

PROPOSED BY: Public Works - Engineering
AMENDED BY: Galloway
INTRODUCTION DATE: _____

ORDINANCE NO. _____

AMENDING WHATCOM COUNTY ~~TITLE CODE CHAPTER 3.72 (CONSTRUCTION PROJECTS – APPRENTICESHIP REQUIREMENTS) 3, REQUIRING THAT PUBLIC FUNDS USED FOR CONSTRUCTION PROJECTS DO DOUBLE DUTY BY ALSO PROVIDING APPRENTICES WITH JOB TRAINING HOURS TO MEET THE REQUIREMENTS NECESSARY TO BECOME THE NEXT GENERATION OF SKILLED TRADES PERSONS TO EXTEND THE START DATES AND ENHANCE THE REQUIREMENTS FOR UTILIZATION OF THE CONTRACTOR APPRENTICESHIP PROGRAM~~

WHEREAS, on November 19, 2019, Whatcom County Council adopted Ordinance 2019-079 establishing apprenticeship utilization requirements for publicly funded construction projects; and

WHEREAS, the Whatcom County Council ~~is~~ remains committed to training ~~of~~ the next generation of skilled workers and urges the timely implementation of this ordinance; and

WHEREAS, the unexpected demands placed on the County by the pandemic and ~~Nov/Dec~~ 2021 flood events impeded ~~Public Works~~ the County Departments from attending to the related issues of administration of the ~~new~~ ordinance, requiring more time for implementation;

WHEREAS, amending this ordinance to provide additional time for implementation gives Whatcom County the opportunity to strengthen its apprenticeship utilization requirements supporting local workers, providing more opportunities for apprentices, and affirming our shared commitment to responsible bids on all publicly funded projects;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Chapter 3.72 of the Whatcom County Code is hereby amended as provided for in Exhibit A attached hereto.

ADOPTED this ____ day of _____, 2022.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Todd Donovan, Council Chair

APPROVED AS TO FORM:

Civil Deputy Prosecutor

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Satpal Sidhu, County Executive

() Approved () Denied

Date Signed: _____

DRAFT

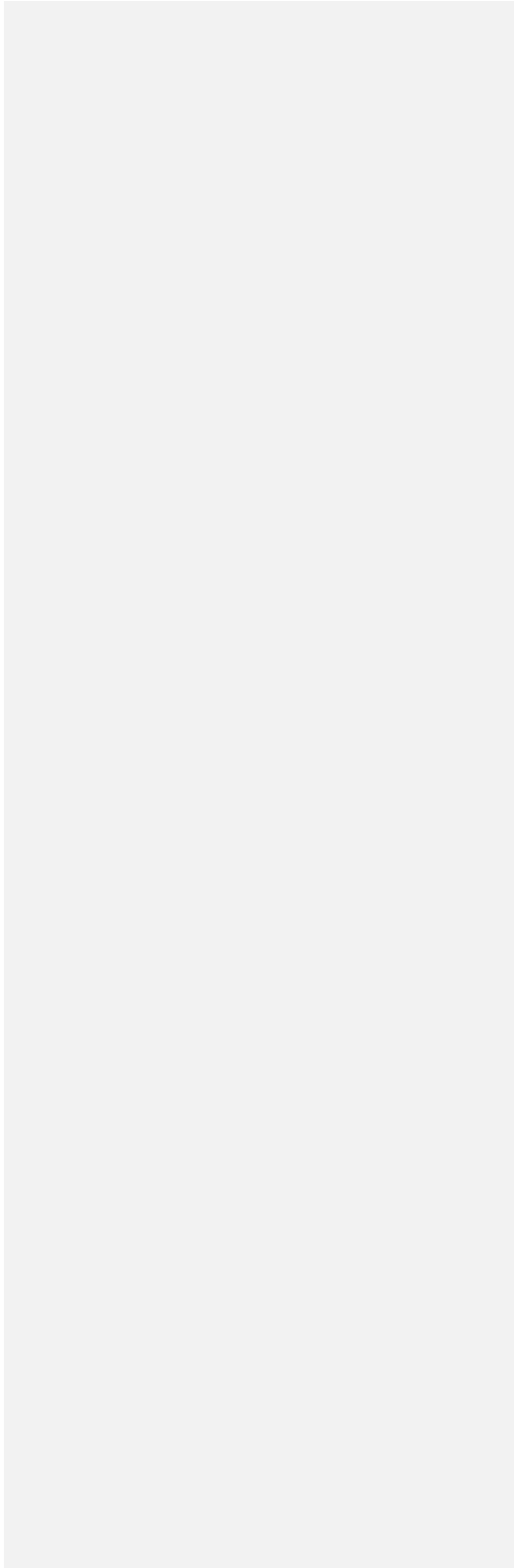


EXHIBIT A

Chapter 3.72 CONSTRUCTION PROJECTS – APPRENTICE REQUIREMENTS

Sections:

- 3.72.010 Definitions.
- 3.72.020 Use of apprentices required for public works.
- 3.72.030 Administration.
- 3.72.040 EAP utilization plan.
- 3.72.050 Exceptions and waivers.
- 3.72.060 Monitoring.
- 3.72.070 Reporting.
- 3.72.080 Remedies.
- 3.72.090 Emergencies.

3.72.010 Definitions.

Where used in this chapter, unless the context clearly requires otherwise, the following terms shall have the meaning and construction set forth herein:

- A. "Apprentice" means an apprentice registered in an approved apprenticeship program.
- B. "~~Approved-Registered~~ apprenticeship program" means an apprenticeship training program ~~which that~~ is approved or recognized by the Washington State Apprenticeship and Training Council or the Federal Agency Apprenticeship Programs.
- C. "Contractor" means a person, corporation, partnership, limited liability company, or joint venture entering into a contract with the county to construct a public work.
- D. "Labor hours" refers to the total number of hours worked by workers receiving an hourly wage who are employed directly and by subcontractors upon the public works project and who are subject to state or federal prevailing wage requirements, and shall include additional hours worked as a result of a contract or project adjustment or pursuant to an agreed-upon change order.
- E. "Minimum apprentice labor hours" refers to labor hours actually worked on a public works project by apprentices expressed as a percentage of total labor hours. ~~The minimum percentage of apprentice labor hours by project shall be:~~
 - ~~1. For contracts less than \$1,000,000 there shall be no requirement;~~
 - ~~2. For contracts advertised for bid before January 1, 2024, there shall be no requirement;~~
 - ~~3. For contracts advertised for bid on or after January 1, 2024, estimated to cost \$2,000,000 or more, no less than 10 percent of the labor hours shall be performed by apprentices;~~
 - ~~4. For contracts advertised for bid on or after January 1, 2025, estimated to cost \$2,000,000 or more, no less than 12 percent of the labor hours shall be performed by apprentices;~~

Commented [KG1]: Moved to 3.72.020

5.—~~For contracts advertised for bid on or after January 1, 2023, estimated to cost \$1,000,000 or more, no less than 15 percent of the labor hours shall be performed by apprentices.~~

- F. ~~“Employee Contractor a~~Apprenticeship ~~p~~Program (ECAP)” refers to the requirements of this chapter and any administrative regulations applicable thereto.
- G. “ECAP coordinator” refers to the person designated by the ~~e~~County ~~e~~Executive to administer and coordinate the ~~employee apprenticeship program CAP~~.
- H. ~~“ECAP Utilization utilization p~~Plan” refers to the ~~plan for utilization description of how the contractor will meet or exceed~~ apprenticeship labor ~~hours will be used in a public work project covered by the as required by this Chapter~~.
- I. ~~“Estimated e~~Cost ~~estimate~~” shall mean the anticipated cost of a public work ~~project~~, as determined by the ~~e~~County ~~E~~ngineer, based upon the expected costs of materials, supplies, equipment, and labor, but excluding taxes and contingency funds. ~~Estimated cost does not include post bid contract change orders or amendments.~~
- J. “Notice to proceed” refers to the written authorization to the contractor under the public work contract to commence work.
- K. “Public work” refers to all county funded construction projects that constitute a public work pursuant to RCW 39.04.010 as now or hereafter amended and estimated to cost \$1,000,000 or more.
- L. “Subcontractor” means a person, corporation, partnership, limited liability company, or joint venture that has contracted with the contractor to perform all or part of the work to construct a public work by a contractor. (Ord. 2019-079 Exh. A).

3.72.020 ~~Minimum apprentice labor hours Use of apprentices~~ required for public works.

Apprentices shall be utilized on the construction of all public works in accordance with this chapter. ~~The minimum percentage of apprentice labor hours by project shall be:~~

1. ~~For contracts less than \$1,000,000 there shall be no requirement;~~
2. ~~For contracts advertised for bid before July 1, 2023, there shall be no requirement;~~
3. ~~For contracts advertised for bid on or after July 1, 2023, with total cost of \$3,000,000 or more, no less than 10 percent of the labor hours shall be performed by apprentices;~~
4. ~~For contracts advertised for bid on or after January 1, 2024, with a total cost of \$1,000,000 or more, no less than 15 percent of the labor hours shall be performed by apprentices.~~ (Ord. 2019-079 Exh. A).

Commented [KG2]: Gives County 6 months to plan and implement

Commented [KG3]: Gives County 1-year delay (originally 2023)

3.72.030 Administration.

- A. Apprenticeship Program Goal. All contractors and subcontractors constructing or involved with the construction of public works, and all service providers involved with the construction of a public work, shall ensure that the combined minimum apprentice labor hours applicable for the size and bid date of the contract are performed by apprentices and meet all requirements of this chapter.

- B. Contract Requirements. Contracts for ~~such~~ construction projects subject to this chapter shall include provisions detailing the apprentice labor requirements. The ECAP coordinator shall develop the necessary bid documents and contract specification language to implement the requirements of this chapter. Contracts shall not be intentionally underestimated or fragmented to avoid the requirements of this chapter.
- C. Submission of ECAP Utilization Plan. All contractors shall submit an ECAP ~~u~~Utilization ~~p~~Plan and shall meet with the ECAP ~~e~~Coordinator to review said ECAP ~~U~~utilization ~~p~~Plan prior to being issued a notice to proceed. Failure to submit an ECAP utilization plan may be grounds for the county to withhold remittance of a progress payment until such plan is received from the responsible contractor. A meeting with the ECAP coordinator prior to issuance of a notice to proceed shall be excused with administrative approval only when the ECAP coordinator is unavailable to meet prior to the scheduled date for issuance of the notice to proceed and the contractor and the ECAP coordinator have otherwise scheduled a meeting for the coordinator to review the contractor's plan. The contractor shall be responsible for meeting the ECAP utilization goal requirements of the contract, including all amendments and change orders thereto, and shall be responsible for overall compliance for all hours worked by subcontractors. To the extent practical, the contractor shall recruit apprentices from multiple trades or crafts. Apprentices utilized in accordance with this chapter must be enrolled in a State or Federal registered apprenticeship program (Ord. 2019-079 Exh. A).
- D. Bids: Bid Specifications for construction projects that are subject to minimum apprentice labor hours requirement shall include a responsible bidder criterion that allows the purchasing manager to find a bidder non-responsive if the bidder fails to meet the requirements under WCC 3.72.020.

Formatted: Highlight

Formatted: Highlight

3.72.040 ECAP ~~u~~Utilization ~~p~~Plan.

Contractors shall submit a CAP Utilization Plan when the cost estimate of a public work meets thresholds established in WCC 3.72.020.

- A. The ECAP ~~u~~Utilization ~~p~~Plan shall meet the following requirements:
 1. Shall be submitted on forms prepared or approved by the ECAP coordinator;
 2. Shall specify the planned labor hours for each trade or craft;
 3. Shall provide for quarterly reports, as well as a final report, indicating the total labor hours and the apprenticeship hours utilized by the contractor and all subcontractors on the project; and
 4. Shall include a description of how the contractor will satisfy the ECAP utilization goal on the particular public work project and include a summary of outreach and recruitment procedures to hire apprentices to work on the project. (Ord. 2019-079 Exh. A).

B. CAP Utilization Plan must be approved by CAP Coordinator.

C. Contractors may submit an amended CAP Utilization Plan if changed conditions or circumstances affect the method or schedule of the contractor's previously submitted plan to meet the apprenticeship program goal.

D. Failure to meet minimum apprentice labor hours requirements or targets outlined in the approved CAP Utilization Plan may be deemed a breach of contract under WCC 3.72.080.

3.72.050 Exceptions and waivers.

At any time prior to a request for bids or proposals on construction projects covered by this chapter, or at any time during the term of a covered contract~~During the term of a construction contract subject to this chapter,~~ the eCounty may reduce or waive the apprentice labor hour goals upon determination by the CAP Coordinator ~~that at for either 1. or 2. below:~~

1. At least two of the below conditions are met and documented:

A. The contractor has demonstrated that it has utilized best efforts to meet the established percentage requirement but remains unable to fulfill the goal;

B. In order to meet the requirement, the contractor will be forced to displace members of its workforce;

B. The contractor or agency has demonstrated that it has contacted multiple State or Federal -registered apprenticeship programs, yet an insufficient number of apprentices are available to meet the CAP utilization goals/requirements;

C.

C. D. The reasonable and necessary requirements of the contract render apprentice utilization infeasible at the required levels;

D. There exists a disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum level of apprentice participation; or

E.

E. The contractor or the agency has demonstrated that meeting the requirements would significantly delay an urgent public work project. There are no evening classes within 30 miles, or day classes within 100 miles, of the job site that the apprentice can attend to meet the school requirements of their apprenticeship;

F.

2. One of the following conditions is met and documented:

A. To the extent that a apprentice labor hour goals are in conflict with funding agreements in place, including state and federal aid-funded projects, in connection with the public work; or

A.

B. The contractor or the agency has demonstrated that meeting the requirements would significantly delay an urgent public work related to a local, state, or federally declared emergency; or

B.

Commented [EK4]: Believe that this is a good compromise, it gets the oversight you are looking for but allows for conflicts to be avoided when working under different grant or federally funded requirements.

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

Commented [EK5]: The agency may want to investigate, and request a waiver for C. and E. prior to bid advertisement.

Formatted: Indent: Left: 0.25"

Commented [EK6]: Often we have very strict fish windows when work must occur and if the contractor can demonstrate that a delay is likely to push the project to the following season, and that one of the other conditions are met, it would be in the best interest of the county for the CAP coordinator to consider it.

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

Formatted: Numbered + Level: 2 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"

Commented [EK7]: this is more consistent with the emergency section 3.72.090

Formatted: Numbered + Level: 2 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"

~~F.C. For other reasons deemed appropriate by the eCounty eExecutive, and approved by the County Council, and Executive and~~ not inconsistent with the purpose and goals of this chapter. (Ord. 2019-079 Exh. A).

Formatted: Font: Italic, Highlight

Formatted: Space After: 10 pt, Numbered + Level: 2 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"

Commented [EK8]: Would prefer not to add this additional council approval as it most likely would cause up to a 2-3 month delay and an undue administrative burden. The council already approves the work through the annual construction plan and the council has oversight on the compliance of the CAP program as outlined in the Reporting section 3.72.070.

3.72.060 Monitoring.

The county shall implement a system for monitoring the actual use of apprentices in construction projects subject to this chapter. Such monitoring shall include identifying individual apprentices by name and Washington State or Federal apprenticeship registration number; reviewing documents provided by the contractor showing total apprentice labor hours; determining the apprentice hours worked by minorities, ~~disadvantaged youth veterans~~, and women, ~~and, as available, persons with disabilities and economically disadvantaged youth~~; and assessing whether the contractor has complied with the apprenticeship requirement established in its contract. (Ord. 2019-079 Exh. A).

3.72.070 Reporting.

The eCounty eExecutive shall report to the eCounty eCouncil annually upon the use of apprentices for public work projects. The report shall include, to the extent it is available:

- A. The percentage of labor hours actually worked by apprentices on each project and the total number of labor hours on each project;
- B. The number of apprentices by contractor broken down by trade and craft category;
- C. The number and percentage of minorities, veterans, and women, ~~persons with disabilities and disadvantaged youth~~ utilized as apprentices on each project;
- D. The number of new apprentices indentured during the reporting year as a result of the county's apprenticeship requirements;
- E. The percentage of apprentices in training on county projects who have graduated to journey level during the reporting year; ~~and~~

~~F. All exemptions-exceptions and waivers granted under WCC 3.72.050 as well as any contractors who have violated the requirements in this chapter; and~~

~~F.G. Recommendations for maintaining, enhancing, or otherwise amending the existing minimum apprentice labor hours required for public work under WCC 3.72.020 and the exceptions and waivers under WCC 3.72.050.~~ (Ord. 2019-079 Exh. A).

3.72.080 Remedies.

Failure by a contractor to comply with established apprenticeship requirements, unless otherwise waived or excused in writing by the county executive or CAP Coordinator pursuant to WCC 3.72.050, shall be deemed a breach of contract for which the county shall be entitled to all remedies allowed by law and under the contract. Failure to comply with the apprenticeship requirements may also be considered evidence bearing on a contractor's qualification for award of future contracts with the county. Contractors who are found to knowingly violate the requirements under this chapter twice shall be deemed ineligible to bid for County projects for at least one year and added to a list maintained by the CAP Coordinator (Ord. 2019-079 Exh. A).

Formatted: Highlight

Formatted: Highlight

3.72.090 Emergencies.

This chapter shall not apply in the event of an emergency ~~or for public work related to a declared emergency~~. For the purposes of this section, “emergency” means unforeseen circumstances beyond the control of the county that either: (A) present an immediate threat to the proper performance of essential functions; or (B) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. (Ord. 2019-079 Exh. A).

Commented [KG9]: Moved to exceptions and waivers.

3.72.100 Severability.

The provisions of this chapter shall be effective in all cases unless otherwise provided by federal or state law. The provisions of this chapter are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or other portion of this chapter or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this chapter or the validity of the application to other persons or circumstances.

DRAFT