

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, ADDING SECTION 4-117 TO THE FRESNO MUNICIPAL CODE RELATING TO NATIONAL TARGETED HIRING IN CONTRACTS FOR ANY PUBLIC WORK OF IMPROVEMENT.

WHEREAS, areas within the United States are experiencing historically high rates of unemployment and underemployment; and

WHEREAS, the City of Fresno is experiencing substantially higher rates of unemployment than other areas within the United States; and

WHEREAS, the City of Fresno unemployment rate average during the past ten years is more than 12%; and

WHEREAS, several of the City of Fresno neighborhoods continue to face high concentrations of poverty; and

WHEREAS, the lack of a sufficient number of pathways to technical education training programs in areas across the United States, including the City of Fresno, means the construction industry cannot meet the growing demands of the construction projects, including any Public Work of Improvement; and

WHEREAS, in publicly funded construction projects the severe negative impact of access to technical education programs is compounded by underemployment of workers residing in economically disadvantaged areas; and

WHEREAS, the City awards many contracts to private firms to construct Public Works of Improvement; and

Date Adopted:

1 of 15

Date Approved

Effective Date:

City Attorney Approval:



Ordinance No.

WHEREAS, this section advances the interests of the City by encouraging employment and training opportunities to create a trained workforce for safe construction of any Public Work of Improvement to mitigate the harms caused by geographically concentrated poverty, unemployment and underemployment in economically disadvantaged areas throughout the United States, including in the City of Fresno; and

WHEREAS, the provisions of this section permit the City to use local, state, and federal funds to promote hiring of workers in economically disadvantaged areas across the nation.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 4-117 of the Fresno Municipal Code is added to read:

SECTION 4-117. NATIONAL TARGETED HIRING IN CONTRACTS FOR PUBLIC WORKS CONSTRUCTION.

(a) Definitions.

(1) "Apprentice" is any worker who is registered and approved by the State of California, Division of Apprenticeship Standards, or who is indentured in a "Viable Apprenticeship Program" as defined in subsection (a)(11).

(2) "City Manager" refers to the City Manager of the City of Fresno, or designee.

(3) "City Referral List" is the list compiled and maintained by the Program Coordinator, listing qualified Journeyman and Apprentice National Targeted Workers residing in the City of Fresno. City shall verify any designated Journeyman worker from

the City Referral List meets the definition of Journeyman as defined by California Code of Regulations, Title 8 Section 205, as it may be amended from time to time.

(4) "Contract" means a construction contract for any Public Work of Improvement, as defined in this article.

(5) "Contractor" is defined as any individual firm, partnership, or corporation, or combination thereof, including joint ventures and any subcontractor of any tier, which is an independent business enterprise and which has entered into Contract with respect to the construction of any part of a Public Work of Improvement.

(6) "Division of Apprenticeship Standards Forms" are the forms in which every Contractor will request any and all apprentices from each trade in order to establish compliance with this section, as provided more specifically in the implementing Administrative Order.

(7) "Program Coordinator" means the City employee, or designee, responsible for monitoring Contractors' compliance with federal Disadvantaged Business Enterprise requirements and the requirements of this section.

(8) "Journeyman" shall be defined as set forth in the California Code of Regulations, Title 8 Section 205, as it may be amended from time to time.

(9) "National Economically Disadvantaged Area" is:

i. A zip code outside of the City of Fresno that includes a census tract, or portion thereof, in which the median annual household income is less than \$35,000 per year, as measured and reported by the U.S. Census Bureau in the most recent U.S. Census; or

ii. A zip code, or any portion of, which falls inside the City of Fresno, the average median income of which census tracts is less than \$35,000 per year, as measured and reported by the U.S. Census Bureau in the most recent U.S. Census.

(10) "National Targeted Worker" is an individual who resides in a National Economically Disadvantaged Area.

(11) "Pre-Apprenticeship Program" means a program that works with Viable Apprenticeship Programs and teaches basic technical and job-readiness skills for a designated apprenticeable occupation or occupation sector, to prepare participates for apprenticeship training.

(12) "Viable Apprenticeship Program" means an apprenticeship program that is approved to train in the applicable craft or trade by the California Department of Apprenticeship Standards or U.S. Department of Labor, and which has a graduation rate of no less than fifty percent (50%), or has graduated at least one apprentice annually in each of the five (5)

years immediately preceding the date of the award of Contract by City. Any apprenticeship program that has been approved for less than ten (10) years shall be deemed a Viable Apprenticeship Program provided that, following the fifth anniversary of its approval by the California Department of Apprenticeship Standards or U.S. Department of Labor, it graduates at least one apprentice each subsequent year.

(13)

(b) Policy. The City shall require all Contracts for any Public Work of Improvement in excess of \$200,000, adjusted annually on the first of July to the nearest \$1,000 in response to changes in the National Consumer Price Index to include provisions that obligate Contractor to follow targeted hiring procedures, including an obligation to make reasonable good faith efforts, as defined in the implementing Administrative Order, to meet specific hiring requirements for Nationally Targeted Workers, as defined in subsection (c).

(c) National Targeted Hiring Requirements.

(1) For each Contract, the following requirements shall apply to each Contractor with regard to project work actually performed by the Contractor, as well as work included under any subcontract;

(2) The initial mandatory participation level is 15% of all project work hours within each trade performed by Nationally Targeted Workers. Project work hours shall not include hours

worked by non-California residents. Subject to the periodic review process set forth in this subsection below, the mandatory participation level for project work hours shall increase annually up to a mandatory participation level of 40% of project work hours within each trade performed by Nationally Targeted Workers, as follows:

Year After Effective Date That Contract Is Advertised for Bids	Mandatory Participation Level For National Targeted Worker Project Work Hours
0-1	15%
1-2	20%
2-3	25%
3-4	Periodic Review
4-5	30%
5-6	35%
6-7	Periodic Review
7-8	40%

(3) A Contractor employing Apprentices, pursuant to this section, shall employ Apprentice National Targeted Workers in a ratio of not less than one hour of Apprentice National Targeted Worker labor work for every five hours of Journeyman work. The provisions in this section shall in no way adversely affect the apprentice employment ratios prescribed California Labor Code Section 1777.5 and in Section 4-113 of this code. All Apprentices shall work under the direct supervision of a Journeyman from the trade in which the Apprentice is indentured.

(4) Unless such a provision would conflict with a state or federal law applicable to a Contract for a Public Work of

Improvement, all City Contracts shall contain provisions requiring each Contractor to make a reasonable good faith effort to employ Apprentice National Targeted Workers who are enrolled in and participating in a Viable Apprenticeship Program or Pre-Apprenticeship Program. This apprenticeship requirement shall apply for each apprenticeable craft or trade in which the Contractor employs workers to perform any of the work under the Contract.

(5) Periodic Review. Every three years from the effective date of this Policy, the City Manager shall evaluate the impact of existing mandatory participation levels.

(6) For any Contractor that has satisfied the criteria for reasonable good faith efforts established by the City Manager pursuant to authority granted in subsection (d):

i. If, in response to a Contractor's written request to the Program Coordinator, made at least seventy-two hours (excluding Saturdays, Sundays, and holidays) before the date on which one or more Apprentice National Targeted Workers are required, a participating Viable Apprenticeship Program or Pre-Apprenticeship Program does not dispatch any Apprentice National Targeted Workers, or dispatches fewer Apprentice National Targeted Workers than requested to such Contractor, that Contractor shall be considered in compliance with the Apprentice National Targeted Worker employment requirement for that trade or craft for the

duration of the project from the request date, provided the Contractor employs all Apprentice National Targeted Workers who are dispatched.

ii. A Contractor which is not a participant in, or an affiliate of, an apprenticeship program, and that receives fewer Apprentice National Targeted Workers dispatched than requested, shall not be considered in compliance with the Apprentice National Targeted Worker employment requirement unless the Contractor has made a written request for the dispatch of Apprentice National Targeted Workers from other Viable Apprenticeship Programs or Pre-Apprenticeship Program.

iii. In the event that the City Referral List does not include sufficient numbers of Journeyman to fill, or to fill completely, the requisition of such Contractor for Journeyman within seventy-two hours (excluding Saturdays, Sundays, and holidays), that Contractor shall be free to obtain Journeyman National Targeted Workers from any source.

(7) In the event that no Viable Apprenticeship Program or Pre-Apprenticeship Program exists for a particular craft or trade, the Contractor shall be exempt from the Apprentice National Targeted Worker employment provisions of this section with regard to that craft or trade.

(8) The Contractor shall retain the authority to make individual hiring decisions. This section does not prevent a Contractor from filling job vacancies or newly created positions by transfer or promotion of its existing staff.

(d) Authority. The City Manager shall have authority to implement this section and shall enter into Contracts and promulgate policies to implement the provisions of this section, including, but not limited to, responsibilities identified in this section, and the implementing Administrative Order.

(e) Required Documentation.

(1) Contractors will use only Division of Apprenticeship Standards Forms to request any and all apprentices with a concurrent transmittal of such request to the Program Coordinator, including workers qualified as National Targeted Workers and/or general dispatch.

(2) On standardized forms acceptable to the City, Contractor shall keep, and shall provide to the City concurrent with each claim for payment, an accurate record showing the name, place of residence, hours employed, trade, and classification, and per diem wages, and benefits of each person employed by the Contractor pursuant to a Contract, including full-time, part-time, permanent, and temporary employees. Such submittal shall incorporate a statement verified under penalty of perjury evidencing each Journeyman worker's qualification as a Journeyman, as well

as the respective National Targeted Worker Journeyman and National Targeted Worker Apprentice hours performed on the Contract for the period for which the Contractor is claiming payment.

(3) On standardized forms acceptable to the City, Contractor shall keep, and shall provide to the City concurrent with each claim for payment, an accurate record documenting the Contractor's reasonable good faith efforts to comply with the National Targeted Worker employment provisions of this section. Said records shall include: a listing by name and address of all recruitment sources contacted by the Contractor; the date of the recruitment contact, and the identity of the person contacted; the trade and classification, and number of employment referrals requested; the number of National Targeted Workers employed as a result of the contact; and the identity and address of the National Targeted Worker(s) employed pursuant to the contact. Contractors and the Program Coordinator shall maintain copies of all Division of Apprenticeship Standards Forms used on the project, submitted or received, including transmission verification reports that are date/time imprinted, until the project employing such workers is completed, all Contract payments are made, and any issues related to penalties and/or liquidated damages are resolved. All Division of Apprenticeship Standards Forms and transmission verification

reports shall be available for inspection and copies provided, upon request by City.

(f) Compliance Procedures.

(1) Contractor shall diligently carry out and adhere to the National Targeted Worker requirements as set forth in this section and in its Contract. The failure of Contractor to comply with the requirements of this section shall be deemed a material breach of Contract.

(2) Consequences of Noncompliance. In addition to any other corrective action allowed by law or Contract, the City Manager has the authority to seek, from any Contractor which fails to comply with this section, any lawful corrective action, which may include but need not be limited to:

- i. Withholding of all or any portion of payments due to the Contractor until the non-compliance is cured;
- ii. Any other remedy for breach available under the Contract;
- iii. Liquidated damages pursuant to subsection (3), below;
- iv. Termination of any or all of the Contractor's Contracts with the City; and
- v. Suspension, debarment from City contracting within the meaning of Section 4-104 of this Code, or determination of non-responsibility.

(3) Liquidated Damages for Violations. Upon a final determination by the City Manager, or designee, that a Contractor has materially violated the National Targeted Worker terms of the Contract, and after due notice of this determination is given to the Contractor, liquidated damages, on account of non-compliance with the National Targeted Worker requirements, may be withheld by the City from progress payments, or the final payment, due to the Contractor for work performed under the Contract. Depending upon the seriousness or willfulness of the violation, the amount of liquidated damages shall be not less than 25%, and not more than 100%, of the full dollar amount of the National Targeted Worker subcontract involved in the violation as determined by the Program Coordinator.

(h) Application. Except as otherwise provided and subject to all local, state, and federal laws affecting the City's procurement of goods and services, or use of funds, this section shall apply to any Public Work of Improvement of the City, including all departments, agencies, corporations, and attached and unattached boards and commissions, that cumulatively or alternatively utilize any public spending, public funding, or public incentives.

(i) Non-Applicability of Section. The provisions of this section shall not apply to any of the following:

The City Manager shall develop rules and regulations for the application of these exemptions:

(1) Work done by the City with its own personnel and/or equipment.

(2) Any Public Work of Improvement obtained from or through any government entity.

(3) Contracts where the provisions of this section would conflict with federal or state grant funded contracts or conflict with the terms of the grant or subvention.

(4) When the Contract is deemed by Council to be of urgent necessity for the preservation of life, health, or property and such Contract is authorized by resolution passed by at least five affirmative votes of the Council and containing a declaration of the facts constituting the urgency.

(j) Geographic Preferences. This section shall be interpreted to prohibit in-state or local geographic preferences in the hiring of National Targeted Workers for City's contracts for Public Work of Improvement utilizing federal or state funding.

(k) Local Funds. Provided no federal or state funding is jeopardized, a Public Work of Improvement funded solely by local funds shall impose a requirement on Contractors that National Targeted Workers must reside in a National Economically Disadvantaged Area located within the City of Fresno and as defined by subsection (b), paragraph (9), of this Ordinance.

(l) Indemnity. A Contractor under this section shall, to the furthest extent allowed by law, agree to indemnify, hold harmless, and defend the City and each of its officers, officials, employees, agents, and volunteers in a form approved by the City Risk Manager.

(m) Severability. If this section or any sentence, clause, or phrase of this section is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this section. The Council hereby declares that it would have passed this Ordinance and adopted this and each section, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2016.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2016
Mayor Approval/No Return: _____, 2016
Mayor Veto: _____, 2016
Council Override Vote: _____, 2016

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: _____
Brandon M. Collet Date
Deputy

BMC:ns,prn [63174ns/ord] 03-11-16