

ORDINANCE NO. 52-06 N.S.

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF RICHMOND AMENDING
CHAPTER 2.56 OF THE MUNICIPAL CODE OF THE CITY OF RICHMOND.**

The Council of the City of Richmond does ordain as follows:

Section I. Amendment of Article II.

Article II of the Municipal Code of the City of Richmond is hereby amended by making the following changes to Chapter 2.56:

Chapter 2.56

LOCAL EMPLOYMENT PROGRAM

Sections:

2.56.010	Findings
2.56.020	Declaration of Policy and Purpose
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2.56.010 **Findings**

The City Council of the City of Richmond hereby finds that statistics indicate that unemployment levels for the citizens of the City of Richmond are higher than for the remainder of Contra Costa County and for neighboring Alameda County. Statistics also indicate that the higher unemployment level in the City of Richmond correlates to the higher number of families living in poverty and to a higher crime rate.

2.56.020 **Declaration of Policy and Purpose**

(a) It is the policy of the City of Richmond to ensure full and equitable opportunities for Richmond residents to participate in the employment opportunities that arise from Public Works Contracts, Service Contracts, and Subsidized Projects.

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

(c) In furtherance of this policy the City of Richmond has established a Local Employment Program to encourage the hiring and retention of Richmond residents for the work to be performed under Public Works contracts, Service Contracts, and Subsidized Projects.

2.56.030 **Scope and Goals**

(a) For any Public Works or Service Contract with the City that has an value of \$100,000 or more, or a Subsidized Project with a Subsidy from the City of \$100,000 or more, there is hereby established the following goals for employment of Richmond residents:

(1) Public Works (Construction) Employment: that a minimum twenty percent (20%) of the total work hours for the contract or project shall be performed by Richmond residents, and that a minimum of twenty percent (20%) of all New Hires for the contract or project shall be Richmond residents for the duration of the contract or project.

(2) Retail Employment: that a minimum thirty percent (30%) of the total workforce shall be Residents, and that a minimum of thirty percent (30%) of all New Hires shall be Residents.

(3) Office, Administrative, and Other Employment: that a minimum thirty percent (30%) of the total workforce shall be Residents, and that a minimum of thirty percent (30%) of all New Hires shall be Residents.

An Employer must achieve these goals or document a good faith effort to achieve these goals.

(b) With respect to Retail Employment and Office, Administrative, and Other Employment, any Employer that occupies any portion of the Project site and employs more than ten full time equivalent employees at the site shall have the employment goals as provided for in Section 2.56.030(a) or 2.56.060(b). The term of this obligation shall be calculated at a rate of one-year for every \$100,000 of subsidy provided by the City to the Project. In no event, however, shall the term of this obligation be less than three (3) years or more than ten (10) years after the completion of any Subsidized Project.

(c) Each Construction Contractor or Subcontractor performing work on a Public Works Contract or Subsidized Project shall employ in its regular workforce Richmond Residents who are enrolled and participating in an apprenticeship program. Such an apprenticeship program must have been approved by the State Department of Industrial Standards. The expected number of apprentices will vary based upon the availability of Richmond Residents indentured in the various apprenticeship programs.. The apprenticeship program must have graduated apprentices annually for at least the past five (5) years.

(1) This requirement applies to any craft for which the State of California Department of Apprenticeship Standards has approved an apprenticeship program. A properly indentured apprentice will be employed under the regulations of the craft or trade at which he or she is indentured and shall be employed only at the work of the craft or trade in which he or she is registered.

(2) The graduation requirement for each of the preceding five (5) years shall not apply to any trade or craft not recognized by the Department of Labor or Division of Apprenticeship Standards as an apprenticeable occupation for more than nine (9) years immediately prior to the effective date of this Ordinance.

(d) Any business that is a Small Business is exempt from the requirements of this Ordinance.

2.56.040 **Definitions**

(a) “City” shall mean the City of Richmond, its agencies, departments and shall include the Richmond Community Redevelopment Agency.

(b) “City Council” shall mean the City Council of the City, and shall include the Agency Board of the Richmond Community Redevelopment Agency.

(c) “City Manager” shall mean the City Manager for the City of Richmond and, for the purposes of this Ordinance, shall include the Chief Executive Officer of the Richmond Community Redevelopment Agency.

(d) “Construction Contractor” shall mean an individual, partnership, corporation, joint venture or other legal entity entering into a Public Works Contract with the City, or performing construction work on a Subsidized Project.

(e) “Employer” shall mean a Construction Contractor, Service Contractor, Subsidy Recipient or any of their Subcontractors, or any business which occupies and conducts its business on any portion of the site of any Subsidized Project within ten years after completion of the Project.

(f) “First Source Agreement” shall mean a written contract between an Employer and the City establishing the hiring process to be followed and containing, at least, the Employer’s: (1) commitment to abide by the responsibilities of an Employer under this Ordinance, and (2) agreement that the specified hiring process shall be followed in order to maximize the number of Richmond residents employed. Unless the City Council directs otherwise, First Source Agreements shall contain the terms set forth in the sample documents considered by the City Council in approval of this Ordinance.

(g) “New Hire” shall mean any employee of a Contractor or Subcontractor who is not listed on the Contractor or Subcontractor’s last quarterly tax statement for the period prior to the commencement of work.

(h) “Public Works Contract” shall mean any contract with the City for construction, alteration, demolition, or repair work.

(i) “Referral System” shall mean the system established by the City to provide referrals of Residents to Employers for employment covered by this Ordinance.

(j) “Resident” shall mean any person whose primary residence is in the City of Richmond.

(k) “Service Contract” shall mean a contract with the City for performance of services, not including Public Works Contracts.

(l) “Service Contractor” shall mean any recipient of a Service Contract, and any subcontractor performing work in furtherance of that Service Contract.

(m) “Small Business” shall mean any business that employs the equivalent of ten or fewer full-time employees in its total workforce.

(m) “Subcontractor” shall mean any and all parties with whom a Subsidy Recipient, Construction Contractor or other Subcontractor enters into a contract to perform a portion of any construction, alteration, demolition, or repair work.

(n) “Subsidized Project” shall mean a development project for which a Subsidy Recipient received one or more Subsidies with a total cost to the City of \$100,000 or more.

(o) “Subsidy” shall mean direct or indirect assistance by the City that materially benefits that person or entity, including, but not limited to: grants or loans of funds administered by the City; tax abatements or deferrals; infrastructure improvements made for the purpose of facilitating or supporting a development project; land sale at below market value; a ground lease at below market value.

(p) “Subsidy Recipient” shall mean 1) a person or entity that in any twelve month period receives one or more Subsidies with a total cost to the City of \$100,000 or more; and/or 2) a person or entity that receives written notice that in exchange for the City’s grant or subsidy to that person or entity, such person or entity must abide by the provisions of this Ordinance.

In addition to the duties and powers given to the City forth elsewhere in the Richmond Municipal Code, the City shall have the following duties and powers regarding this ordinance:

(a) The City shall conduct pre-bid meetings for contracts or projects subject to this Ordinance to inform potential bidders of the requirements of the Ordinance.

(b) The City shall have the exclusive right to determine whether or not a business is a Small Business.

(c) The City shall require all Employers with contracts or projects subject to this Ordinance to abide by its provisions.

(d) The City shall require that Employers require compliance with and enforce the provisions of this Ordinance with any and all Subcontractors, successors, and assigns.

(e) The City shall actively monitor compliance with this Ordinance and will submit a quarterly report to the City Council on the status of the implementation of this Ordinance on all Public Works Contracts, Service Contracts, and Subsidized Projects. Compliance will be measured from the initial day of performance and shall continue for the duration of the contract or project in question.

(f) The City shall require that this Ordinance is incorporated into all relevant Development Agreements, Development and Disposition Agreements, Land Disposition Agreements, Requests for Proposal, Requests for Qualifications, and other such documents.

(g) The City shall ensure that the employment goals set under this Ordinance are maintained for the duration of the contract or project in question.

2.56.060 Responsibilities of Employers

(a) Each Employer shall, as a condition of entry into any contract or receipt of a Subsidy subject to this ordinance, or of locating in a Subsidized Project, comply with the responsibilities and goals set forth in this Ordinance, including, but not limited to:

(1) **First Source Agreements.** Each Employer shall enter into a First Source Agreement. The First Source Agreement shall establish the hiring process to be followed by the Employer for construction and non-construction hiring to achieve the goals of this Ordinance. It is an operational document, and a model First Source Agreement is attached hereto to guide City staff on the necessary provisions for such Agreements.

(2) **Pre-bid meetings.** Each Employer shall attend any pre-bid meeting conducted by the City for any contract or project subject to this Ordinance.

(3) **Cooperation with Monitoring Efforts.** Each Employer shall make available to the City records and information that are relevant to monitoring and enforcement of this Ordinance, including contracts with other entities. The City shall not use such records or information for any purpose other than monitoring or enforcement of this Ordinance. Each Employer shall cooperate fully and promptly with any inquiry or investigation the City deems necessary in order to monitor compliance with this Ordinance, including allowing access to job sites and employees. Employers may remove names and social security numbers from requested records to protect the privacy of individual employees, however, the City may require that an Employer provide addresses of individual employees if their actual place of residence is at issue.

(b) **Safe Harbor.** As an incentive to exceed the goals of this Ordinance, an Employer who meets the following requirements shall be deemed to be in compliance with the goals of the Ordinance for the quarter and exempt from reporting requirements for that quarter:

(1) Public Works (Construction) Employment: that a minimum 30% of the total work hours for the contract or project during the quarter was performed by Residents.

(2) Retail Employment: that a minimum 40% of the total workforce during the quarter was Residents.

(3) Office, Administrative, and Other Employment: that a minimum 40% of the total workforce during the quarter was Residents.

Any Employer who achieves the Safe Harbor requirements for four consecutive quarters shall thereafter be required only to make an annual report, unless the Employer fails to file the annual report or the report fails to demonstrate compliance.

(c) **Non-City Project Hiring.** An employer who can adequately document the New Hire of a Richmond resident on any non-City project within one of the nine Bay Area counties (Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara, Marin, Solano, Napa, and Sonoma), during the time a subject contract or project is in effect, shall be entitled to credit the hours of that Richmond hire towards meeting the New Hire goals of this ordinance.

(d) **Binding on Successors and Assigns.** Each Employer under this Ordinance shall not assign, sell or in any way transfer any portion of their interest in a contract, project, Subsidy or other interest subject to this Ordinance without first notifying the City. Each Employer shall require that each of said Employer's successors and/or assigns agree to comply with all terms of this Ordinance applicable to Employers.

(e) **Nondiscrimination in Conditions of Employment.** Employers shall not discriminate against Residents in any terms and conditions of employment, including retention, promotions, job duties, shift assignments, and training opportunities.

2.56.070 Responsibilities Regarding New Hires

Every Employer shall have the following responsibilities:

(a) Each Employer shall comply with the goals for all New Hires, as stated in §2.56.030(a), and shall use union hiring halls for union contracts and the Referral System for non-union contracts.

(b) Each Employer shall, prior to hiring in furtherance of the contract or project, provide to the City its hiring projections, including number, type, and qualifications for the projected jobs.

(c) Each Employer shall utilize the hiring process specified in their First Source Agreement with the City.

2.56.080 Non-Compliance

(a) The City shall determine whether an Employer has complied with the requirements of this Ordinance. If the City determines that the Employer failed to comply with the provisions of this Ordinance, the Employer has the burden of proving compliance with this Ordinance and its obligations under this Ordinance or a good faith effort to comply. For the purposes of this Ordinance, a good faith effort shall mean compliance with the requirements of the hiring process as established in their First Source Agreement. Each Employer agrees to pay the civil penalties set forth in Section 2.56.080(d) if they are found in non-compliance.

(b) The City Manager has the power, in addition to any other remedy the City may have under this Ordinance or by operation of law, to suspend or terminate the pertinent contract in whole or in part, with continuance thereof conditioned upon a satisfactory showing to the City Manager of the Employer's ability to comply.

(c) In the event the City believes the Employer may not be in compliance with the requirements of this Ordinance, the following procedure will be followed:

(1) The City Manager or designee shall cause to be delivered to the Employer a written "Notice of Non-Compliance." This Notice shall specify the matters which constitute the

non-compliance; the specific action required to correct the non-compliance; and the time period during which such correction shall occur. In no event shall this time period be more than thirty (30) days after receipt of the Notice by the Employer. If the Notice is mailed, it will be deemed received five days after the date of mailing.

(2) If the Employer disagrees with the Notice, they shall have the burden of proving compliance with the provisions of the Ordinance and shall submit any evidence and argument to the City Manager or designee to establish compliance no more than thirty (30) days after receipt of the Notice by the Employer.

(3) In the event the City Manager or designee subsequently agrees that compliance has occurred, the City Manager or designee shall cause to be delivered promptly to the Employer a written "Notice of Correction of Non-Compliance," specifying the original non-compliance which has been corrected.

(4) In the event the City Manager or designee does not agree that compliance has occurred, the City Manager or designee shall promptly notify the Employer by a written "Notice of Failure to Correct Non-Compliance," describing the facts constituting the non-compliance.

(5) After the issuance of a written "Notice of Failure to Correct Non-Compliance," the Employer shall have the right to request a hearing before the City Manager, designee, or a mutually agreed upon arbitrator who shall make the final determination. The request for a hearing must be made within ten (10) working days after receipt of the "Notice of Failure to Correct Non-Compliance." If the Notice is mailed, it will be deemed received five days after the date of mailing. The hearing shall be held no sooner than 20 and no later than 30 days after receipt by the City of the Request for Hearing, unless otherwise agreed to by the parties. At the hearing, the Employer will be allowed to present any evidence and argument it believes proves compliance. The City Manager, designee, or neutral arbitrator shall issue their final determination no later than 10 business days after the hearing. The Employer must exhaust this administrative remedy prior to commencing further legal action.

(6) In the event no Request for Hearing is timely made, the determination of failure to correct non-compliance shall be deemed to be final.

(7) Should the Employer fail to comply with the "Notice of Non-Compliance" as specified above, and a final determination of non-compliance is made, the City may exercise any of its powers as specified in §2.56.080 of the Ordinance.

(d) Civil Penalties. The City may assess civil penalties for violations of this Ordinance. Civil penalties for violations of this Ordinance are as follows: an amount not to exceed \$1,000.00 or 1% of the total contract amount, whichever is greater, for each working day of non-compliance, regardless of the number of separate acts of non-compliance by the Employer existing on a particular day.

(e) The City shall keep a record of all violations of the hiring goals established by this Ordinance. A history of violation of the Ordinance's goals shall be a factor which is considered by the City when deciding upon any future awards of contracts to the affected Employer and may form the basis for denying any future contracts to the affected Employer.

2.56.090 Miscellaneous

(a) Severability. The provisions of this Ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this Ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of the Ordinance, or the validity of its application to other persons or circumstances.

(b) Effective Date. This Ordinance shall take effect 30 days after the date of its enactment and shall govern all contracts and other relevant agreements that have not been executed by that date.

(c) **Sources of Authority.** This Ordinance constitutes an exercise of the police powers of the City, the contracting and spending powers of the City and Agency, and the powers of the Agency deriving from the California Health & Safety Code, §33000 *et seq.*

(c) **Compliance with State and Federal Law.** This Ordinance shall be enforced only to the extent that it is consistent with the laws of the State of California and the United States of America. No employer shall be required by this agreement to violate its obligations under an Agreement governed by the National Labor Relations Act and the Labor-Management Relations Act. If any provision of this Ordinance is held by a court of law to be in conflict with state or federal law, the applicable law shall prevail over the terms of this Ordinance, and the conflicting provisions of this Ordinance shall not be enforceable.

(e) **Compliance with Court Order.** A Employer shall be excused from compliance with the pertinent terms of this Ordinance if the Employer is bound by a court or administrative order or decree which conflict with those terms.

(f) **Material Terms.** The provisions of this Ordinance are material terms of all contracts or agreements in which this Ordinance is incorporated.

I certify that the foregoing was passed and adopted by the Council of the City of Richmond at a special meeting held on July 25, 2006, by the following vote:

AYES:	Councilmembers Bates, Griffin, Marquez, McLaughlin, Rogers, Thurmond, Viramontes, and Mayor Anderson
NOES:	None
ABSTENTIONS:	None
ABSENT:	Councilmember Butt

DIANE HOLMES
Clerk of the City of Richmond

(SEAL)

APPROVED:

IRMA L. ANDERSON
Mayor

APPROVED AS TO FORM:

JOHN EASTMAN
City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of Ordinance No. 52-06 N.S., finally passed and adopted by the Council of the City of Richmond at special meeting held on July 25, 2006, and published in accordance with law.