



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

New Case Electronically Filed:
August 23, 2016 09:01

By: GARY S. SINGLETARY 0037329

Confirmation Nbr. 835928

CITY OF CLEVELAND

CV 16 868008

vs.

THE STATE OF OHIO

Judge:

MICHAEL J. RUSSO

Pages Filed: 30

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CITY OF CLEVELAND
601 Lakeside Avenue, Rm. 106
Cleveland, OH 44114-1077

Plaintiff,

vs.

THE STATE OF OHIO
c/o Michael DeWine
Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, OH 43215-3428

Defendant.

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JUDGE:

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT,
TEMPORARY RESTRAINING ORDER,
AND INJUNCTIVE RELIEF**

For its Verified Complaint for Declaratory Judgment, Temporary Restraining Order, and Injunctive Relief Plaintiff the City of Cleveland (“City”) states as follows:

1. This is an action seeking declaratory judgment, a temporary restraining order, and injunctive relief with respect to the unconstitutionality of R.C. § 9.49, which was passed by the General Assembly on May 11, 2016, signed by the Governor of Ohio on May 31, 2016, and which has an otherwise presumptive effective date of August 31, 2016. Attached as Exhibit A hereto is the Affidavit with verification of Melissa K. Burrows, Ph.D., City of Cleveland, Director of Mayor’s Office of Economic Opportunity (“OEO”).

PARTIES

2. Plaintiff City of Cleveland is a chartered municipal corporation under Article XVIII, Section 7 of the Ohio Constitution. The City is located in Cuyahoga County.

3. Defendant, the State of Ohio (“State”), is a state of the United States of America.

JURISDICTION

4. This is a civil action against the State that seeks declaratory relief. As such, it falls within the original jurisdiction of this Court.

5. The City has standing to bring this action because it is questioning the constitutional validity of a statute, R.C. § 9.49, that seeks to preempt local governmental authority and that would adversely affect the City if allowed to stand.

6. A justiciable cause exists between the parties as with the enactment of R.C. § 9.49 the State improperly seeks to usurp and deny the City’s home rule authority under the Ohio Constitution by preventing the City from exercising its local self-government authority in accordance with certain City ordinances that were enacted to establish terms associated with City funded public construction contracts.

7. R.C. § 9.49 is due to become effective on August 31, 2016. The City is requesting that this Court issue a temporary restraining order before that date and thereafter a preliminary injunction to stay and/or prevent the State from implementing the statute while the Court considers the constitutional issues raised by the City with its complaint for declaratory judgment. R.C. § 2721.03 establishes that this Court is authorized to grant such injunctive relief, with Ohio Civ. R. 65(B) providing further that “[t]he application for preliminary injunction may be included in the complaint...”

VENUE

8. Venue of this action is proper in this Court because the City is located within Cuyahoga County.

BACKGROUND

Home Rule Amendment

9. Section 3 of Article XVIII of the Ohio Constitution (“Home Rule Amendment”), states that:

“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with the general laws.”

10. The Home Rule Amendment gives municipalities the “broadest possible powers of self-government in connection with all matters which are strictly local and do not impinge upon matters which are of a state-wide nature or interest.” *State ex rel. Hackley v. Edmonds*, 150 Ohio St. 203, 212, 80 N.E.2d 769 (1948).

11. The City’s authority to contract arises as a power of local self-government under the Home Rule Amendment. *Dies Elec. Co. v. City of Akron*, 62 Ohio St.2d 322, 405 N.E.2d 1026 (1980).

12. Local authorities are presumed to be familiar with local conditions and to know the needs of their community. *Allion v. Toledo* (1919), 99 Ohio St. 416, syllabus.

Fannie M. Lewis Cleveland Resident Employment Law

13. Chapter 188 of the Codified Ordinances of the City of Cleveland (“CCO Chapter 188”), entitled the “Fannie M. Lewis Cleveland Resident Employment Law” (“Fannie Lewis Law”) was established by Cleveland’s City Council through the passage of City Ord. No. 2031-A-02 on June 10, 2003. (Ord. No. 2031-A-02 is attached hereto as Exhibit B).

14. Ord. No. 2031-A-02 was enacted as “An ordinance to supplement the codified ordinances of Cleveland, Ohio, 1976, by enacting new Chapter 188 relating to

employment of City residents for certain public improvement contracts.” (*Id.*).

15. City Council had “conducted hearings on this matter for over one year” prior to the passage of CCO Chapter 188. (*Id.*) Council was familiar with local conditions concerning unemployment and poverty, and the Fannie Lewis Law was enacted to address the needs of the local community.

16. The City Council recognized with Ord. No. 2031-A-02 that Council “believes strongly in employment opportunities for Cleveland residents.” City Council established and recognized as a purpose for the law by way of language prefacing the adopted language of CCO Chapter 188 that “there are Cleveland residents who possess the skills and training required for work on construction contracts”; that “few of the employment opportunities arising from [projects recently completed or currently under construction] have gone to Cleveland residents”; and that “the City of Cleveland has a higher unemployment rate and higher poverty rate than Cuyahoga County and many surrounding communities.” (*Id.*)

17. The City Council further recognized with its adoption of CCO Chapter 188 that “the employment of City residents on construction projects funded, in part or in whole, with City assistance will help alleviate unemployment and poverty in the City.” (*Id.*)

18. A complete and current copy of CCO Chapter 188, to include subsequent amendments accomplished to date, is attached hereto as Exhibit C.

19. CCO § 188.02 defines “Construction Contract” as follows:

(b) “Construction Contract” means any agreement whereby the City either grants a privilege or is committed to expend or does expend its funds or other resources, or federal grant opportunities, including without limitation, Community Development Block Grants, Urban Development Action Grants and Economic Development Administration Grants, in an amount of one hundred thousand dollars (\$100,000.00) or more, for the

erection, rehabilitation, improvement, alteration, conversion, extension, demolition or repair of improvements to real property, including facilities providing utility service and includes the supervision, inspection, and other on-site functions incidental to construction, but does not include professional services. Construction Contract includes any contract that is entered into by a person or entity that receives a grant, loan, privilege, credit, or resources from the City, from its funds or from federal grant opportunities for the poor, minorities and/or unemployed in an amount of one hundred thousand dollars (\$100,000.00) or more, for the purpose of erecting, improving, rehabilitating, altering, converting, extending, demolishing, or repairing real property or improvements to real property.

20. CCO § 188.02(a) (1) and (3) specifically provide that every Construction Contract shall:

(1) Require that one (1) or more Residents perform twenty percent (20%) of the total Construction Worker Hours (“Resident Construction Worker Hours”) performed under the Construction Contract;

* * *

(3) Require the contractor and its Subcontractors to use significant effort to ensure that no less than four percent (4%) of the Resident Construction Worker Hours required by this division are performed by Low-Income Persons.

21. “Resident” is defined by ordinance as a person “domiciled within the boundaries of City of Cleveland. The domicile is an individual’s one (1) and only true, fixed and permanent home and principal establishment.” CCO § 188.01(g).

22. “Low-Income Person” is defined by ordinance as a “Resident who, when first employed by a contractor, is a member of a family having a total income equal to or less than the ‘Section 8’ Very Low-Income limit established by the United States Department of Housing and Urban Development.” CCO § 188.01(f).

23. “Contractor” is defined by ordinance as “any person or company receiving a Construction Contract from the City of Cleveland, any subdivision of the City, or any individual legally authorized to bind the City pursuant to said contract.” CCO §188.01(d).

24. The application of the City's Fannie Lewis Law is limited to public construction contracts entered into between the City and Contractors that have voluntarily chosen to bid on such local public construction contracts.

R.C. § 9.49

25. R.C. § 9.49 was enacted with the passage of H.B. No. 180 of the 131st General Assembly and thereafter signed by the Governor of Ohio on May 31, 2016.

26. A copy of H.B. 180 as enacted and containing the full text of R.C. § 9.49 is attached to the Complaint as Exhibit D.

27. With the language in R.C. § 9.49(B)(1) the State seeks to restrict and preempt the City's exercise of well-established local self-government authority to establish the terms of contracts for public improvements through language that provides:

(1) No public authority shall require a contractor, as part of a prequalification process or for the construction of a specific public improvement or the provision of professional design services for that public improvement, to employ as laborers a certain number or percentage of individuals who reside within the defined geographic area or service area of the public authority.

28. R.C. § 9.49 seeks to limit the authority of the City and other municipalities as it expansively defines "Public Authority" at Paragraph (A)(6)(b) to include, among other entities "[a] county, township, **municipal corporation**, or any other political subdivision of the state." (emphasis added).

29. The General Assembly sought to justify its unconstitutional attempt to preempt well-established municipal Home Rule authority by invoking the authority of Section 34 of Article II of the Ohio Constitution, which provides:

Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power.

30. R.C. § 9.49 does not fix or regulate the hours of labor.
31. R.C. § 9.49 does not does not establish a minimum wage.
32. R.C. § 9.49 does not provide for the comfort of all employees.
33. R.C. § 9.49 does not provide for the health of all employees.
34. R.C. § 9.49 does not provide for the safety of all employees.
35. R.C. § 9.49 does not provide for the general welfare of all employees.
36. The enactment of R.C. § 9.49 is unrelated to the proper exercise of the General Assembly's legislative authority established by Section 34 of Article II of the Ohio Constitution. The General Assembly's attempt to relate the unconstitutional enactment of R.C. § 9.49 to the authority provided by Section 34 of Article II of the Ohio Constitution is improper.

FIRST CLAIM FOR RELIEF

(Violation Of Home Rule Powers—Local Self-Government)

37. The City incorporates paragraphs 1 through 36 by reference as if fully rewritten herein.
38. The “Home Rule Amendment” establishes in pertinent part that “[m]unicipalities shall have authority to exercise all powers of local self-government...”
39. “The first step in a home-rule analysis is to determine ““whether the matter in question involves an exercise of local self-government or an exercise of local police power.’ *Twinsburg v. State Emp. Relations Bd.* (1988), 39 Ohio St.3d 226, 228, 530 N.E.2d 26, overruled on other grounds, *Rocky River v. State Emp. Relations Bd.* (1989), 43 Ohio St.3d 1, 20, 539 N.E.2d 103. If an allegedly conflicting city ordinance relates

solely to self-government, the analysis stops, because *the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction.*” *Am. Financial Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 23 (emphasis added).

40. The City’s Fannie Lewis Law in establishing required resident construction hours as a bid specification for City Construction Contracts is an exercise of the City’s power of local self-government under the Home Rule Amendment.

41. In seeking to preempt and restrict the City from requiring that twenty percent (20%) of the total Construction Worker Hours under a Construction Contract with the City be performed by local residents the State unconstitutionally interferes with the City’s exercise of local self-government powers granted to it by the Home Rule Amendment.

42. R.C. § 9.49 is unconstitutional and violates the Home Rule Amendment by seeking to impermissibly limit and preempt the City’s exercise of local self-government authority and the statute should be declared to be unconstitutional.

SECOND CLAIM FOR RELIEF

(Violation of Home Rule Powers—Police Power)

43. The City of Cleveland incorporates paragraphs 1 through 42 by reference as if fully rewritten herein.

44. The Home Rule Amendment establishes additionally in part that “[m]unicipalities shall have authority ... to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with the general laws.”

45. Alternatively, should the City’s Fannie Lewis Law be reviewed as an exercise of

the City's police power, the State's attempted restriction and preemptions on City authority contained in R.C. § 9.49 would violate the Ohio constitution.

46. The Home Rule Amendment establishes that the City may exercise such local police, sanitary and other similar regulations as are not in conflict with the general laws of the State.

47. To constitute a general law for purposes of home rule analysis, "a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally." *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963 (syllabus).

48. R.C. § 9.49 is not a general law. The statute is not part of a statewide and comprehensive legislative enactment, it only purports to limit local municipal legislative authority, and it does not prescribe a rule of conduct upon citizens generally.

49. Because R.C. § 9.49 is not a general law, any attempted State enforcement of the statute in an effort to preempt and restrict the City from employing the resident construction hour requirements established in the City's Fannie Lewis Law would be unconstitutional.

50. R.C. § 9.49 is an unconstitutional infringement upon the Home Rule authority directly granted to the City and other municipalities by the Ohio Constitution and should be declared to be unconstitutional.

THIRD CLAIM FOR RELIEF

(The General Assembly Misapplies Article II, Section 34 of the Ohio Constitution in Seeking to Justify Its Unconstitutional Action)

51. The City of Cleveland incorporates paragraphs 1 through 50 by reference as if fully rewritten herein.

52. The Ohio General Assembly purports to justify the enactment of R.C. § 9.49 under the authority of Article II, Section 34 of the Ohio Constitution.

53. “A statement by the General Assembly of its intent to preempt a field of legislation is a statement of legislative intent that may be considered in a home-rule analysis but does not dispose of the issue.” *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 31

54. R.C. § 9.49 does not fix and regulate hours of labor, does not establish a minimum wage, and does not provide for the comfort, health, safety and general welfare of all employees in Ohio.

55. That General Assembly improperly invoked Article II, Section 34 of the Ohio Constitution as a justification of intent for enacting R.C. § 9.49.

56. Notwithstanding the General Assembly’s incorrect reference to Article II, Section 34 of the Ohio Constitution in H.B. 180, R.C. § 9.49 is an unconstitutional act through which the State seeks to preempt the exercise of long-standing Home Rule authority by the City and other municipalities.

FOURTH CLAIM FOR RELIEF

(TRO/Preliminary and Permanent Injunction)

57. The City of Cleveland incorporates paragraphs 1 through 56 by reference as if fully rewritten herein.

58. The purpose of the City's request for temporary restraining order and preliminary and/or permanent injunction is to preserve the status quo in this matter pending final adjudication of the declaratory judgment action presented questioning the constitutionality of R.C. § 9.49.

59. The State's violation of the Ohio Constitution in seeking to deprive the City of its established Home Rule Authority is evident and the City has a substantial likelihood of success on the merits of its claim.

60. The City and its residents will suffer irreparable harm in the absence of injunctive relief through the deprivation of its Home Rule Authority and the negative effect of the State's law on the Residents of Cleveland for which there can be no compensatory relief through monetary damages.

61. There will be no unjustified harm to the State or third parties with the granting of the City's request for temporary restraining order and injunction. CCO Chapter has been the law of Cleveland for more than 12 years and its terms are well known to prospective contractors.

62. The public interest will be served through issuance of a temporary restraining order and also by preliminary and/or permanent injunction by preserving the legal relationship between the State and the City as established by the Ohio Constitution during the pendency of this litigation. Enjoining R.C. § 9.49 during the pendency of this litigation will ensure the lawful and constructive purposes established with CCO Chapter 188 for the City and its residents are continued.

PRAYER FOR RELIEF

Wherefore, the City demands:

A. A declaration that R.C. § 9.49 violates the Ohio Constitution by infringing upon the City's Home Rule Powers of local self-government.

B. A declaration that R.C. § 9.49 is not a general law and violates the Ohio Constitution by infringing upon the City's Home Rule authority to adopt and enforce within the City's limits such local police, sanitary and other similar regulations, as are not in conflict with the general laws.

C. A declaration that the General Assembly's reference to Article II Section 34 of the Ohio Constitution as a justification for enacting R.C. § 9.49 is improper, not well taken, and unconstitutional.

D. A temporary restraining order and further order that the State of Ohio is preliminarily and/or permanently enjoined from enforcing R.C. § 9.49 during the pendency of this litigation.

Respectfully submitted,

BARBARA A. LANGHENRY (0038838)
Director of Law, City of Cleveland

By: /s/ Gary S. Singletary
GARY S. SINGLETARY (0037329)
Chief Counsel
L. STEWART HASTINGS JR. (0025852)
ELIZABETH WILLIAMSON (0088709)
Assistant Directors of Law
City of Cleveland, Department of Law
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ewilliamson@city.cleveland.oh.us

Counsel for Plaintiff City of Cleveland

INSTRUCTIONS FOR SERVICE

To the Clerk:

Please serve a copy of the foregoing Complaint upon the Defendant State of Ohio c/o the Ohio Attorney General at the address listed for the Defendant State of Ohio in the case caption of the Complaint by certified mail, return receipt requested.

Respectfully submitted,

BARBARA A. LANGHENRY (0038838)
Director of Law, City of Cleveland

By: /s/ Gary S. Singletary
GARY S. SINGLETARY (0037329)
Chief Counsel
L. STEWART HASTINGS JR. (0025852)
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Counsel for Plaintiff City of Cleveland

COUNTY OF CUYAHOGA)
) :SS AFFIDAVIT
STATE OF OHIO)

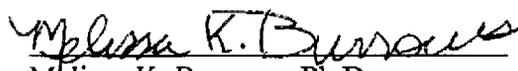
Melissa K. Burrows, Ph.D., being first duly sworn states as follows based on her personal knowledge:

1. I have been employed by the City of Cleveland since October 2014 in the position of Director, Mayor’s Office of Equal Opportunity (“OEO”).
2. In my position as Director of OEO I have read the City of Cleveland’s “Verified Complaint for Declaratory Judgment, Temporary Restraining Order, and Injunctive Relief” and I know the contents. The City’s Complaint is true to the best of my knowledge, information and/or belief.
3. The mission of the OEO is to advance equal economic benefit for all Clevelanders by ensuring compliance with contractor goals and requirements, by providing development and supporting activity for target groups and by overall advocacy with a commitment to excellent public service.
4. In carrying out its mission, OEO’s responsibilities include the administration, monitoring and enforcement of Cleveland Codified Ordinance Chapter 188.
5. Cleveland Codified Ordinance Chapter 188 is known as the Fannie M. Lewis Cleveland Resident Employment Law (“Fannie Lewis Law”).
6. Attached to my affidavit as Exhibit A-1 is a summary of information prepared by OEO for this litigation using data for calendar years 2013, 2014, 2015, and 2016 to date. The attached summary utilizes construction contract information that has been collected by OEO in the regular course of its duties and responsibilities for the City of Cleveland and was generated by OEO on August 3, 2016.
7. The attached Exhibit A-1, Cleveland Resident Utilization Summary Report, provides the following data for the referenced years:
 - Total Worker Hours related to Construction Contracts;
 - Total Wages associated with the Total Worker Hours;
 - Total Worker Hours performed by Cleveland Residents;
 - Total Wages paid to Cleveland Residents for hours performed;
 - The percentage of Total Worker Hours performed by Cleveland Residents;
 - The amount of the Total Worker Hours performed by Cleveland Residents that were performed by Low Income Residents;
 - The Total of Low Income Resident Hours as a Percentage of Total Worker Hours performed by Cleveland Residents

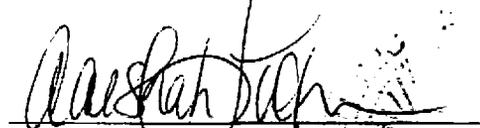


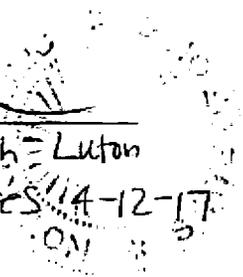
8. A copy of Ordinance No. 2031-A-02, enacting Cleveland Codified Ordinance Chapter 188, is attached to the Verified Complaint as Exhibit B.
9. A copy of current Cleveland Codified Ordinance Chapter 188, including all amendments to date, is attached to the Verified Complaint as Exhibit C.

FURTHER, AFFIANT SAYETH NAUGHT.


Melissa K. Burrows, Ph.D.
City of Cleveland
Director, Mayor's Office of Equal
Opportunity

Sworn to before me and subscribed in my presence this 22nd day of August, 2016.

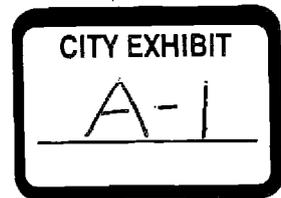

Notary Public Aeshah Luton
My comm. expires 11-12-17



Cleveland Resident Utilization
Summary Report

Year	Total Worker Hours	Wages	Cleveland Residents	Cleveland Resident Wages	Low Income Residents
2013	894,129	\$31,061,482.35	194,358	\$7,418,684.06	21,862
2014	1,982,724	\$83,864,726.45	409,387	\$15,554,360.49	42,982
2015	979,117	\$41,438,212.78	202,844	\$7,808,928.91	25,228
2016	491,611	\$19,823,661.18	91,281	\$3,362,278.16	10,566
Total	4,347,581	\$176,188,082.76	897,870	\$34,144,251.62	100,638

Data collected through LCPTracker
Local Worker Utilization Hours and Wages Report
Report generated August 3, 2016



Section shall not apply where the federal government or any of its agencies furnished or furnishes by loan or grant all or any part of the funds used or to be used in connection with the Project and prescribed or prescribes predetermined minimum wages to be paid to such laborers and mechanics; and provided further that, if a nonpublic user beneficiary undertakes, as a part of the Project, construction to be performed by its regular bargaining unit employees who are covered by a collective bargaining agreement that was in existence prior to the date of adoption of this Ordinance, the rate of pay provided under the applicable collective bargaining agreement may be paid to such employees. If and to the extent required by Revised Code Section 176.05, all wages paid to laborers and mechanics employed on a Project funded from the Housing Account of the Project Fund shall be paid at not less than the residential prevailing rate of wages for laborers and mechanics for each class of work called for by the Project, which wages shall be determined as provided in Section 176.05.

Section 15. Certifications of Community Improvement Corporation. Prior to delivery of the Bonds, the Core City Fund program shall be certified to be in accordance with the Plan by the Corporation as the agency of the City for industrial, commercial, distribution and research facilities development within the City. Each individual Project shall be so certified by the Corporation prior to receiving proceeds of the Bonds by loan or otherwise.

Section 16. Priorities of Projects. In evaluating Projects to be assisted by the Core City Fund Program, the City will endeavor to allocate the proceeds of the Bonds (net of amounts used to pay costs of any Credit Support Instrument and costs of issuance and net of amounts used to make deposits to the Bond Fund and Bond Reserve Fund) to the following categories of Projects in the following respective amounts: 9% for Projects in furtherance of technology-based industries, 10% for non-housing Projects located in the Central Business District of the City, 24% for non-housing Projects not located in the Central Business District estimated to cost less than \$1,000,000 (inclusive of all sources and uses of funds), 24% for non-housing Projects not located in the Central Business District estimated to cost \$1,000,000 or more (inclusive of all sources and uses of funds), and 33% for housing Projects. Subaccounts of the Economic Development Account of the Project Fund shall be established for the non-housing projects to account for these allocations of the net proceeds of the Bonds. The Director of Finance of the City may modify those allocations to the extent necessary to properly match the amount of loans to the financial requirements of the Projects to be assisted, provided that any reduction to any one category that results in an aggregate reduction to that category amounting to more than 2-1/2%

of the net proceeds of the Bonds shall be submitted to Council for review and approval. The Directors of Economic Development and Community Development shall jointly report annually to the Community and Economic Development Committee of Council concerning the loans or other assistance given to Projects from the proceeds of the Bonds, the completion status of the Projects that have received assistance, the status of the repayment of loans, and the amounts available for new loans or other assistance under the Program. To the extent that the Revenues received by the City from Projects are not applied to the payment of debt service on the Bonds and are to be used to assist new Projects, the Revenues shall be applied to assist the same category of Projects from which the Revenues were derived.

Section 17. Captions, Headings, and Section References. The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit, or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs, or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

Section 18. Interpretation. Any provisions of the Codified Ordinances of the City which are inconsistent with the provisions of this Ordinance shall not apply to the Bonds authorized herein. Nothing in this Ordinance is intended to, and no provision hereof shall be applied in any manner as would, impair the obligation of contract of the City with respect to any outstanding bonds, Bonds, certificates of indebtedness, other obligations, trust indentures, trust agreements, or other agreements or contracts made or entered into by the City.

Section 19. Satisfaction of Conditions. This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid, and binding special obligations of the City have been performed and have been met, or will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law, and that no limitation of indebtedness or taxation, either statutory or constitutional, is applicable to the issuance of the Bonds.

Section 20. Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

Section 21. Emergency. This Ordinance is hereby declared to be an emergency measure and, provided it

receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed June 10, 2003.

Effective June 12, 2003.

Ord. No. 2031-A-02 (as a Substitute for Ordinance No. 2031-02).

By Council Members Lewis, Sweeney, Polensek, Jackson, Brady and O'Malley.

An ordinance to supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Chapter 188 relating to employment of City residents for certain public improvement contracts.

Whereas, the Council of the City of Cleveland believes strongly in employment opportunities for Cleveland residents; and

Whereas, there are Cleveland residents who possess the skills and training required for work on construction projects; and

Whereas, despite, the expenditure of millions of dollars in the City of Cleveland on projects recently completed or currently under construction, few of the employment opportunities arising from those projects have gone to Cleveland residents; and

Whereas, the City of Cleveland has a higher unemployment rate and higher poverty rate than Cuyahoga County and many surrounding communities; and

Whereas, the employment of City residents on construction projects funded, in part or in whole, with City assistance will help alleviate unemployment and poverty in the City; and

Whereas, Council Member Fannie M. Lewis serves as Chairperson of the Employment, Affirmative Action, and Training Committee and has conducted hearings on this matter for over one year; and

Whereas, it is appropriate to honor Council Member Lewis' service and dedication by naming the Cleveland Resident Employment Law the "Fannie M. Lewis Cleveland Resident Employment Law"; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That, notwithstanding and as an exception to any provision of the Codified Ordinances of Cleveland, Ohio, 1976, to the contrary, the Codified Ordinances of Cleveland, Ohio, 1976, are hereby supplemented by enacting new Chapter 188, to read as follows:

**Chapter 188
Fannie M. Lewis Cleveland
Resident Employment Law**

Section 188.01 Definitions

For purposes of this chapter, the following words, phrases and terms are defined as follows:

(a) "City" means the City of Cleveland, Ohio.

(b) "Construction Contract" means any agreement whereby the City either grants a privilege or is committed to expend or does expend its funds or other resources, or federal

1456

CITY EXHIBIT

B

grant opportunities, including without limitation, Community Development Block Grants, Urban Development Action Grants and Economic Development Administration Grants, in an amount of \$100,000 or more, for the erection, rehabilitation, improvement, alteration, conversion, extension, demolition or repair of improvements to real property, including facilities providing utility service and includes the supervision, inspection, and other on-site functions incidental to construction, but does not include professional services. Construction Contract includes any contract that is entered into by a person or entity that receives a grant, loan, privilege, credit, or resources from the City, from its funds or from federal grant opportunities for the poor, minorities and/or unemployed in an amount of \$100,000 or more, for the purpose of erecting, improving, rehabilitating, altering, converting, extending, demolishing, or repairing real property or improvements to real property.

(c) "Construction Worker Hours" means the total hours worked on a Construction Contract by Skilled and Unskilled Construction Trade Workers, whether those workers are employed by the Contractor or any Subcontractor. In determining the total Construction Worker Hours to be furnished at the construction site, there shall be included the number of hours devoted to all tasks customarily performed on a construction site, whether or not such tasks are, in fact, performed on the construction site. Construction Worker Hours excludes the number of hours of work performed by non-Ohio residents.

(d) "Contractor" means any person or company receiving a Construction Contract from the City of Cleveland, any subdivision of the City, or any individual legally authorized to bind the City pursuant to said contract.

(e) "Director" means the Director of the Office of Equal Opportunity.

(f) "Low Income Person" means a Resident who is a member of a family having an income equal to or less than the Section 8 very low-income limit established by the Department of Housing and Urban Development. Very low-income families are defined as families whose incomes do not exceed fifty percent (50%) of the median family income for the area. Income limits are adjusted for family size. Unrelated individuals shall be considered as one person families for this purpose.

(g) "Resident" or "Resident of the City" shall mean persons domiciled within the boundaries of City of Cleveland. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

(h) "Skilled and Unskilled Construction Trade Worker" means all work site foremen, journeymen, including technical engineers, apprentices, construction trainees and elevator construction helpers and apprentices that are in a bona fide apprenticeship training program that is certified by the U.S. Department of Labor, Bureau of Apprenticeship and Training. Also included are other workers appropriate for

construction activities. Salaried superintendents are excluded from this special provision.

(i) "Subcontractor(s)" means any person or company that assumes by secondary contract some or all of the obligations of the original Contractor.

Section 188.02 Employment of City Residents

(a) Where not otherwise prohibited by federal, state or local law or the terms of federal or state grants, all Construction Contracts shall contain a provision that requires that Residents of the City perform twenty percent (20%) of the total Construction Worker Hours ("Resident Construction Worker Hours") and shall contain a provision detailing the penalties for failure to do so, which penalties are set forth in Section 188.05. Additionally, where not otherwise prohibited by federal, state or local law or the terms of federal or state grants, all Construction Contracts shall contain a provision that requires the Contractor to use significant effort, and requires any Subcontractors to use significant effort, to ensure that no less than four percent (4%) of the Resident Construction Worker Hours are performed by persons who qualify as Low Income Persons. Cleveland residents employed by a Contractor or Subcontractor as Skilled or Unskilled Construction Trade Workers at the time that work on a Construction Contract begins, but who are otherwise employed by the Contractor or Subcontractor on projects that are not pursuant to a Construction Contract, may be counted toward the above-stated Resident Construction Worker Hours requirement upon presentation of documentary proof to the Director. Residents who are Skilled and Unskilled Construction Trade Workers and are graduates from established pre-apprenticeship programs, such as the Union Construction Industry Partnership - Apprenticeship Skill Achievement Program ("UCIP-ASAP") who are working for the Contractor or Subcontractor, may be counted toward the above-stated Resident Construction Worker Hours requirement.

(b) The percentage levels set forth in Section 188.02(a) are intended as minimum requirements for use of Residents of the City of Cleveland under Construction Contracts and shall not be construed as limiting or deferring the full use of Residents of the City beyond this numerical level.

(c) Prior to the commencement of work, each Contractor and Subcontractor(s) shall complete and submit to the Director a work force table. This document shall identify the estimated work force requirements for the duration of the job, broken down by trade and month. This document shall be revised as required, but not less than once a month.

Section 188.03 Standards, Reductions and No Waiver

(a) The Director, consistent with the provisions of this Chapter, shall establish standards and procedures, as the Director deems proper and necessary, to effectively administer the intent and purpose of this Chapter. In creating these standards and procedures and in creating any sub-

sequent modifications thereof, the Director shall work with the Chairperson of the Employment, Affirmative Action and Training Committee. The standards and exceptions shall be effective thirty (30) days after publication in the City Record. However, at least ten (10) days prior to publication in the City Record, the Director shall provide the President of City Council and the Chairperson of the Employment, Affirmative Action and Training Committee with a copy of the proposed standards and procedures.

(b) Such standards and procedures shall specify that the employment of the minimum percentage of Residents may be reduced prior to or during construction only when a Contractor or potential Contractor can demonstrate the high impracticality of complying with this percentage level for particular contracts or classes of employees. The Director shall apply the standard of "efforts to the greatest extent feasible" to the Contractor's or Subcontractor's efforts when evaluating requests for reduction. A reduction may be deemed appropriate by the Director if a Contractor or potential Contractor has unsuccessfully solicited a sufficient number of Residents of the City to perform the work identified in the bid specifications and has documented such effort to the satisfaction of the Director. In addition, such standards and procedures shall require that a Contractor or potential Contractor seeking a reduction shall have provided timely notice of the need for Residents of the City to an appropriate source(s) of referrals, as determined by the Director, which source(s) shall be entitled to comment on any reduction application. If the Director determines that a lesser percentage of Residents is appropriate with respect to a potential Construction Contract for which bids will be solicited, bid specifications shall include a statement of the revised standards. The standards established by the Director shall also provide for a reduction during construction based on petition by the Contractor demonstrating serious unforeseen circumstances, such as new governmental regulations, national or natural disasters, war and/or other disastrous events or high impracticality.

(c) The Director shall file his determination on all reductions, and the reasons for the reduction, with the Clerk of City Council, the President of City Council, and the Chairperson of the Employment Affirmative Action and Training Committee, within five (5) working days of making a determination.

(d) The Director shall not waive the Resident Construction Worker Hours of this chapter.

Section 188.04 Monitoring by Director: Reporting by Contractor, and Advisory Committee to the Director

(a) The Director shall separately monitor the use of Residents of the City on all applicable projects in Skilled and Unskilled Construction Trade Worker positions, and shall report his findings in writing to the Clerk of City Council, the President of City Council, and to the Employment Affirmative Action and Training Committee of this Council on a bi-monthly basis.

(b) The Contractor shall provide for the maintenance of all records documenting that Residents of the City are employed in pursuance of the Construction Contract. The Contractor and Subcontractor(s) shall maintain copies of personnel documents supportive of every Resident employee's actual record of residence.

(c) The Contractor shall designate a principal officer of its firm to be responsible for administering the Resident requirements for the Contractor and all of its Subcontractor(s) pursuant to the requirements detailed in this Chapter. This officer shall meet regularly, or as may be required, with the Director or his designee to ensure compliance with the Resident requirements set forth herein. Primary responsibility for meeting established goals shall remain with the Contractor. Certified payroll reports (U.S. Department of Labor form WH-347 or equivalent) in a format specified by the Director shall be submitted monthly to the Director for applicable construction contracts and shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time an employee's name appears on a payroll, a hire date for the employee should be included after the employee's name.

(d) Full access to the Contractor(s) and Subcontractor(s) employment records that document information that relates to the requirements of this Chapter shall be granted to the Director, his designated agents, the Chief of Police, or any duly authorized representative thereof. The Contractor and Subcontractor(s) shall maintain all relevant personnel data in records for a period of at least three (3) years after final completion of work. This retention period may be extended in writing by the Director based upon audit irregularities.

(e) The Director may require affidavits and other supporting documentation from the Contractor and/or Subcontractor(s) to verify or clarify that an employee is a Resident when doubt or lack of clarity has arisen.

(f) There shall be established a Residency Construction Advisory Committee to the Director with the charge of furthering the intent and purpose of this Chapter. Membership shall consist of one representative appointed by the Mayor, one representative appointed by the President of City Council, one representative appointed by the Executive Director of the Cleveland Building and Construction Trade Council, one representative appointed by the Executive Director of the Construction Employers Association or its delegate and one representative jointly appointed by the Mayor and the President of City Council who is not affiliated with Cleveland Building and Construction Trade Council or the Construction Employers Association or its delegate. This Committee may establish one (1) or more advisory subcommittees to help achieve the goals established pursuant to this legislation.

Section 188.05 Violation and Penalty

(a) When work under a Construction Contract is completed, and in the event that the Director

determines that the Contractor has failed to fulfill the requirements contained in Section 188.02 concerning Construction Worker Hours performed by Residents of the City or has failed to submit reports as required in Sections 188.02 and 188.04, the City is deemed to have been damaged. Good faith efforts on the part of the Contractor or Subcontractor to provide employment to Residents of the City shall not suffice to replace the actual, verified achievement of the requirements contained in Section 188.02.

(b) In the event the Contractor breaches its Construction Contract obligation for Resident Construction Worker Hours stated in Section 188.02, one eighth (1/8) of one (1) percent of the final total amount of the Construction Contract shall be paid by the Contractor to the City in payment for each percentage of shortfall toward the Resident Construction Worker Hours set forth in Section 188.02 or the reduced requirement established by the Director in accordance with Section 188.03. In the event the Low Income Person objective is not achieved, the Director shall determine if a penalty is appropriate and assess the penalty in his/her discretion.

(c) Failure to submit, or knowing falsification of, the reports required in Sections 188.02 and 188.04 shall result in a breach of the Construction Contract subject to assessment of the maximum penalty provided in division (b), and the penalty shall be calculated as if no Residents of the City were employed on the construction project in furtherance of the Construction Contract.

(d) No Contractor shall knowingly falsify any required reports, statements or payroll certifications. Any Contractor who knowingly falsifies reports, statements or the certification of payroll data is guilty of a misdemeanor of the first degree and subject to a fine of not more than five thousand dollars (\$5,000). If a Contractor is convicted under this division, that Contractor shall be barred from contracting with the City on any construction project subject to this Chapter for a period of five (5) years.

(e) Any retainage to cover contract performance that may become due to the Contractor pursuant to the Codified Ordinances of the City of Cleveland may be withheld by the City pending the determination by the Director of whether the Contractor must pay a penalty.

(f) The imposition of any penalty or fine under this section shall not preclude the City from exercising any other rights or remedies to which it is entitled.

(g) All funds collected by the City of Cleveland under division (b) or (c) of this section shall be deposited into a special account which shall be created for the sole purpose of receiving said funds. The funds deposited into this account shall be used for the operation of the Office of Equal Opportunity provided such funds have been appropriated for that purpose, provided there is any necessary legislative authority and provided the funds are used in compliance with all laws or restrictions regarding their use.

(h) In addition to assessing the penalty set forth above, the City may, for a period of five (5) years

after a violation of this chapter, require the Contractor to post a surety bond or other appropriate security in an amount representing twenty percent (20%) of the contract price for any subsequent contract awarded to the Contractor, which the Contractor shall agree and shall be required to forfeit in its entirety in the event that full compliance with the requirements of this chapter are not achieved during the performance of the contract. This surety bond shall be in addition to such other surety bonds that are required pursuant to the Codified Ordinances of Cleveland, Ohio.

(i) No person shall knowingly supply false information to establish that the person is a Resident for purposes of this Chapter. Any person who knowingly supplies false information to establish that he or she is a Resident is guilty of a misdemeanor of the first degree and subject to imprisonment for a period not to exceed (6) months and a fine of not more than one thousand dollars (\$1,000). Upon conviction, such person shall be barred from employment in furtherance of a Construction Contract for a period of five (5) years.

Section 188.06 Severability

Each section and each part of each section of this Fannie M. Lewis Cleveland Resident Employment Law is declared to be an independent section or part of a section, and notwithstanding any other evidence of legislative intent, it is declared to be the controlling legislative intent that if any section or part of a section or any provision thereof, or the application thereof to any person or circumstances, is held to be invalid, the remaining sections or parts of sections and the application of such provision to any other person or circumstances, other than those as to which it is held invalid, shall not be affected thereby. It is further declared to be the legislative intent that the other provisions of this Code would have been adopted independently of such section or parts of a section which are held to be invalid.

Section 188.07 Duration

This Fannie M. Lewis Cleveland Resident Employment Law is enacted as a temporary measure to alleviate the lack of use of Residents on City of Cleveland construction projects found to exist by the Council of the City of Cleveland. This code shall remain in full force and effect, subject to periodic review by the Council of the City of Cleveland. The City Council shall regularly, but at a minimum of once every five (5) years, determine whether there is a continuing need to ensure adequate resident employment, and make relevant findings in support of that determination, and, if necessary amend this Chapter as appropriate. In addition thereto, every two (2) years after enactment of this Fannie M. Lewis Cleveland Resident Employment Law, the City Council shall review the twenty (20) percent resident requirement, and the four (4) percent requirement for Low Income Persons, to determine the appropriateness of each percentage and make relevant findings of that determination, and if necessary, amend 188.02 (a).

Section 188.08 Effective Date

This chapter shall be effective and be in force upon its passage and approval as of January 1, 2004.

Section 2. Within sixty (60) days of the passage date of this ordinance, the Director shall finalize the initial standards and procedures in accordance with Section 188.03 and provide a copy to the Chairperson of the Employment, Affirmative Action and Training Committee. The Director shall ensure that the standards and procedures authorized under Section 188.03 are created and published so that they are effective prior to January 1, 2004.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed June 10, 2003.

Effective July 20, 2003.

Ord. No. 81-03.

By Council Member Lewis.

An emergency ordinance authorizing the sale of real property as part of the Land Reutilization Program and located on East 88th, 91st and 92nd Streets to Cuyahoga Metropolitan Housing Authority.

Whereas, the City of Cleveland adopted and implemented procedures under Chapter 5722 of the Ohio Revised Code to facilitate reutilization of nonproductive lands situated within the City of Cleveland; and

Whereas, real property acquired under the City's Land Reutilization Program is acquired, held, administered and disposed of by the City of Cleveland through its Department of Community Development under the terms of Chapter 5722 of the Ohio Revised Code and Section 183.021 of Codified Ordinances of the City of Cleveland, 1976; and

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That pursuant to Section 183.021 of the Codified Ordinances of Cleveland, Ohio 1976, the Commissioner of Purchases and Supplies is hereby authorized to sell Permanent Parcel No. 107-13-067 as more fully described below, to Cuyahoga Metropolitan Housing Authority.

Section 2. That the real property to be sold pursuant to Section 1 of this Ordinance is more fully described as follows:

P. P. No. 107-13-067

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being Sublots Nos. 181 and 182 in W.J. Crawford and James Parmalee's Subdivision of part of Original One Hundred Acre Lot No. 384 as shown by the recorded plat in Volume 16 of Maps, Page 5 of Cuyahoga County Records and together forming a parcel of land 75 feet front on the Westerly side of East 92nd Street, 80 feet on the Northerly line 80 feet deep on the Southerly line which is also the Northerly line of Morris Court, N.E., and 75 feet in the rear as appears by said plat, be the same more or less, but subject to all legal highways.

Subject to Zoning Ordinances, if any.

Section 3. That pursuant to Section 183.021 of the Codified Ordinances of Cleveland, Ohio 1976, the Commissioner of Purchases and Supplies is hereby authorized to sell Permanent Parcel No. 107-14-127 as more fully described below to Cuyahoga Metropolitan Housing Authority.

Section 4. That the real property to be sold pursuant to this Ordinance is more fully described as follows:

P. P. No. 107-14-127

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being Sublot No. 25 in Wade Park and Superior Subdivision of part of Original One Hundred Acre Lot No. 384, as shown by the recorded plat in Volume 21 of Maps, Page 5 of Cuyahoga County Records, and being 35 feet front on the Easterly side of East 89th Street, and extending back of equal width 75 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

Subject to Zoning Ordinances, if any.

Section 5. That pursuant to Section 183.021 of the Codified Ordinances of Cleveland, Ohio 1976, the Commissioner of Purchases and Supplies is hereby authorized to sell Permanent Parcel No. 107-14-128 as more fully described below, to Cuyahoga Metropolitan Housing Authority.

Section 6. That the real property to be sold pursuant to this Ordinance is more fully described as follows:

P. P. No. 107-14-128

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being Sublot No. 24 in the Wade Park and Superior Subdivision of part of Original One Hundred Acre Lot No. 384 as shown by the recorded plat in Volume 21 of Maps, Page 5 of Cuyahoga County Records, be the same more or less, but subject to all legal highways.

Also subject to all zoning ordinances, if any.

Section 7. That pursuant to Section 183.021 of the Codified Ordinances of Cleveland, Ohio 1976, the Commissioner of Purchases and Supplies is hereby authorized to sell Permanent Parcel No. 107-14-129 as more fully described, to Cuyahoga Metropolitan Housing Authority.

Section 8. That the real property to be sold pursuant to this Ordinance is more fully described as follows:

P. P. No. 107-14-129

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being Sublot No. 23 in Wade Park and Superior Subdivision of part of Original One Hundred Acre Lot No. 384, as shown by the recorded plat in Volume 21 of Maps, Page 5 of Cuyahoga County Records, as appears by said plat, be the same more or less, but subject to all legal highways.

Section 9. That pursuant to Section 183.021 of the Codified Ordinances of Cleveland, Ohio 1976, the Commissioner of Purchases and Supplies is hereby authorized to sell

Permanent Parcel No. 107-14-187 as more fully described below, to Cuyahoga Metropolitan Housing Authority.

Section 10. That the real property to be sold pursuant to this Ordinance is more fully described as follows:

P. P. No. 107-14-187

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being Sublot No. 86 in the Wade Park and Superior Subdivision of part of Original One Hundred Acre Lot No. 384, as shown by the recorded plat in Volume 21 of Maps, Page 5 of Cuyahoga County Records, and being 40 feet front on the Westerly side of East 91st Street (formerly Studley Street), and extending back of equal width 100 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

Section 11. That pursuant to Section 183.021 of the Codified Ordinances of Cleveland, Ohio 1976, the Commissioner of Purchases and Supplies is hereby authorized to sell Permanent Parcel No. 107-14-188 as more fully described below, to Cuyahoga Metropolitan Housing Authority.

Section 12. That the real property to be sold pursuant to this Ordinance is more fully described as follows:

P. P. No. 107-14-188

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being all of Sublot No.85 in Curtiss and Ambler's Wade Park and Superior Subdivision of part of Original East Cleveland Township Lot 384. Said Sublot No. 85 is 40 feet front on the Westerly side of Studley Street (now East 91st Street) and extends back of equal width 100 feet deep according to the plat of said Subdivision recorded in Volume 21 of Maps, Page 5 of Cuyahoga County Records.

Section 13. That pursuant to Section 183.021 of the Codified Ordinances of Cleveland, Ohio, 1976, the Commissioner of Purchases and Supplies is hereby authorized to sell the following Permanent Parcel Nos. which are more fully described in the next section, to Cuyahoga Metropolitan Housing Authority.

Section 14. That the real property to be sold pursuant to this Ordinance is more fully described as follows:

P. P. No. 104-14-025

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and bounded and described as follows, to wit: And known as being part of Original One Hundred Acre Lot No. 343, and bounded and described as follows:

Beginning at a point in the in the Northerly line of Dibble Avenue, now known as Dibble Avenue, N.E., as shown by the recorded plat in Volume 13 of Maps, Page 34 of Cuyahoga County Records, at a point 420 feet and 1 1/2 inches East from the intersection of the North line of Dibble Avenue, N.E., with the East line of East 55th Street, (formerly Willson Avenue), thence North 34 minutes East at right angles to Dibble Avenue, N.E., 110 feet 9 3/4 inches; thence North 86° 29 minutes East 39 feet 1 inches' thence South 34 min-

CHAPTER 188 – FANNIE M. LEWIS CLEVELAND RESIDENT EMPLOYMENT LAW

- 188.01 Definitions
- 188.02 Employment of City Residents
- 188.03 Standards, Reductions and No Waiver
- 188.04 Monitoring by Director: Reporting by Contractor, and Advisory Committee to the Director
- 188.05 Violation and Penalty
- 188.06 Severability
- 188.07 Duration
- 188.08 Effective Date



Note: Ordinance No. 2031-A-02, passed June 10, 2003, enacted Chapter 188, the “Fannie M. Lewis Cleveland Resident Employment Law” and provides for an effective date of January 1, 2004.

§ 188.01 Definitions

For purposes of this chapter, the following words, phrases and terms are defined as follows:

(a) “City” means the City of Cleveland, Ohio.

(b) “Construction Contract” means any agreement whereby the City either grants a privilege or is committed to expend or does expend its funds or other resources, or federal grant opportunities, including without limitation, Community Development Block Grants, Urban Development Action Grants and Economic Development Administration Grants, in an amount of one hundred thousand dollars (\$100,000.00) or more, for the erection, rehabilitation, improvement, alteration, conversion, extension, demolition or repair of improvements to real property, including facilities providing utility service and includes the supervision, inspection, and other on-site functions incidental to construction, but does not include professional services. Construction Contract includes any contract that is entered into by a person or entity that receives a grant, loan, privilege, credit, or resources from the City, from its funds or from federal grant opportunities for the poor, minorities and/or unemployed in an amount of one hundred thousand dollars (\$100,000.00) or more, for the purpose of erecting, improving, rehabilitating, altering, converting, extending, demolishing, or repairing real property or improvements to real property.

(c) “Construction Worker Hours” means the total hours worked on a Construction Contract by Skilled and Unskilled Construction Trade Workers, whether those workers are employed by the Contractor or any Subcontractor. In determining the total Construction Worker Hours to be furnished at the construction site, there shall be included the number of hours devoted to all tasks customarily performed on a construction site, whether or not such tasks are, in fact, performed on the construction site. Construction Worker Hours excludes the number of hours of work performed by non-Ohio residents.

(d) “Contractor” means any person or company receiving a Construction Contract from the City of Cleveland, any subdivision of the City, or any individual legally authorized to bind the City pursuant to said Contract.

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(e) “Director” means the Director of the Office of Equal Opportunity.

(f) “Low-Income Person” means a Resident who, when first employed by a contractor, is a member of a family having a total income equal to or less than the “Section 8” Very Low-Income limit established by the United States Department of Housing and Urban Development. Very Low-Income families are defined as families whose incomes do not exceed fifty percent (50%) of the median family income for the area in which they reside. Income limits are adjusted for family size. A Resident who is not a member of a family shall be considered as a one-person family for this purpose. A Resident shall retain “Low-Income Person” status for a continuous five (5) year period starting upon the OEO’s written acknowledgement that the Resident’s family income does not exceed the above-stated limit, provided:

(1) The Resident remains employed by the same employer that hired the Resident as a Low-Income Person; and

(2) The Resident remains a Resident during the five (5) year period.

(g) “Resident” or “Resident of the City” shall mean persons domiciled within the boundaries of City of Cleveland. The domicile is an individual’s one (1) and only true, fixed and permanent home and principal establishment.

(h) “Skilled and Unskilled Construction Trade Worker” means all work site foremen, journeyworkers, including technical engineers, apprentices, construction trainees and elevator construction helpers and apprentices that are in a bona fide apprenticeship training program that is certified by the U.S. Department of Labor, Bureau of Apprenticeship and Training. Also included are other workers appropriate for construction activities. Salaried superintendents are excluded from this special provision.

(i) “Subcontractor(s)” means any person or company that assumes by secondary contract some or all of the obligations of the original Contractor.

(Ord. No. 1056-10. Passed 10-25-10, eff. 10-28-10)

§ 188.02 Employment of City Residents

(a) Where not otherwise prohibited by federal, state, or local law or the terms of federal or state grants, every Construction Contract shall:

(1) Require that one (1) or more Residents perform twenty percent (20%) of the total Construction Worker Hours (“Resident Construction Worker Hours”) performed under the Construction Contract;

(2) State the penalties set forth in Section 188.05 for failure to meet the requirement of division (a)(1) of this section; and

(3) Require the contractor and its Subcontractors to use significant effort to ensure that no less than four percent (4%) of the Resident Construction Worker Hours required by this division are performed by Low-Income Persons.

Upon submission of documentary proof of the hours satisfactory to the Director, a Contractor may include in its Resident Construction Worker Hours the hours worked for the Contractor or its Subcontractors by Residents who are Skilled and Unskilled Construction Trade Workers on projects that are not under a Construction Contract, between the dates that work under the Construction Contract begins and ends. A Contractor may also include in its Resident Construction Worker Hours the hours worked by Residents who are graduates of established, bona fide pre-apprenticeship programs approved by the Fannie M. Lewis Advisory Committee, including, but not limited to, the Bricklayers & Allied Crafts Preapprenticeship program, Cement Masons Pre- apprenticeship program, or Union Construction Industry Partnership-Apprenticeship Skill Achievement Program (“UCIP-ASAP”).

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(b) The percentage levels set forth in division (a) of Section 188.02 are intended as minimum

requirements for use of Residents under Construction Contracts and shall not be construed as limiting or deferring the full use of Residents beyond this numerical level.

(c) Prior to the commencement of work, each Contractor and Subcontractor shall, if requested by the Director, complete and submit to the Director a work-force table. The table shall identify the estimated work-force requirements for the duration of the job, broken down by trade and month. The Contractor or Subcontractor shall revise the table as required, but not less than once a month.

(Ord. No. 1056-10. Passed 10-25-10, eff. 10-28-10)

§ 188.03 Standards, Reductions and No Waiver

(a) The Director, consistent with the provisions of this chapter, shall establish standards and procedures, as the Director deems proper and necessary, to effectively administer the intent and purpose of this chapter. In creating these standards and procedures and in creating any subsequent modifications thereof, the Director shall work with the Chairperson of the Employment, Affirmative Action and Training Committee. The standards and exceptions shall be effective thirty (30) days after publication in the *City Record*. However, at least ten (10) days prior to publication in the *City Record*, the Director shall provide the President of City Council and the Chairperson of the Employment, Affirmative Action and Training Committee with a copy of the proposed standards and procedures.

(b) Such standards and procedures shall specify that the employment of the minimum percentage of Residents may be reduced prior to or during construction only when a Contractor or potential Contractor can demonstrate the high impracticality of complying with this percentage level for particular contracts or classes of employees. The Director shall apply the standard of "efforts to the greatest extent feasible" to the Contractor's or Subcontractor's efforts when evaluating requests for reduction. A reduction may be deemed appropriate by the Director if a Contractor or potential Contractor has unsuccessfully solicited a sufficient number of Residents of the City to perform the work identified in the bid specifications and has documented such effort to the satisfaction of the Director. In addition, such standards and procedures shall require that a Contractor or potential Contractor seeking a reduction shall have provided timely notice of the need for Residents of the City to an appropriate source(s) of referrals, as determined by the Director, which source(s) shall be entitled to comment on any reduction application. If the Director determines that a lesser percentage of Residents is appropriate with respect to a potential Construction Contract for which bids will be solicited, bid specifications shall include a statement of the revised standards. The standards established by the Director shall also provide for a reduction during construction based on petition by the Contractor demonstrating serious unforeseen circumstances, such as new governmental regulations, national or natural disasters, war and/or other disastrous events or high impracticality.

(c) The Director shall file his or her determination on all reductions, and the reasons for the reduction, with the Clerk of City Council, the President of City Council, and the Chairperson of the Employment Affirmative Action and Training Committee, within five (5) working days of making a determination.

(d) The Director shall not waive the Resident Construction Worker Hours of this chapter.

(Ord. No. 2031-A-02. Passed 6-10-03, eff. 1-1-04)

§ 188.04 Monitoring by Director: Reporting by Contractor, and Advisory Committee to the Director

(a) The Director shall separately monitor the use of Residents of the City on all applicable projects in Skilled and Unskilled Construction Trade Worker positions, and shall report his or her findings in writing to the Clerk of City Council, the President of City Council, and to the Employment Affirmative Action and Training Committee of this Council on a bimonthly basis.

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(b) The Contractor shall provide for the maintenance of all records documenting that Residents of the

City are employed in pursuance of the Construction Contract. The Contractor and Subcontractor(s) shall maintain copies of personnel documents supportive of every Resident employee's actual record of residence.

(c) The Contractor shall designate a principal officer of its firm to be responsible for administering the Resident requirements for the Contractor and all of its Subcontractor(s) pursuant to the requirements detailed in this chapter. This officer shall meet regularly, or as may be required, with the Director or his or her designee to ensure compliance with the Resident requirements set forth herein. Primary responsibility for meeting established goals shall remain with the Contractor. Certified payroll reports (U.S. Department of Labor form WH-347 or equivalent) in a format specified by the Director shall be submitted monthly to the Director for applicable construction contracts and shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time an employee's name appears on a payroll, a hire date for the employee should be included after the employee's name.

(d) Full access to the Contractor(s') and Subcontractor(s') employment records that document information that relates to the requirements of this chapter shall be granted to the Director, his or her designated agents, the Chief of Police, or any duly authorized representative thereof. The Contractor and Subcontractor(s) shall maintain all relevant personnel data in records for a period of at least three (3) years after final completion of work. This retention period may be extended in writing by the Director based upon audit irregularities.

(e) The Director may require affidavits and other supporting documentation from the Contractor and/or Subcontractor(s) to verify or clarify that an employee is a Resident when doubt or lack of clarity has arisen.

(f) There shall be established a Residency Construction Advisory Committee to the Director with the charge of furthering the intent and purpose of this chapter. Membership shall consist of one (1) representative appointed by the Mayor, one (1) representative appointed by the President of City Council, one (1) representative appointed by the Executive Director of the Cleveland Building and Construction Trade Council, one (1) representative appointed by the Executive Director of the Construction Employers Association or its delegate and one (1) representative jointly appointed by the Mayor and the President of City Council who is not affiliated with Cleveland Building and Construction Trade Council or the Construction Employers Association or its delegate. This Committee may establish one (1) or more advisory subcommittees to help achieve the goals established pursuant to this legislation.

(Ord. No. 2031-A-02. Passed 6-10-03, eff. 1-1-04)

§ 188.05 Violation and Penalty

(a) When work under a Construction Contract is completed, and in the event that the Director determines that the Contractor has failed to fulfill the requirements contained in Section 188.02 concerning Construction Worker Hours performed by Residents of the City or has failed to submit reports as required in Sections 188.02 and 188.04, the City is deemed to have been damaged. Good faith efforts on the part of the Contractor or Subcontractor to provide employment to Residents of the City shall not suffice to replace the actual, verified achievement of the requirements contained in Section 188.02.

(b) If a Contractor breaches a Construction Contract by failing to meet the Resident Construction Worker Hours requirement of Section 188.02, it shall pay the City one-eighth of one percent (0.125%) of the final total amount of the Construction Contract for each percentage by which it fails to meet the requirement or any reduced requirement determined appropriate by the Director according to Section 188.03. If a Contractor does not achieve the Low-Income Person objective, the Director in his or her sole discretion shall determine whether a penalty is appropriate and, if so, the penalty amount the Contractor shall pay the City.

(c) The Director, in addition to any other remedies available for the breaches by a Contractor identified in division (b) of this section or for other defaults under a Construction Contract, may:

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(1) Recommend that the City withhold all or part of any payments due the Contractor until such time as the Contractor cures its defaults, pays or credits all penalties or other payments due under the Construction Contract, the Code, or the Standards and Procedures, and is in full compliance with all applicable provisions of the Code, the Construction Contract, and the Standards and Procedures relating to Resident or Low- Income Person employment or reporting;

(2) Recommend, based upon a breach of or default under the Contract relating to Resident or Low- Income Person employment, that the City rescind, cancel, or otherwise terminate the Construction Contract and declare a forfeiture of any performance bond;

(3) Recommend that the Director of Law take such legal action, whether civil or criminal, as he or she deems appropriate;

(4) Recommend disqualification under Section 181.27 or Section 185.08 of the Codified Ordinances of Cleveland, Ohio, 1976 of a Contractor from eligibility to bid to or contract with the City for a period not to exceed two (2) years; or

(5) Recommend that the City make a claim for payment of damages, including any liquidated damages specified in the Contract.

(d) A decision of the Director under this section is final and may be appealed to the Board of Zoning Appeals by filing a notice of appeal with the Board and a copy to the Director within fifteen (15) days of the decision. The Board of Zoning Appeals shall, after a hearing, determine whether the decision of the Director is arbitrary, capricious, or unreasonable. The decision of the Board of Zoning Appeals, in turn, may be reviewed by the Common Pleas Court of Cuyahoga County under RC Chapter 2506, or as otherwise provided by law.

(e) Failure to submit, or knowing falsification of, the reports required in Sections 188.02 and 188.04 shall result in a breach of the Construction Contract subject to assessment of the maximum penalty provided in division (b) of this section, and the penalty shall be calculated as if no Residents of the City were employed on the construction project in furtherance of the Construction Contract.

(f) No Contractor shall knowingly falsify any required reports, statements or payroll certifications. Any Contractor who knowingly falsifies reports, statements or the certification of payroll data is guilty of a misdemeanor of the first degree and subject to a fine of not more than five thousand dollars (\$5,000.00). If a Contractor is convicted under this division, that Contractor shall be barred from contracting with the City on any construction project subject to this chapter for a period of five (5) years.

(g) Pending determination by the Director whether a Contractor must pay a penalty under this chapter, the Director may recommend that the City withhold from amounts retained by the City under Section 185.41 and payable to the Contractor, the amount of any penalty payable by the Contractor under this chapter.

(h) The imposition of any penalty or fine under this section shall not preclude the City from exercising any other rights or remedies to which it is entitled.

(i) All funds collected by the City of Cleveland under division (b) or (c) of this section shall be deposited into a special account which shall be created for the sole purpose of receiving said funds. The funds deposited into this account shall be used for the operation of the Office of Equal Opportunity provided such funds have been appropriated for that purpose, provided there is any necessary legislative authority and provided the funds are used in compliance with all laws or restrictions regarding their use.

(j) No person shall knowingly supply false information to establish that the person is a Resident for purposes of this chapter. Any person who knowingly supplies false information to establish that he or she is a Resident is guilty of a misdemeanor of the first degree. Upon conviction, such person shall be barred from employment in furtherance of a Construction Contract for a period of five (5) years.

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(Ord. No. 1056-10. Passed 10-25-10, eff. 10-28-10)

§ 188.06 Severability

Each section and each part of each section of this Fannie M. Lewis Cleveland Resident Employment Law is declared to be an independent section or part of a section, and notwithstanding any other evidence of legislative intent, it is declared to be the controlling legislative intent that if any section or part of a section or any provision thereof, or the application thereof to any person or circumstances, is held to be invalid, the remaining sections or parts of sections and the application of such provision to any other person or circumstances, other than those as to which it is held invalid, shall not be affected thereby. It is further declared to be the legislative intent that the other provisions of this Code would have been adopted independently of such section or parts of a section which are held to be invalid.

(Ord. No. 2031-A-02. Passed 6-10-03, eff. 1-1-04)

§ 188.07 Duration

This Fannie M. Lewis Cleveland Resident Employment Law is enacted as a temporary measure to alleviate the lack of use of Residents on City of Cleveland construction projects found to exist by the Council of the City of Cleveland. This code shall remain in full force and effect, subject to periodic review by the Council of the City of Cleveland. The City Council shall regularly, but at a minimum of once every five (5) years, determine whether there is a continuing need to ensure adequate resident employment, and make relevant findings in support of that determination, and, if necessary amend this chapter as appropriate. In addition thereto, every two (2) years after enactment of this Fannie M. Lewis Cleveland Resident Employment Law, the City Council shall review the twenty percent (20%) resident requirement, and the four percent (4%) requirement for Low Income Persons, to determine the appropriateness of each percentage and make relevant findings of that determination, and if necessary, amend 188.02(a).

(Ord. No. 2031-A-02. Passed 6-10-03, eff. 1-1-04)

§ 188.08 Effective Date

This chapter shall be effective and be in force upon its passage and approval as of January 1, 2004.

(Ord. No. 2031-A-02. Passed 6-10-03, eff. 1-1-04)

AN ACT

To enact section 9.49 and to repeal sections 153.013 and 5525.26 of the Revised Code to prohibit a public authority from requiring a contractor to employ a certain percentage of individuals from the geographic area of the public authority for the construction or professional design of a public improvement.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 9.49 of the Revised Code be enacted to read as follows:

Sec. 9.49. (A) As used in this section:

(1) "Construction manager" and "construction manager at risk" have the same meanings as in section 9.33 of the Revised Code.

(2) "Contractor" means a person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, drill, or provide professional design services for any part of a structure or public improvement. "Contractor" may include any public or business association and any person or entity that actively participates in whole or in part in the actual construction of a public improvement or provision of professional design services by itself, through the use of employees, or through the use of a construction manager, construction manager at risk, professional design firm, design-build firm, general contractor, or subcontractor.

(3) "Design-build firm" has the same meaning as in section 153.65 of the Revised Code.

(4) "Laborer" means a person who does any of the following in furtherance of a public improvement:

(a) Performs manual labor or labor of a particular occupation, trade, or craft;

(b) Uses tools or machinery of a particular occupation, trade, or craft;

(c) Otherwise performs physical work in a particular occupation, trade, or craft.

(5) "Professional design services" and "professional design firm" have the same meanings as in section 153.65 of the Revised Code.

(6) "Public authority" includes any of the following:

(a) The state;

(b) A county, township, municipal corporation, or any other political subdivision of the state;

(c) Any public agency, authority, board, commission, instrumentality, or special district of the state, a county, township, municipal corporation, or other political subdivision of the state;

(d) Any officer or agent of one of the entities listed in divisions (A)(6)(a) to (c) of this section who is authorized to enter into a contract for the construction of a public improvement or to construct a public improvement by the direct employment of labor.

(7) "Public improvement" means any of the following:

(a) A road, bridge, highway, street, or tunnel;

(b) A waste water treatment system or water supply system;



(c) A solid waste disposal facility or a storm water and sanitary collection, storage, and treatment facility;

(d) Any structure or work constructed by a public authority or by another person on behalf of a public authority pursuant to a contract with the public authority.

(B)(1) No public authority shall require a contractor, as part of a prequalification process or for the construction of a specific public improvement or the provision of professional design services for that public improvement, to employ as laborers a certain number or percentage of individuals who reside within the defined geographic area or service area of the public authority.

(2) No public authority shall provide a bid award bonus or preference to a contractor as an incentive to employ as laborers a certain number or percentage of individuals who reside within the defined geographic area or service area of the public authority.

SECTION 2. That sections 153.013 and 5525.26 of the Revised Code are hereby repealed.

SECTION 3. In enacting section 9.49 of the Revised Code in this act, the General Assembly hereby declares its intent to recognize both of the following:

(A) The inalienable and fundamental right of an individual to choose where to live pursuant to Section 1 of Article I, Ohio Constitution;

(B) Section 34 of Article II, Ohio Constitution, specifies that laws may be passed providing for the comfort, health, safety, and general welfare of all employees, and that no other provision of the Ohio Constitution impairs or limits this power, including Section 3 of Article XVIII, Ohio Constitution.

SECTION 4. The General Assembly finds, in enacting section 9.49 of the Revised Code in this act, that it is a matter of statewide concern to generally allow the employees working on Ohio's public improvement projects to choose where to live, and that it is necessary in order to provide for the comfort, health, safety, and general welfare of those employees to generally prohibit public authorities from requiring contractors, as a condition of accepting contracts for public improvement projects, to employ a certain number or percentage of individuals who reside in any specific area of the state.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20__

Approved _____, 20__

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____