

TO ALL COUNCIL MEMBERS:

**IMPORTANT ADDITIONAL
INFORMATION FOR**

APRIL 9, 2019

SUBSTITUTE VERSION

(STRIKE AND CLEAN VERSIONS ATTACHED)

**ORDINANCE AMENDING WHATCOM COUNTY CODE
TITLE 3, ESTABLISHING A LOCAL EMPLOYMENT AND
APPRENTICESHIP PROGRAM (LEAP) (AB2019-210)**

**(As amended by proposers Rud Browne and Todd
Donovan on April 9)**

SUBSTITUTE -
STRIKE
VERSION

PROPOSED BY: **BROWNE, DONOVAN**
INTRODUCTION DATE: **APRIL 9, 2019**

ORDINANCE NO. _____

**AMENDING WHATCOM COUNTY CODE TITLE 3, ESTABLISHING A LOCAL
EMPLOYMENT AND APPRENTICESHIP PROGRAM (LEAP)**

WHEREAS, a highly skilled workforce is essential for enhancing economic growth and the continued prosperity of all our citizens; and

WHEREAS, shortages of skilled construction workers limit job growth and affect our economy; and

WHEREAS, this "skills gap" problem will continue to grow, due to the large numbers of skilled worker retirements and increased construction activity; and

WHEREAS, the responsibility to train the next generation of skilled workers rests with both the public and private sectors and must be done before too much of the knowledge and experience of existing skilled workers is lost due to retirements; and

WHEREAS, apprenticeship is a proven, highly-effective training model allowing entry-level workers to gain experience in a highly skilled occupation through a combination of on-the-job training and classroom instruction; and

WHEREAS, growing participation in apprenticeship programs today will ensure a viable workforce in the construction trade industry tomorrow; and

WHEREAS, the fastest, easiest and cheapest way to increase the number of skilled workers is to improve the completion rate (currently less than 50%) of students participating in registered apprenticeships; and

WHEREAS, the cyclical nature of the construction industry can impact the availability of job training hours the apprentice is required to accumulate before they can receive a journey level certificate; and

WHEREAS, for apprenticeships to be perceived as a good alternative to college apprentices must have confidence that they can get enough on-the-job training hours to complete their education in the same number of years as college; and

WHEREAS, adding an apprenticeship percentage requirement to government contracts will help provide certainty of employment when it's needed most - during their apprenticeship; and

WHEREAS, Washington's traditional sources of high-wage, low-skilled work (forests and factories) is declining due to automation and global trade; and

WHEREAS, for there to be an increase in wages, there needs to be both an increase in the use of technology and highly-skilled workers; and

WHEREAS, if employers cannot find trained workers in Whatcom County, they will look to other places to locate their business facilities and create jobs; and

WHEREAS, apprenticeship programs can provide opportunity for disadvantaged youth and other individuals whose education has been disrupted to "learn and earn" their way to career path that offers the promise of a stable family wage future; and

WHEREAS, women and racial minorities have traditionally been under represented within the skilled trades; and

WHEREAS, Whatcom County is committed to working in partnership with labor, business and the Washington State Apprenticeship and Training Council to create a skilled

1 workforce that reflects the diversity of our population and promotes community
2 development; and

3
4 **WHEREAS**, the need to provide more family-wage jobs is reflected in the County's
5 Comprehensive Plan, and the County is seeking to encourage cooperative educational
6 opportunities responsive to the changing needs of the workplace, both locally while
7 increasing economic stability throughout Whatcom County; and

8
9 **WHEREAS**, since the 1990s, city, county, and port governments in Washington
10 State have proven that apprenticeship utilization programs increase the number of people
11 training as registered apprentices; and

12
13 **WHEREAS**, with RCW 39.04.320 the Washington State Legislature recognized in
14 2005 the importance of apprenticeship training programs and expanded requirements that
15 state agencies require 15% of total labor hour be performed by approved apprentices for
16 projects that cost \$1 million or more; and

17
18 **WHEREAS**, between 2006 and 2009, the number of registered apprentices actively
19 training in Washington doubled after the state legislature expanded apprentice utilization in
20 state public works contracting, with building and construction trades leading the way; and

21
22 **WHEREAS**, since 2012, agencies under the authority of the governor, local school
23 districts, and four year institutions of higher education have phased in ~~required~~ a 15%
24 apprentice utilization provision for projects that cost \$1 million or more; and

25
26 **WHEREAS**, a joint study from Washington General Administration and the
27 Washington Department of Labor and Industries concluded that the state's apprentice
28 utilization program is successful; and

29
30 **WHEREAS**, the Council finds that it would be in the best interests of the public
31 health, safety and welfare for the County to phased in ~~required~~ an apprenticeship utilization
32 goal which encourages employment of apprentices by requiring minimum level of 15%
33 apprentice employment as a requirement in the awarding of qualifying public works
34 construction contracts greater than \$1,000,000.

35
36 **NOW, THEREFORE, BE IT RESOLVED**, that Whatcom County Code Title 3 shall be
37 amended to include a new chapter "CONSTRUCTION PROJECTS – APPRENTICE
38 REQUIREMENTS" as outlined in the Exhibit A to this ordinance.

39
40 **ADOPTED** this ____ day of _____, 2019.

41
42
43 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

44
45
46 _____
Dana Brown-Davis, Clerk of the Council

Rud Browne, Council Chair

47
48
49 WHATCOM COUNTY EXECUTIVE
50 APPROVED AS TO FORM:

WHATCOM COUNTY, WASHINGTON

51
52
53 _____
54 Civil Deputy Prosecutor

55 Jack Louws, County Executive

56 () Approved () Denied

57
58 Date Signed: _____
59

EXHIBIT A

WHATCOM COUNTY CODE CHAPTER X.XX
CONSTRUCTION PROJECTS – APPRENTICE REQUIREMENTS

Sections:

- X.XX.010 Definitions.
- X.XX.020 Use of apprentices required for public works.
- X.XX.030 Administration.
- X.XX.040 EAP utilization plan.
- X.XX.050 Exceptions and waivers.
- X.XX.060 Monitoring.
- X.XX.070 Reporting.
- X.XX.080 Failure to meet utilization goal.

X.XX.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:

- (1) "Apprentice" means an apprentice registered in an Approved Apprenticeship Program.
- (2) "Approved Apprenticeship Program" means an apprenticeship training program which: (a) is approved or recognized by the Washington State Apprenticeship and Training Council, and (b) all training and hours worked accumulate towards his/her graduation to journey level irrespective of any change of employer.
- (3) "Contractor" means a person, corporation, partnership, limited liability company, or joint venture entering into a contract with the County to construct a public work.
- (4) "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.
- (5) "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:
 - a. For contracts less than \$1,000,000 there shall be no requirement;
 - b. For contracts advertised for bid before January 1, 2021 there shall be no requirement;
 - c. For contracts advertised for bid on or after January 1, 2021 estimated to cost three million dollars or more, no less than ten percent of the labor hours shall be performed by Apprentices.
 - d. For contracts advertised for bid on or after January 1, 2022 estimated to cost two million dollars or more, no less than twelve percent of the labor hours shall be performed by Apprentices.
 - e. For contracts advertised for bid on or after January 1, 2023, estimated to cost two million dollars or more for transportation roads and bridges, or one million dollars or more for all other projects, no less than fifteen percent of the labor hours shall be performed by Apprentices.
- (6) "Employee apprenticeship program (EAP)" refers to the requirements of this chapter and any administrative regulations applicable thereto.

- 1 (7) "EAP coordinator" refers to the person designated by the County Executive to
2 administer and coordinate the employee apprenticeship program.
3
- 4 (8) "EAP utilization plan" refers to the plan for utilization of apprenticeship labor in a
5 public work project.
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- 7 (9) "Estimated cost" shall mean the anticipated cost of a public work, as determined by
8 the County, based upon the expected costs of materials, supplies, equipment, and
9 labor, but excluding taxes and contingency funds.
10
- 11 (10) "Notice to proceed" refers to the written authorization to the contractor under the
12 public work contract to commence work.
13
- 14 (11) "Public work" refers to all County funded construction projects that constitute a
15 public work pursuant to RCW 39.04.010 as now or hereafter amended and estimated
16 to cost \$1,000,000 or more.
17
- 18 (12) "Subcontractor" means a person, corporation, partnership, limited liability company,
19 or joint venture that has contracted with the contractor to perform all or part of the
20 work to construct a public work by a contractor.
21
- 22 (13) "Director" means the Director of Public Works, or his or her designee, or successor
23

24 **X.XX.020 Use of apprentices required for public works.**
25

26 Apprentices shall be utilized on the construction of all public works in accordance with this
27 chapter.
28

29 **X.XX.030 Administration.**
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- 31 (1) Apprenticeship Program Goal.
32 All contractors and subcontractors constructing or involved with the construction of
33 public works, and all service providers involved with the construction of a public work,
34 shall ensure that the combined Minimum Apprentice Labor Hours applicable for the size
35 and bid date of the contract , are performed by Apprentices.
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39 goals for Apprentices who are women, disadvantaged youth, and those who are racial
40 minorities. Contractors may be allowed to offer utilization below the aspirational
41 percentage goals by substituting other efforts to meet the intent of building a trained
42 construction workforce for a proportion of the utilization percentages for women,
43 disadvantaged youth, and minorities.
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- 45 (3) Contract Requirements.
46 Contracts for such construction projects shall include provisions detailing the
47 apprentice labor requirements.
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- 49 (4) Submission of EAP Utilization Plan.
50 All contractors shall submit an EAP utilization plan and shall meet with the EAP
51 coordinator to review said EAP utilization plan prior to being issued a notice to
52 proceed. Failure to submit an EAP utilization plan may be grounds for the County to
53 withhold remittance of a progress payment until such plan is received from the
54 responsible contractor. A meeting with the EAP coordinator prior to issuance of a
55 notice to proceed shall be excused only when the EAP coordinator is unavailable to
56 meet prior to the scheduled date for issuance of the notice to proceed and the
57 contractor and the EAP coordinator have otherwise scheduled a meeting for the
58 coordinator to review the contractor's plan. The contractor shall be responsible for

1 meeting the EAP utilization goal requirements of the contract, including all
2 amendments and change orders thereto, and shall be responsible for overall
3 compliance for all hours worked by subcontractors. To the extent practical, the
4 contractor shall recruit apprentices from multiple trades or crafts.
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6 **X.XX.040 EAP utilization plan.**

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8 The EAP utilization plan shall meet the following requirements:

- 9 (1) Shall be submitted on forms prepared or approved by the EAP coordinator;
- 10 (2) Shall specify the planned labor hours for each trade or craft;
- 11 (3) Shall provide for quarterly reports, as well as a final report, indicating the total labor
12 hours and the apprenticeship hours utilized by the contractor and all subcontractors
13 on the project; and
- 14 (4) Shall include a description of how the contractor will satisfy the EAP utilization goal
15 on the particular public work project and include a summary of outreach and
16 recruitment procedures to hire apprentices to work on the project.
17

18 **X.XX.050 Exceptions and waivers.**

19
20 During the term of a construction contract subject to this chapter, the County may reduce
21 or waive the apprentice labor hour goals upon determination that:

- 22 (1) The contractor has demonstrated that it has utilized best efforts to meet the
23 established percentage requirement but remains unable to fulfill the goal;
- 24 (2) The contractor has demonstrated that insufficient apprentices are available to meet
25 the EAP utilization goals;
- 26 (3) The reasonable and necessary requirements of the contract render apprentice
27 utilization infeasible at the required levels;
- 28 (4) There exists a disproportionately high ratio of material costs to labor hours, which
29 does not make feasible the required minimum level of apprentice participation;
- 30 (5) There is no evening classes within 30 miles, or day classes within a 100 miles of the
31 job site that the Apprentice can attend to meet the school requirements of their
32 apprenticeship;
- 33 (6) To the extent that apprentice labor hour goals are in conflict with funding
34 agreements in place, including federal aid projects, in connection with the public
35 work; or
- 36 (7) For reasons deemed appropriate by the County Executive and not inconsistent with
37 the purpose and goals of this chapter.
38

39 **X.XX.060 Monitoring.**

40
41 The County shall implement a system for monitoring the actual use of apprentices in
42 construction projects subject to this chapter. Such monitoring shall include identifying
43 individual apprentices by name and Washington State apprenticeship registration number;
44 reviewing documents provided by the contractor showing total apprentice labor hours;
45 determining the apprentice hours worked by minorities, disadvantaged youth, and women,
46 and as available, persons with disabilities and economically disadvantaged youth; and
47 assessing whether the contractor has complied with the apprenticeship requirement
48 established in its contract.
49

50 **X.XX.070 Reporting.**

51
52 The County Executive shall report to the County council annually upon the use of
53 apprentices for public work projects. The report shall include, to the extent it is available:

- 54 (1) The percentage of labor hours actually worked by apprentices on each project and
55 the total number of labor hours on each project;
- 56 (2) The number of apprentices by contractor broken down by trade and craft category;
- 57 (3) The number and percentage of minorities, women, persons with disabilities and
58 disadvantaged youth utilized as apprentices on each project;

- 1 (4) The number of new apprentices indentured during the reporting year as a result of
- 2 the County's apprenticeship requirements; and
- 3 (5) The percentage of apprentices in training on County projects who have graduated to
- 4 journey level during the reporting year.
- 5 (6) All exemptions and waivers granted under section X.XX.050

6
7 **X.XX.080 Failure to meet utilization goal.**

8
9 (1) Hours Assessment.

10 Contracts for the construction of public work projects shall provide that contractors
11 failing to meet the EAP utilization goals they committed to when bidding for County
12 contracts shall be assessed an amount for each hour that is not achieved. The
13 amount per hour shall be based on the extent the contractor or service provider met
14 its goal. The amount per hour that shall be assessed shall be as follows:

Percent of goal met	Assessment per unmet apprentice hour
100%	\$ 0.00
90% to 99%	\$ 2.50
75% to 89%	\$ 4.00
50% to 74%	\$ 5.50
1% to 49%	\$ 8.00
0%	\$12.00

23
24 When determining the percent of goal that is met, all rounding shall be down to the
25 nearest whole percent. No assessment shall be waived by the County unless it is
26 determined by the County Executive to be in the best interests of the County, which
27 determination shall be made after consultation with the EAP coordinator.

28
29 (2) Deposit of Assessments.

30 All assessments imposed pursuant to this section shall be deposited into a separate
31 account dedicated to support pre-apprenticeship, training and outreach programs
32 within the County. Contributions need not be made for labor hours that have been
33 adjusted in accordance with section X.XX.050.

SUBSTITUTE
CLEAN
VERSION

PROPOSED BY: BROWNE, DONOVAN
INTRODUCTION DATE: APRIL 9, 2019

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- 2 the County's apprenticeship requirements; and
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26 determined by the County Executive to be in the best interests of the County, which
27 determination shall be made after consultation with the EAP coordinator.

28
29 (2) Deposit of Assessments.

30 All assessments imposed pursuant to this section shall be deposited into a separate
31 account dedicated to support pre-apprenticeship, training and outreach programs
32 within the County. Contributions need not be made for labor hours that have been
33 adjusted in accordance with section X.XX.050.