitute ordinance relating to residents preference program code provisions.

309-41-1	rc
309-41-2-a	am
309-41-2-b	rn
309-41-2-b	cr
309-41-2-c	rn
309-41-2-d	rn
309-41-2-e	rn
309-41-2-e	am
309-41-2-f	am
309-41-3.5-b	am
355-41-3.5-c	am
355-1-1	rc
355-7-2-a-0	am
355-7-2-a-1	am
355-11-1	am
355-11-1.5	cr
355-11-2-e	am
355-11-3-0	am
355-11-3-a	am

This ordinance revises current code provisions governing the residents preference program by:

- Allowing a contractor to satisfy its resident preference program requirement by using workers who are employees of record of an entity engaged solely in training its employees for permanent employment, who are not employed or paid directly by the contractor and who, from time to time, are assigned to provide work at a contractor's jobsite as part of the employee's job training and career development.
- Requiring that at least 40% of workers participating in the program have either no skills, or insufficient skills, for the initial job assignment.
- Increasing the percentage of participants required to reside in high-poverty zip code areas from 25% to 35%. This requirement shall be reduced back to 25% if insufficient workers cannot be recruited through programs established by the city.
- Providing that a digital location tracking device indicating the whereabouts of a person throughout the day may, solely at the city's discretion, be deemed evidence of domiciliary intent when asserting residency.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part. 1. Section 309-41-1 of the code is repealed and recreated to read:

309-41. Participation of City Residents in Public Works Contracts.

1. DEFINITIONS.

- a. "Construction" means either new construction work or repair work on any road, bridge, sewer, street, alley, building or any other public work whatsoever.
- b. "Contract" means a binding agreement executed by the city in which the city is committed to expend or expends its funds or other resources.
- c. "Contractor" means a separate and distinguishable business entity participating or seeking to participate in the performance of a contract.
- d. "Department" means the department of public works or other city department administering a city construction contract.
- e. "Permanent employer" means an employer who pays employees directly for services rendered without any intermediary, who is not principally engaged in training or preparing employees to be employed by an unrelated employer of record, and receives no funding from any source as an incentive to employ the employee or to reduce the cost of an employee's compensation or benefits.
- f. "Resident" means a person who maintains his or her place of permanent abode within the city and within a particular zip code area. Domiciliary intent is required to establish that a person is maintaining his or her place of permanent abode in the city. Mere ownership of real property is not sufficient to establish domiciliary intent. Evidence of domiciliary intent includes, without limitation, the location where the person votes, pays personal income taxes or obtains a driver's license. The commissioner of the department of public works shall take into account evidence provided by a mobile application that tracks the physical location of persons in making determinations regarding domiciliary intent.
- g. "Training employer" means an employer of record solely engaged in training or preparing employees for employment by a permanent employer pursuant to a training employer curriculum as provided in s. 355-11-1.5. Training may include development of job performance or workplace readiness skills, and instruction may be provided in a classroom, an onsite shop or the jobsite of a permanent employer.
- h. "Under skilled worker" means a worker on a construction contract who has either no skills, or insufficient skills, for an initial job assignment, and is being trained by a training employer.
- i. "Unemployed or underemployed" means a resident who has worked fewer than 1,200 hours in the preceding 12 months or has not worked in the preceding 15 days or, regardless of employment status, has a household income at or below the federal poverty guidelines as adjusted by the Wisconsin department of public instruction to define eligibility for reduced lunch in public schools. Included are residents who have been employees of record during the preceding 12 months, regardless of the number hours employed, for a training employer.
- j. "Worker hours" means the total hours worked on a construction contract by skilled, unskilled and under skilled construction trade workers, whether those workers are employed by the contractor or any subcontractor, or a training employer. In determining the total worker hours to be furnished at a construction site, the number of hours devoted to all tasks customarily performed on a construction site shall be included, whether or not such tasks are performed on the construction site. "Worker

hours" includes work performed by persons filling apprenticeships, participating in on-the-job training or gaining work experience through a work experience program, and excludes the number of hours of work performed by all non-Wisconsin residents.

Part 2. Section 309-41-2-a of the code is amended to read:

2. REQUIREMENTS.

a. A requirement that ~~[[40% of]]~~ the >>percentage of<< worker hours, subject to the provisions of sub. 3-a-2, shall be performed by unemployed or underemployed residents, and that contractors and subcontractors shall give fair consideration to all segments of the population including women and minorities.

Part 3. Section 309-41-2-b to e of the code is renumbered 309-41-2-c to f.

Part 4. Section 309-41-2-b of the code is created to read:

b. A requirement that not less than 40% of the percentage of worker hours provided in par. a be performed by under skilled workers.

Part 5. Section 309-41-2-e and f of the code is amended to read:

e. A requirement that at least ~~[[one quarter]]~~ >>35%<< of the worker hours required in par. a be performed by unemployed or underemployed residents who maintain their permanent residence in zip codes established as high-poverty, as determined by the city clerk on January 1 every three years beginning in 2017, in consultation with the department of administration and based on income guidelines established by the U.S. department of housing and urban development for poverty relief and housing block grant programs. >>If in the judgment of the commissioner of public works, the first source employment program provided in s. 355-11 used by contractors and subcontractors for worker recruitment is unable to provide sufficient workers to meet the 35% requirement on a particular contract, the requirement may be reduced to 25%.<<

f. A requirement that all contractors and subcontractors ~~[[utilize a local workforce development agency as a first-source option]]~~ >>use a first-source employment program<< for recruiting applicants for both new and replacement ~~[[employment]]~~ >>job assignments,<< as provided in s. 355-11.

Part 6. Section 309-41-3.5-b and c of the code is amended to read:

3.5. EXCEPTIONS.

b. For every worker hour exceeding the requirements of ~~[[sub. 2-d]]~~ >>sub. 2-e<<, one-and-a-half hours shall be credited toward meeting the requirements of sub. 2-a.

c. The hours worked by a resident who meets the definition of unemployed or underemployed solely under the 15-day provision of ~~[[sub. 4-f]]~~ >>sub. 1-i<< shall not be credited toward meeting the contract participation requirements of sub. 2-a unless the resident had not worked on the same project for the same contractor prior to the 15-day period.

Part 7. Section 355-1-1 of the code is repealed and recreated to read:

355-1. Definitions.

1. DEPARTMENT means department of city development or other city department partnering on a private construction project.
2. DIRECT FINANCIAL ASSISTANCE means the value of below-market land sales, any direct subsidies to developers and city expenditures for private improvements, with a combined value of \$1 million or more, as determined by the commissioner of the department, targeted specifically to a project. It includes the value of tax increment financing and below-market-rate loans provided by the city.
3. RESIDENT means a person who maintains his or her place of permanent abode within the city and within a particular zip code area. Domiciliary intent is required to establish that a person is maintaining his or her place of permanent abode in the city. Mere ownership of real property is not sufficient to establish domiciliary intent. Evidence of domiciliary intent includes, without limitation, the location where the person votes, pays personal income taxes or obtains a driver's license. The commissioner of city development shall take into account evidence provided by a mobile application that tracks the physical location of persons in making determinations regarding domiciliary intent.
4. PERMANENT EMPLOYER means an employer of record solely engaged in training or preparing employees for employment by a permanent employer.
- 5 TRAINING EMPLOYER means an employer of record solely engaged in training or preparing employees for employment by a permanent employer pursuant to a training employer curriculum as provided in s. 355-11-1.5. Training may include development of job performance or workplace readiness skills, and instruction may be provided in a classroom, an onsite shop or the jobsite of a permanent employer.
6. UNDER SKILLED WORKER means a worker on a project who has either no skills, or insufficient skills, for the initial job assignment, and is being trained by a training employer.
7. UNEMPLOYED OR UNDEREMPLOYED means that the resident has worked less than 1200 hours in the preceding 12 months or has not worked in the preceding 15 days or, regardless of employment status, has household income at or below the federal poverty guidelines as adjusted by the Wisconsin department of public instruction to define eligibility for reduced lunch in public schools. Included are residents who have been employees of record during the preceding 12 months, regardless of the number of hours employed, for a training employer.

Part 8. Section 355-7-2-a-0 and 1 of the code is amended to read:

355-7. Participation of City Residents.

2. ADMINISTRATION.

- a. Prior to submitting a proposed term sheet for a project, the commissioner of city development, in consultation with the office of small business development or such other entity as may be designated by the city from time to time, shall determine the appropriate level of participation of unemployed and underemployed residents of the city for the project to reflect the job or trade categories required for the project and the pool of available certified and qualified workers within each job or trade category. The total appropriate level of participation shall be presumed to be 40%, unless the commissioner determines there is sufficient reason to impose a lesser requirement. >>Not less than 40% of the appropriate level of unemployed and underemployed participants shall be under skilled workers.<< The recipient of direct financial assistance shall submit a city resident utilization plan and gap analysis detailing how the level of required participation will be achieved. Up to one-third of required

worker hours may be achieved by documenting the use of unemployed or underemployed residents on projects undertaken by the developer where such compliance is not required, or by hiring unemployed or underemployed residents on a full-time permanent basis for non-construction job categories connected to the project. Such adjustments must be proposed in an affidavit on a form provided by the department setting forth the facts upon which the request for adjustment is based.

a-1. At least ~~[[one quarter]]~~ >>35%<< of the appropriate level of participation required in par. a shall be performed by unemployed or underemployed residents who maintain their permanent residence in zip codes established as high-poverty, as determined by the city clerk on January 1 every three years beginning in 2017, in consultation with the department of administration and based on income guidelines established by the U.S. department of housing and urban development for poverty relief and housing block grant programs. Every worker hour exceeding this requirement shall count for one -and-a-half hours toward the requirement of par. a. >>If in the judgment of the commissioner of city development in consultation with the office of small business development or such other entity as may be determined by the city from time-to-time, the first source employment program provided in s. 355-11 used by contractors and subcontractors for worker recruitment is unable to provide sufficient workers to meet the 35% requirement on a particular contract, the requirement may be reduced to 25%.<<

Part 9. Section 355-11-1 of the code is amended to read:

355-11. First-Source Employment Utilization.

1. DEFINITIONS. In this section "first-source employment program" means an employment program operated by the city or its designee which is to be utilized as a contractor's or subcontractor's first source for either recruiting applicants for both new and replacement employment, or for employing contract employees for a project: >>A training employer may be designed as a first-source employment program.<<

Part 10. Section 355-11-1.5 of the code is created to read:

1.5. TRAINING EMPLOYER CURRICULUM. The curriculum used by a training employer shall be recognized by industry and state authorities as suitable, and prepare trainees for pre-apprenticeship certification. Instruction may be provided in a classroom, an onsite shop or the jobsite of a permanent employer. Trainees shall be provided all appropriate protective equipment during training. Training shall include development of job performance or workplace readiness skills, life skills, worksite and job performance safety and issuance of a federal occupation safety and health administration 10-hour safety course completion card. A training employer shall provide to a contractor labor compliance tracking of all trainees assigned to the contractor's worksite.

Part 11. Section 355-11-2-e of the code is amended to read:

2. RECIPIENT OF DIRECT FINANCIAL ASSISTANCE.

e. The office of small business development or its designee shall institute a tracking system and record which applicants were interviewed, which applicants were not interviewed and which applicants were hired >>, or engaged through a training employer,<< for positions subject to this subsection.

Part 12. Section 355-11-3-0 and a of the code is amended to read:

3. >>CONFIRMATION<<. The office of small business development shall confirm that each construction contract for a project entered into by a recipient of direct financial assistance requires contractors and subcontractors to enter into a first-source agreement with the city or its designee which shall apply for the duration of the contract. A first-source recruitment agreement shall require:

a. Utilization of the city's first-source employment program as the first source for recruitment and referral of applicants for new and replacement ~~[[employment]]~~ >>job assignments<<.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

LRB 175325 - 2

Aaron Cadle

March 27, 2020