

# Ordinance No. 00492

## SUBSTITUTE ORDINANCE NO. 492

AN ORDINANCE of the City Council of the City of Lakewood, Washington, creating Chapter 01.42 Contracting Requirements ? Lawful Hiring Compliance of the Lakewood Municipal Code.

WHEREAS, the City has an interest in ensuring that those who contract with the City employ only individuals who are employment eligible; and

WHEREAS, ?E-Verify?, an Internet based system operated by the Department of Homeland Security in partnership with the Social Security Administration, is free and voluntary; and

WHEREAS, ?E-Verify? is the best means available for determining employment eligibility of new hires and the validity of their Social Security numbers; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON DO ORDAIN as follows:

Section 1. That Chapter 01.42 Contracting Requirements ? Lawful Hiring Compliance is hereby added to the Lakewood Municipal Code to read as follows:

### Chapter 01.42 Contracting Requirements ? Lawful Hiring Compliance

Sections:

01.42.010 Reference

01.42.020 Definitions

01.42.030 Application of Requirements

01.42.040 Enforcement of Contract Terms

#### **01.42.010 Reference.**

The ordinance shall be known and may be cited as the "City of Lakewood Lawful Hiring Compliance Ordinance."

#### **01.42.020 Definitions.**

When used in this chapter, the following words, terms and phrases shall have the meanings ascribed to them herein, and shall be construed so as to be consistent with state and federal law, including federal immigration law.

(a)*Business entity.* Any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit with the City. The term business entity shall include, but not be limited to, self-employed individuals, partnerships, corporations, contractors, and subcontractors doing business with the City.

(b)*City.* The City of Lakewood, Washington.

(c)*Commercially available off-the-shelf (COTS) item.* **A Commercially available off-the-shelf (COTS) item means any item of supply that is sold in substantial quantities in the commercial marketplace and offered to the City without modification.**

(d) *Contract.* Contract shall mean all types of agreements including, but not limited to, State grants; orders for purchase or disposal of supplies, services, construction, or any other item; awards; contracts of a fixed-price, cost, or incentive type; contracts providing for the issuance of job or task orders; letter contracts;; Master Price Agreements; Agency Price Agreements; and construction management contracts.

(e) *Contractor.* A person, employer, or business entity that enters into a contract or an agreement with the City to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include, but not be limited to, a subcontractor, contract employee, or a recruiting or staffing entity. No governmental agency shall be considered to be a contractor for purposes of this chapter.

(f)*E-Verify.* E-Verify shall mean the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, Division C, Title IV, s. 403(a), as amended, and operated by the United States Department of Homeland Security, or a successor electronic verification of work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees pursuant to the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603.

(g) *Unauthorized alien.* A person who is unauthorized to be lawfully employed in the United States, pursuant to 8 U.S.C. ? 1324a(h)(3). The City shall not conclude that a person is an unauthorized alien unless and until an authorized representative of the city has verified with the federal government, pursuant to 8 U.S.C. ? 1373(c), that the person is an unauthorized alien.

(h)*Work.* Any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including provided to City all activities conducted by business entities and contractors.

**01.42.030 Application of Requirements.**

(a) The City shall enroll and participate in E-Verify, as defined. The City Manager or designee shall oversee the City's participation in this program and shall ensure that it is applied to all persons to be hired by the City as City employees.

(b) As a condition for the award of any City contract, gift, contribution or grant to a business entity or contractor after July 1, 2009, the business entity or contractor shall enroll in E-Verify and thereafter shall provide the City documentation affirming its enrollment and participation in the program. The business entity or contractor shall be required to continue its participation in the program throughout the course of its business relationship with the City.

(c) As a condition for the award or renewal of any City franchise or contract made after July 1, 2009, the business entity shall provide documentation affirming its enrollment and participation in the E-Verify program prior to the award of said franchise. The business entity or contractor shall continue its participation in E-Verify throughout the term of its business relationship with the City.

(d) If a business entity or contractor described in (b) uses a subcontractor in connection with the performance of the contract, the subcontractor shall, as a condition of contract, certify to the contractor in a manner that does not violate federal law that the subcontractor has registered and is participating in the E-Verify program and will not knowingly employ or contract with an unauthorized alien. This certification shall be supplied to the City within three working days of the date the business procured the services of the subcontractor.

(e) The City shall include specific written notice in all requests for bids that business entities and any subcontractors are required to enroll in the E-Verify program pursuant to subsection (b) above. Business entities are exempt from subsection (b) if they received requests for bids not containing such notice.

(f) **Exception. Notwithstanding any other provision herein, this Chapter shall not apply to the purchase by the City of any commercially available off-the-shelf (COTS) item where no labor or service is supplied as an element of the contract or purchase of those items."**

**01.42.040 Enforcement of Contract Terms.**

(a) The City Manager or designee shall implement procedures necessary to implement and enforce the requirements of this chapter into all contracts into which the City has entered with business entities or contractors. These procedures shall ensure that no business engages in discrimination based on national origin, ethnicity, race or any other classification deemed suspect by the City or any agency or court.

(b) The City shall suspend a contract with any business entity or contractor that the United States Attorney General or the Secretary of Homeland Security has found to have been in violation of 8 U.S.C. ? 1324a.

(c) The City may suspend a contract with any business entity or contractor that fails to correct a violation of 8 U.S.C. ? 1324a within 30 business days after notification of the violation by the United States Attorney General or Secretary of Homeland Security.

(d) The City shall not suspend the contract of any business entity or contractor if, prior to the date of the violation, the business entity or contractor had verified the work authorization of the alleged unlawful workers using the E-Verify program and demonstrated the same to the City.

(e) Every contract entered into by the City shall provide that the suspension for noncompliance with this chapter shall terminate one business day after a legal representative of the business entity or contractor submits, at a City office designated by the City Manager, a declaration signed under penalty of perjury of the laws of the state, in the form provided by the City, stating that the violation of federal law has ended.

Section 2. Severability. If any portion of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 3. Effective Date. That this Ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary.

PASSED by the City Council this 1st day of June, 2009.

CITY OF LAKEWOOD

\_\_\_\_\_ Douglas G. Richardson, Mayor

Attest:

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Alice M. Bush, MMC, City Clerk

Approved as to form:

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Heidi Ann Wachter, City Attorney