

ORDINANCE NO. ORD-24-01

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CHAPTER 112
(NON-DISCRIMINATION)

AN ORDINANCE TO AMEND SECTION 9.158 OF CHAPTER 112 (NON-DISCRIMINATION) OF TITLE IX OF THE CODE OF THE CITY OF ANN ARBOR

The City of Ann Arbor Ordains:

Section 1. That Section 9.158 of Chapter 112 of Title IX of the Code of the City of Ann Arbor be amended to read as follows:

9:158. Nondiscrimination by city contractors.

- (1) All contractors proposing to do business with the City of Ann Arbor shall satisfy the contract compliance administrative policy adopted by the City Administrator in accordance with the guidelines of this section. All city contractors shall ensure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon any classification protected by this chapter. All contractors shall agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of any applicable protected classification.
- (2) All contractors shall be required to post a copy of Ann Arbor's Non-Discrimination Ordinance at all work locations where its employees provide services under a contract with the city.
- (3) Upon request, each prospective contractor shall submit to the city data showing current total employment by occupational category, sex and minority group and shall respond to information requests documenting its equal employment opportunity policies and procedures.
- (4) If the contract which is being awarded includes federal requirements for affirmative action, each prospective contractor shall submit to the city data showing current total employment by occupational category, sex and minority group. If, after verifying this data, the City Administrator's designee concludes that it indicates total minority and

female employment commensurate with their availability within the contractor's labor recruitment area, i.e., the area from which the contractor can reasonably be expected to recruit, said contractor shall be accepted by the City Administrator's designee as having fulfilled affirmative action requirements for the period of the contract at which time the City Administrator's designee shall conduct another review. If the data demonstrates an under-representation, the contractor shall develop an affirmative action program for review by the City Administrator's designee. Said program shall include specific goals and timetables for the hiring and promotion of minorities and females. Said goals shall reflect the availability of minorities and females within the contractor's labor recruitment area. In the case of construction contractors, the City Administrator's designee shall use for employment verification the labor recruitment area of the Ann Arbor metropolitan statistical area. Construction contractors determined to be in compliance shall be accepted by the City Administrator's designee as having fulfilled affirmative action requirements for a period of 1 year at which time the City Administrator's designee shall conduct another review.

- (5) In hiring for construction projects, contractors shall document their good faith efforts to employ local persons, so as to enhance the local economy.
- (6) City contractors shall not inquire into a candidate's criminal history on applications for employment for those employees needed to fulfill the terms of its contract with the city **until after a conditional offer of employment has been extended.**

This section does not limit the right of the city contractor or any of its subcontractors:

- (a) To conduct criminal history background checks after **a candidate is determined to be otherwise qualified for the position and has received a conditional offer of employment for that position;**
- (b) To make employment contingent upon the successful completion of, and contractor's evaluation of the results, of a criminal background check;
- (c) To conduct criminal history background checks on applicants for positions where there is a statutory duty to do so, including inquiring on the contractor's employment application as to whether the applicant has a criminal conviction for those positions only.

This section does not impact any contractor's hiring practices for those employees hired to produce or provide goods and/or services unrelated to a city contract.

- (7) All contracts shall include provisions through which the contractor agrees to follow all applicable federal and state laws.

- (8) The City Administrator's designee shall monitor the compliance of each contractor with the nondiscrimination provisions of each contract. The City Administrator's designee, together with the Human Rights Commission, shall develop procedures and regulations consistent with the administrative policy adopted by the City Administrator for notice and enforcement of non-compliance. Such procedures and regulations shall include a provision for the posting of contractors not in compliance.
- (9) The City Administrator's designee will provide the city's Human Rights Commission with an annual summary report of contracts awarded; affirmative action requirements reviewed, where applicable; any complaints received alleging violation of the contractor's non-discrimination requirements, and actions taken. The Human Rights Commission will be provided, at its request, with additional information related to the report. The Human Rights Commission and the City Administrator's designee will report annually to the City Council on compliance of city contractors with this chapter.
- (10) All city contracts shall provide further that breach of the obligation not to discriminate shall be a material breach of the contract for which the city shall be entitled, at its option, to do any or all of the following:
- (a) Cancel, terminate, or suspend the contract in whole or part and/or refuse to make any required periodic payments under the contract;
 - (b) Declare the contractor ineligible for the award of any future contracts with the city for a specified length of time;
 - (c) Recover liquidated damages of a specified sum, said sum to be that percentage of the labor expenditure for the time period involved which would have accrued to protected class members had the discrimination provisions not been breached;
 - (d) Impose for each day of non-compliance, liquidated damages of a specified sum, based upon the following schedule:

Contract Amount	Assessed Damages Per Day of Non-Compliance
\$25,000—99,999	\$50.00
100,000—199,999	100.00
200,000—499,999	150.00
500,000—1,499,999	200.00
1,500,000—2,999,999	250.00
3,000,000—4,999,999	300.00
5,000,000 and above	500.00

- (e) In addition, the contractor shall be liable for any costs or expenses incurred by the City of Ann Arbor in obtaining from other sources the work and services to

be rendered or performed or the goods or properties to be furnished or delivered to the city under this contract.

Section 2. Severability.

The various sections and provisions of this ordinance shall be deemed to be severable and should any section or provision of this ordinance be declared by any court of competent jurisdiction to be unconstitutional or invalid, the same shall not affect the validity of this ordinance as a whole or any section or provision of this ordinance other than the section or provision so declared to be unconstitutional or invalid.

Section 3. This ordinance shall take effect and be in force in ten days from the date of legal publication.

CERTIFICATION

I hereby certify that the foregoing ordinance was adopted by the Council of the City of Ann Arbor, Michigan, at its regular session of January 22, 2024.

(Date)

Jacqueline Beaudry, Ann Arbor City Clerk

Christopher Taylor, Mayor of the City of Ann Arbor

I hereby certify that the foregoing ordinance received legal publication on the City Clerk's webpage on February 1, 2024.

Jacqueline Beaudry, Ann Arbor City Clerk