

Ordinance No. **011-09C.S.**

AN ORDINANCE AMENDING THE STOCKTON MUNICIPAL CODE BY AMENDING TITLE 3, REVENUE AND FINANCE, BY ADDING SECTION 3.68.095 RELATING TO LOCAL HIRING ON PUBLIC WORKS CONTRACTS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS.

SECTION I. AMENDMENT OF CODE.

Title 3, Chapter 3.68, Article 1 of the Stockton Municipal Code is hereby amended by adding Section 3.68.095 to read, as follows:

3.68.095 LOCAL EMPLOYMENT-- PUBLIC WORKS CONTRACTORS:

A. FINDINGS.

The City Council of the City of Stockton hereby finds that:

(1) Unemployment rates in Stockton have been consistently higher than in California as a whole. Statistics indicate that the higher unemployment level in Stockton correlates to a higher number of families living in poverty and to a higher crime rate.

(2) Due to the lack of local jobs, much of the work force residing in Stockton is forced to commute long distances to find work, causing increased traffic on state highways, increased pollution, increased use of gas and other fuels and other serious environmental impacts.

(3) Because of the shortage of local jobs, many residents of Stockton must leave for work very early in the morning and return late in the evening, often leaving children and teenagers alone and unsupervised during the hours between school and the parents return from work outside the area.

(4) Absentee parents and unsupervised youth can result in increased problems for families, communities and the City as a whole, including, but not limited to increased crime, more frequent and more serious injuries, poor homework accomplishments, failing grades and increased high school drop out rates.

(5) The City Council of the City of Stockton has concluded that the City needs an expanding employment base and that a policy that encourages contractors who receive City contracts or subsidies to hire residents of Stockton will benefit the City as a whole.

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(6) Such policy will provide job opportunities to Stockton residents, expand the City's employment base, lessen the drain on public assistance resources and reduce the impacts on the environment caused by high unemployment and long commuting times to jobs outside the area.

B. DECLARATION OF POLICY AND PURPOSE.

(1) It is the policy of the City of Stockton to ensure full and equitable opportunities for Stockton residents to participate in the employment opportunities that arise from public works contracts.

(2) It is also the policy of the City of Stockton to increase the number of employed persons living in the City of Stockton in an attempt to counteract the grave economic and social ills associated with the higher unemployment levels that exist within the City.

(3) In furtherance of this policy the City of Stockton has established a local hiring program to encourage the hiring and retention of Stockton residents for the work to be performed under public works contracts.

C. SCOPE AND GOALS.

(1) Unless such a provision would conflict with a state or federal law or regulation applicable to a particular contract for public works or improvements, all City contracts for public works or improvements of estimated value or City subsidy of \$100,000 or more shall contain provisions pursuant to which the contractor promises to make a good-faith effort, with the assistance of local labor union hiring halls or community organizations designated by the City to employ qualified individuals who are, and have been for one year prior to the effective date of the contract, residents of Stockton in sufficient numbers so that no less than 50% of the contractor's total construction work force, including any subcontractor work force, measured in labor work hours, is comprised of Stockton residents.

(2) Unless such provision would conflict with a state or federal law or regulation applicable to a particular contract for a public works project, all City contracts for a public works project referenced in subsection (1) shall contain provisions pursuant to which each contractor or subcontractor shall make a good faith effort to employ apprentices who are enrolled in and participating in a viable apprenticeship program serving the San Joaquin Valley and approved by the State Department of Apprenticeship Standards. This apprenticeship requirement shall apply for each apprenticable craft or trade in which the contractor employs workers in performing any of the work under the contract.

(3) If, in response to a written request made at least 48 hours (excluding Saturdays, Sundays and holidays) before the date on which one or more apprentices

are required, an apprenticeship program(s) does not dispatch any apprentice or dispatches fewer apprentices than requested to a contractor (that has agreed to employ and train apprentices in accordance with California Labor Code section 1777.5) within 72 hours of such request (excluding Saturdays, Sundays and holidays), that contractor shall be considered in compliance with the apprentice employment requirement for that trade or craft for a 90-day period from the request date, provided the contractor employs those apprentices who are dispatched. Where there is more than one viable apprenticeship program for that trade or craft serving the San Joaquin Valley, a contractor, that is not a participant in or an affiliate of an apprenticeship program and receives fewer apprentices dispatched than requested, shall not be considered in compliance with the apprentice employment requirement unless the contractor has made a written request for the dispatch of apprentices from at least two viable apprenticeship programs. A contractor, that is a participant in or an affiliate of an apprenticeship program, shall make dispatch requests to the program in which it is affiliated or participating.

(4) In the event that no viable apprenticeship program exists for a particular craft or trade, the contractor shall be exempt from the requirements of this Section with regard to that craft or trade.

(5) A contractor employing apprentices pursuant to this Section shall employ apprentices in a ratio of not less than one apprentice for each five journeymen in the apprenticeship craft or trade classification that are employed on the public work contract unless to do so would result in apprentice employment in ratios below the minimum ratios prescribed by California Labor Code section 1777.5 in which case apprentice employment shall be at least in the ratios prescribed by California Labor Code section 1777.5.

(6) This Section shall not be construed so as to exempt a contractor from any otherwise applicable requirement imposed upon the contractor by the California Labor Code.

D. GOOD FAITH EFFORT.

A bidder or contractor who fails to meet the goal of having 50 percent of its work force be residents of Stockton shall, nevertheless, be deemed to have made a "good faith effort" to hire sufficient numbers of residents of Stockton if, prior to execution of the contract with the City, six (6) or more of the following employee recruitment activities have been undertaken and documented:

(1) Placing a valid job order for existing and projected position vacancies with the local office of the State Employment Development Department, for no less than 10 consecutive calendar days.

(2) Placing a valid job order for existing and projected position vacancies with Worknet of San Joaquin County, for no less than 10 consecutive calendar days.

(3) Advertising existing and projected position vacancies, job informational meetings, job application workshops, job application centers and job interviews by posting notices which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process, in conspicuous local authorized public places, including but not limited to the City Hall, schools, post offices, libraries, and senior citizens' centers.

(4) Conducting a job informational meeting to inform the community of employment opportunities of the contractor, to be held at a City or other public facility (may be combined with other contractors).

(5) Providing ongoing assistance to Stockton residents in completing job application forms.

(6) Conducting a job application workshop to assist the community in applying and interviewing for jobs in the contracting industry, to be held at a City or other public facility (may be combined with other contractors).

(7) Establishing a job application center located in the City of Stockton, where job applications may be obtained, delivered to and collected.

(8) Conducting job interviews within 10 miles of the location designated for contract performance.

(9) Advertising valid existing and projected position vacancies through the local media, such as community television network, local newspapers of general circulation, and trade papers or minority focus newspapers.

(10) Telephone solicitation of known potential local subcontractors or employees.

(11) Any other means of obtaining employees who are residents of Stockton that are reasonably calculated to comply with the goals of this ordinance.

E. REQUIRED DOCUMENTATION.

(1) The contractor shall keep, and provide to the City, on standardized forms acceptable to the City, an accurate record showing the name, place of residence, hours employed and per diem wages and benefits of each person employed by the contractor, and the contractor's subcontractors, on the specific public works project, including full-time, part-time, permanent and temporary employees.

(2) The contractor shall keep, and provide to the City, on forms acceptable to the City, an accurate record documenting the contractor's good faith efforts to comply with the local resident employment and apprentice employment provisions of this

Section. Said records shall include: a listing by name and address of all local recruitment sources contacted by the contractor; the date of the local recruitment contact and the identity of the person contacted; the trade and classification and number of employment referrals requested; the number of local residents employed as a result of the contact; and the identity and address of the person(s) employed pursuant to the contact.

F. FORMS SUBMITTED UNDER PENALTY OF PERJURY.

All forms required under this Section shall attest to the veracity of the information set forth therein and shall be submitted under penalty of perjury.

G. IRRESPONSIBLE BIDDER DECLARATION.

Should any contractor or subcontractor fail to abide by the good-faith local resident employment and apprentice employment provisions of this Section, the contractor or subcontractor may be declared by the City to be an irresponsible bidder on future projects pursuant to Section 3.72.010 of this Code.

H. BINDING ON SUBCONTRACTORS.

The good-faith local resident employment and apprentice employment provisions of this Section shall bind the contractor both with respect to persons employed directly by the contractor and to all persons employed by the contractor's subcontractors. The contractor shall be responsible for assuring that all subcontractors document said compliance by submitting, and making available to the City, the forms required by this Section.

I. DEFINITIONS.

As used in this Section, the following terms shall have the following definitions:

(1) "Qualified individual" means an individual who is in a certified state or federally approved apprenticeship program in an applicable trade or has become a journeyman in his or her applicable trade.

(2) "Contract for public works or improvement" means any contract with the City for construction, alteration, demolition or repair work.

(3) "Resident of Stockton" means an individual who has been domiciled, as defined by Section 200(b) of the California Elections Code, within the boundaries of Stockton for at least one year immediately preceding the date of the award of contract by the City and who can verify his or her domicile upon request of the contractor or City by producing documentation such as a rent/lease agreement, telephone and utility bills or payment receipts, a valid California driver's license or identification card, and/or any other similar, reliable evidence that verifies that the individual is domiciled within

Stockton. For the purposes of this section, the following Zip Code areas are considered to be within Stockton: 95202, 95203, 95204, 95205, 95206, 95207, 95209, 95210, 95212, 95215 and 95219.

(4) "Viable apprenticeship program" means an apprenticeship program approved by the California Department of Apprenticeship Standards that has graduated apprentices annually for at least the past five years. Any apprenticeship program that has been approved for less than ten years shall be deemed a viable apprenticeship program provided that, following the fifth anniversary of its approval by the California Department of Apprenticeship Standards, it graduates apprentices each subsequent year.

J. CONTRACTS – BID DOCUMENTS – SUBCONTRACTS.

(1) Contracts and bid documents shall incorporate this Section by reference and shall provide that the failure of any contractor or subcontractor to comply with any of its requirements shall be deemed a material breach of the contract or subcontract.

(2) All subcontracts shall expressly acknowledge the City's status as a third party beneficiary to that subcontract and further expressly acknowledge that the City, as a third party beneficiary, shall have the right to enforce the provisions of this Section with regard to that subcontract or seek remedies available under this Section should a party to the subcontract fail to comply with any of the provisions of this Section that apply to the subcontract.

(3) Contracts and bid documents shall require bidders, contractors and subcontractors to maintain records necessary for monitoring their compliance with this Section.

K. EXCEPTIONS.

The provisions of this Section shall not apply:

(1) Where the City determines that the contract is necessary to respond to a declared emergency which endangers the public health, welfare or safety and there is no time to apply the provisions of this Section.

(2) To City construction contracts or portions thereof, wherein the work is of a highly specialized nature as determined by the City Council when the contract specifications are approved.

SECTION II. SEVERABILITY.

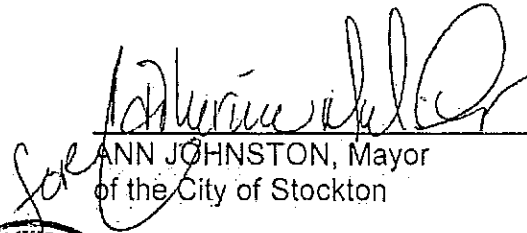
If in the event any section or portion of this Section shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

SECTION III. EFFECTIVE DATE.

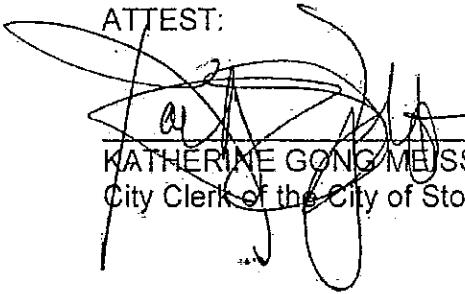
This Ordinance shall become effective and be in full force from and after thirty (30) days from its passage.

ADOPTED: SEP 1 2009

EFFECTIVE: OCT 1 2009


ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:


KATHERINE GONG MEISSNER
City Clerk of the City of Stockton



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