

PROPOSED BY: Public Works
INTRODUCTION DATE: _____

ORDINANCE NO. _____

AMENDING WHATCOM COUNTY CODE CHAPTER 3.72 (CONSTRUCTION PROJECTS – APPRENTICE REQUIREMENTS) TO ALIGN WITH RCW 39.04.320,

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

WHEREAS, on December 12th, 2022, Whatcom County Council amended Ordinance 2022-673; and

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

WHEREAS, a new program specialist position was created and filled in September of 2023 to create systems and fulfill much of the CAP Coordinator role; and

WHEREAS, Washington state amended RCW 39.04.320 to include Municipalities effective 7/1/2024; and

WHEREAS, amending this ordinance to align with RCW 39.04.320 will provide Whatcom County the opportunity to create a consistent message for local workers, and provide opportunities for equity and training; and

WHEREAS, adjusting the language of the code will allow for more equity and clarity for local bid processes;

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 _____, 2023.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Civil Deputy Prosecutor

Carol Frazey, County Executive Pro Tem

() Approved () Denied

Date Signed: _____

EXHIBIT A

Chapter 3.72 CONSTRUCTION PROJECTS – APPRENTICE REQUIREMENTS

Sections:

3.72.010 Definitions.

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

3.72.030 Administration.

3.72.040 ~~CEAP~~ utilization plan.

3.72.050 Exceptions and waivers.

3.72.060 Monitoring.

3.72.070 Reporting.

3.72.080 Remedies.

3.72.090 Emergencies.

3.72.100 Severability

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 as defined by RCW 39.04.310~~

A.B. “Bid” refers to an offer as defined by RCW 39.26.010.

~~B.~~ “Registered apprenticeship program” means an apprenticeship training program 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 ~~submitting a bid with anticipation entering into or already entered into~~ a contract with the ~~C~~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.

F.D. “Contractor Apprenticeship Program (CAP)” refers to the requirements of this chapter and any administrative regulations applicable thereto.

G.E. “CAP ~~C~~oordinator” refers to the person designated by the County Executive to administer and coordinate the CAP.

H.F. “CAP Utilization Plan” refers to the description of how the contractor will meet or exceed apprentice labor hours as required by this Chapter and RCW 39.04.320.

- G. “Cost estimate” shall mean the anticipated cost of a public work project, ~~as determined by the County Engineer,~~ based upon the expected costs of materials, supplies, equipment, and labor, but excluding taxes and contingency funds.
- H. “Labor hours” is defined by RCW 39.04.310 and shall include additional hours worked as a result of a contract or project adjustment or pursuant to an agreed-upon change order.
- I. “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.
- ~~I.~~
- 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~~ publicly funded construction projects that constitute a public work ~~pursuant to as defined in~~ RCW 39.04.010 ~~as now or hereafter amended and~~ with a ~~estimated to cost~~ cost estimate of \$1,000,000 or more.
- L. “Registered apprenticeship program” means an apprenticeship training program that is approved or recognized by the Washington State Apprenticeship and Training Council.
- ~~K.~~
- L.M. “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 required for public work.

Apprentices shall be utilized on the construction of all public works in accordance with this chapter, except when requirements of this chapter conflict with funding agreements in place. The minimum percentage of apprentice labor hours by project shall be:

- ~~A.~~ For a total cost estimate of 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;
- ~~B.~~ For contracts-public work projects advertised for bid on or after ~~January~~ July 1, 2024, with a total cost estimate 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).

3.72.030 Administration.

Apprentices shall be utilized on the construction of all public work in accordance with this chapter, except when requirements of this chapter conflict with funding agreements in place, and when emergencies are present as referenced in WCC 3.72.090.

- 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~~ the total labor hours threshold ~~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. Bid and Contract Requirements. ~~Bid and~~ Contracts for public work construction projects subject to this chapter shall include provisions detailing the apprentice labor requirements. ~~The CAP~~

~~coordinator shall develop the necessary bid documents and contract specification language to implement the requirements of this chapter. Contract specification language and bid documents will be developed to comply with the Washington State Department of Enterprise Services requirements. Bids and C~~contracts shall not be intentionally underestimated or fragmented to avoid the requirements of this chapter.

- C. Submission of CAP Utilization Plan. All contractors shall submit a ~~n~~ CAP Utilization Plan and shall meet with the CAP Coordinator to review said CAP Utilization Plan prior to being issued a notice to proceed. Failure to submit a CAP 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 CAP Coordinator prior to issuance of a notice to proceed shall be excused with administrative approval only when the CAP Coordinator is unavailable to meet prior to the scheduled date for issuance of the notice to proceed and ~~the contractor and the CAP C~~oordinator have otherwise scheduled a meeting for the coordinator to review has reviewed the contractor's utilization plan. ~~The contractor shall be responsible for meeting the CAP 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. Bid specifications for construction projects that are subject to minimum apprentice labor hours requirement shall include a 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 and RCW 39.0.320.

3.72.040 CAP Utilization Plan.

Unless waived, Ccontractors shall submit a CAP Utilization Plan when the cost estimate of a public work meet or exceeds thresholds established in WCC 3.72.020.

- A. The CAP Utilization Plan shall be approved by the CAP Coordinator and meet the following requirements:
1. Shall be submitted on forms prepared or approved by the CAP Coordinator;
 2. Shall specify the plan to meet or exceed the total labor hours threshold by trade or craft;
 3. Shall include a description of how the contractor will satisfy the CAP 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).
 4. Shall be reviewed on a monthly basis for compliance through the electronic system developed by the Washington State Department of Labor & Industries
 5. 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.

6. 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 and RCW 39.0.320.

- ~~1. Shall be submitted on forms prepared or approved by the CAP 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 CAP 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).~~
- ~~5.—~~
- ~~6. CAP Utilization Plan must be approved by CAP Coordinator.~~
- ~~7.—~~
- ~~8. 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.~~
- ~~9.—~~

B. 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. The contractor shall be responsible for meeting the CAP 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 approved or recognized by the Washington State Apprenticeship and Training Council. (Ord. 2019-079 Exh. A).

B.C. Prior to final project acceptance, a final report of apprenticeship labor hours will be reviewed through the electronic system developed by the Washington State Department of Labor & Industries.

3.72.050 Exceptions and waivers.

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

~~A~~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 15 percent~~ apprentice labor hour 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;
- C. 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 requirements;

- D. The reasonable and necessary requirements of the contract render apprentice utilization infeasible at the required levels;
- E. 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
- F. The contractor or the agency has demonstrated that meeting the requirements would significantly delay an urgent public work project.
- G. For other reasons deemed appropriate by the County Executive, and not inconsistent with the purpose and goals of this chapter. (Ord. 2019-079 Exh. A).

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

- ~~A.—Apprentice labor hour goals are in conflict with funding agreements in place, including state and federal funded projects, in connection with public work;~~
- ~~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~~

3.72.060 Monitoring.

The county shall ~~implement a system for monitoring~~monitor 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, veterans, and women~~; 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 County Executive shall report to the County Council 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 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;~~
- F.C. All exceptions and waivers granted under WCC 3.72.050 as well as any contractors who have violated the requirements in this chapter; and
- G.D. 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.

~~In addition to RCW 39.04.320 (4c), F~~ailure by a contractor to comply with established apprenticeship requirements, unless otherwise waived or excused in writing by the ~~e~~County ~~E~~xecutive or CAP Coordinator pursuant to WCC 3.72.050, shall be deemed a breach of contract for which the ~~C~~ounty 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 one year and added to a list maintained by the CAP Coordinator (Ord. 2019-079 Exh. A).

3.72.090 Emergencies.

This chapter shall not apply ~~on public work projects affected by a local, state, or federally declared in the emergency event of an 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).~~

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.