

ORDINANCE NO. _____

An ordinance amending Section 10.36 of the Los Angeles Administrative Code relating to Service Contractor Worker Retention.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Section 10.36 of the Los Angeles Administrative Code is amended in its entirety to read as follows:

Sec. 10.36. Findings and Statement of Policy.

The City awards many contracts to private firms to provide services to the public and to City government. The City also provides financial assistance and funding to other firms for the purpose of economic development or job growth. At the conclusion of the term of a service contract with the City or with those receiving financial assistance from the City, a different firm often receives the successor contract to perform the City services.

The City obtains benefits achieved through the competitive process of entering into new contracts. It is the experience of the City that reasons for change do not necessarily include a need to replace workers presently performing services who already have useful knowledge about the workplace where the services are performed.

Incumbent workers have invaluable existing knowledge and experience with the work schedules, practices and clients. Replacing these workers with workers without these experiences decreases efficiency and results in a disservice to the City and City financed or assisted projects.

Retaining existing service workers when a change in contractor occurs reduces the likelihood of labor disputes and disruptions. The reduction of the likelihood of labor disputes and disruptions results in the assured continuity of services to City constituents and visitors who receive services provided by the City or by City financed or assisted projects.

Contracting decisions involving the expenditure of City funds should avoid a potential effect of creating unemployment and the consequential need for social services. The City, as a principal provider of social support services, has an interest in the stability of employment under contracts with the City or by those receiving financial assistance from the City. The retention of existing workers benefits that interest.

Sec. 10.36.1. Definitions.

The following definitions shall apply throughout this article:

(a) **“Awarding Authority”** means that subordinate or component entity or person of the City (such as a department) or of the City Financial Assistance Recipient that awards or is otherwise responsible for the administration of a Service Contract or, if none, then the City or the City Financial Assistance Recipient.

(b) **“City”** means the City of Los Angeles and all Awarding Authorities thereof.

(c) **“City Financial Assistance Recipient”** means any person who receives from the City in any 12-month period discrete financial assistance for economic development or job growth expressly articulated and identified by the City totaling at least \$100,000; provided, however, that corporations organized under Section 501(c)(3) of the United States Internal Revenue Code of 1954, 26 U.S.C. §501(c)(3), with annual operating budgets of less than \$5,000,000, or that regularly employ homeless persons, persons who are chronically unemployed, or persons receiving public assistance, shall be exempt.

Categories of such assistance include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan at market rate shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d) and 7872(f). A recipient shall not be deemed to include lessees and sublessees. Service Contracts for economic development or job growth shall be deemed providing such assistance once the \$100,000 threshold is reached.

(d) **“Contractor”** means any person that enters into a Service Contract with the City or a City Financial Assistance Recipient. Governmental entities, including public educational institutions and public hospitals, are not Contractors and are not subject to this article.

(e) **“Designated Administrative Agency (DAA)”** means the Department of Public Works, Bureau of Contract Administration, which shall bear administrative responsibilities under this article.

(f) **“Employee”** means any person employed as a service Employee of a Contractor or Subcontractor earning no more than twice the hourly wage without health benefits available under the Living Wage Ordinance, Los Angeles Administrative Code Section 10.37 *et seq.*, whose primary place of employment is in the City on or under the authority of a Service Contract. Examples of Employee includes: hotel Employees; restaurant, food service or banquet Employees; janitorial Employees; security guards; parking attendants; nonprofessional health care Employees; gardeners; waste management Employees; and clerical Employees. Employee does not include a person who is a managerial, supervisory or confidential Employee. An Employee must have been employed by a terminated Contractor for the preceding 12 months or longer.

(g) **“Person”** means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association or other entity that may employ individuals or enter into contracts.

(h) **“Service Contract”** means a contract let to a Contractor by the City or a City Financial Assistance Recipient primarily for the furnishing of services to or for the City or City Financial Assistance Recipient (as opposed to the purchase of goods or other property) and that involves an expenditure or receipt in excess of \$25,000 and a contract term of at least three months.

(i) **“Subcontractor”** means any person not an Employee who enters into a contract with a Contractor to assist the Contractor in performing a Service Contract and who employs Employees for such purpose.

(j) **“Successor Service Contract”** means a Service Contract where the services to be performed are substantially similar to the Service Contract recently terminated. Termination includes, but is not limited to: (1) the completion of the Service Contract; (2) early termination of the Service Contract in whole or in part; and (3) an amendment that reduces services provided under the Service Contract, in whole or in part.

Sec. 10.36.2. Transition Employment Period.

(a) Where an Awarding Authority has given notice that a Service Contract has been terminated, or where a Contractor has given notice of termination, upon receiving or giving the notice the terminated Contractor shall within ten days thereafter provide to the Contractor with a Successor Service Contract the name, address, date of hire, and employment occupation classification of each Employee in employment, of itself or Subcontractors, at the time of contract termination. If the terminated Contractor has not learned the identity of the Contractor with a Successor Service Contract, if any, by the time that notice was given of contract termination, the terminated Contractor shall obtain such information from the Awarding Authority. If a Successor Service Contract has not been awarded by the end of the ten-day period, the employment information referred to

earlier in this subsection shall be provided to the Awarding Authority. Where a subcontract of a Service Contract has been terminated prior to the termination of the Service Contract, the terminated Subcontractor shall for purposes of this Article be deemed a terminated Contractor.

(1) Where a Service Contract or Contracts are being let where the same or similar services were rendered under multiple Service Contracts, the Awarding Authority shall pool the Employees, ordered by seniority within job classification, under the prior contracts. The successor Contractor shall provide written notice to the Awarding Authority and the DAA that the Awarding Authority's pool list will be used. The notice must include the following:

(A) the reason why pooling is necessary;

(B) the total number of Employees required under the Successor Service Contract;

(C) a breakdown of the number of Employees required within each job classification and seniority within each class; and

(D) an indication as to which Employees within each job classification shall be offered employment under this article.

The written notice must be provided no later than ten days after the successor Contractor receives the listing of the terminated Contractor's Employees. The DAA shall notify the successor Contractor whether pooling will be permitted.

(2) Where the use of Subcontractors has occurred under the terminated Service Contract or where the use of Subcontractors is to be permitted under the Successor Service Contract, or where both circumstances arise, the Awarding Authority shall pool, when applicable, the Employees, ordered by seniority within job classification, under such prior Service Contracts or subcontracts where required by, and in accordance with, rules authorized by this article. The successor Contractor or Subcontractor shall provide written notice to the Awarding Authority and the DAA that the Awarding Authority's pool list will be used. The DAA shall notify the successor Contractor or Subcontractor whether pooling will be permitted.

(b) If work-related requirements for a particular job classification under the Successor Service Contract differ from the terminated Service Contract, the successor Contractor (or Subcontractor, where applicable) shall give notice to the Awarding Authority and the DAA and provide an explanation including:

- (1) the different work-related requirements needed; and
- (2) the reason why the different work-related requirements are necessary for the Successor Service Contract.

(c) Within ten days of receipt of the list of Employees from the terminated Contractor, the Successor Contractor shall make written offers for a 90-day transition employment period to the eligible Employees by letters sent certified mail. The letters shall ask an Employee to return the offers to the successor Contractor with the Employee's signature indicating acceptance or rejection of the offer of employment. The letters should state that if an Employee fails to return a written acceptance of the offer within ten days of the date of mailing of the successor Contractor's certified letter, then the Employee will be presumed to have declined the offer.

The successor Contractor shall provide copies of the letters offering employment to the Awarding Authority and proof of mailing.

(d) A successor Contractor shall retain Employees for a 90-day transition employment period. Where pooling of Employees has occurred, the successor Contractor shall draw from such pools in accordance with rules established under this article. During such 90-day period, Employees so hired shall be employed under the terms and conditions established by the successor Contractor (or Subcontractor) or as required by law.

(e) If at any time the successor Contractor determines that fewer Employees are required to perform the new Service Contract than were required by the terminated Contractor (and Subcontractors, if any), the successor Contractor shall retain Employees by seniority within job classification. The successor Contractor shall give notice to the Awarding Authority and the DAA and provide an explanation including:

- (1) the reason that fewer Employees will be needed;
- (2) the total number of Employees required under the Successor Service Contract;
- (3) a breakdown of the number of Employees required within each job classification;
- (4) a listing of the terminated Contractor's Employees by job classification and seniority within each class; and
- (5) an indication as to which Employees within each job classification shall be offered employment under this article.

The notice must be provided no later than ten days after the successor Contractor receives the list of the terminated Contractor's Employees pursuant to Section 10.36.2(a).

Letters offering employment shall be made by seniority within each job classification. If an Employee in a job classification declines an offer of employment or fails to respond within ten days pursuant to Section 10.36.2(a), the successor Contractor shall issue a letter offering employment to the next Employee in that job classification. The successor Contractor shall continue to offer employment in this manner until all required positions are filled for the Successor Service Contract or until all Employees have been offered employment.

(f) During such 90-day transition employment period, the successor Contractor (or Subcontractor, where applicable) shall maintain a preferential hiring list of eligible covered Employees not retained by the successor Contractor (or Subcontractor) from which the successor Contractor (or Subcontractor) shall hire additional Employees, if needed.

(g) During such 90-day transition employment period, the successor Contractor (or Subcontractor, where applicable) shall not discharge without cause an Employee retained pursuant to this article. "Cause" for this purpose shall include, but not be limited to, the definition in California Labor Code Section 2924.

(h) At the end of such 90-day transition employment period, the successor Contractor (or Subcontractor, where applicable) shall perform a written performance evaluation for each Employee retained pursuant to this article. If the Employee's performance during such 90-day period is satisfactory, the successor Contractor (or Subcontractor) shall offer the Employee continued employment under terms and conditions established by the successor Contractor (or Subcontractor) or as required by law.

(i) If the City or a City Financial Assistance Recipient enters into a Service Contract for the performance of work that prior to the Service Contract was performed by the City's or the City Financial Assistance Recipient's own service Employees, the City or the City Financial Assistance Recipient shall be deemed to be a terminated Contractor within the meaning of this article and the Contractor under the Service Contract shall be deemed to be a Contractor with a Successor Service Contract within the meaning of this article.

Sec. 10.36.3. Enforcement.

(a) An Employee who has been discharged in violation of this article by a successor Contractor or its Subcontractor may bring an action in the Superior Court of the State of California against the successor Contractor and, where applicable, its Subcontractor, and may be awarded:

(1) Back pay for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

(A) The average regular rate of pay received by the Employee during the last three years of the Employee's employment in the same occupation classification; or

(B) The final regular rate received by the Employee.

(2) Costs of benefits the successor Contractor would have incurred for the Employee under the successor Contractor's (or Subcontractor's, where applicable) benefit plan.

(b) If the Employee is the prevailing party in any such legal action, the court shall award reasonable attorney's fees and costs as part of the costs recoverable.

(c) Compliance with this article shall be required in all City contracts to which it applies, and the contracts shall provide that violation of this article shall entitle the City to terminate the contract and otherwise pursue legal remedies that may be available.

(d) If the DAA determines that a Contractor or Subcontractor violated this article, the DAA may recommend that the Awarding Authority take any or all of the following actions:

(1) Document the determination in the Awarding Authority's Contractor Evaluation required under Los Angeles Administrative Code Section 10.39 *et seq.*;

(2) Require that the Contractor or Subcontractor document the determination in each of the Contractor's or Subcontractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Section 10.40, *et seq.*;

(3) Terminate the Service Contract; or

(4) Recommend to the Awarding Authority to withhold payments due to the Contractor or Subcontractor.

(e) Notwithstanding any provision of this Code or any other law to the contrary, no criminal penalties shall attach for any violation of this article.

Sec. 10.36.4. Exemption for Contractor or Contractor's Prior Employees.

(a) An Awarding Authority shall, upon application by a Contractor or Subcontractor, exempt from the requirements of this article a person employed by the Contractor or Subcontractor continuously for at least 12 months prior to the

commencement of the Successor Service Contract who is proposed to work on the Successor Service Contract as an Employee in a capacity similar to the prior employment, where the application demonstrates that: (a) the person would otherwise be laid off work; and (b) his or her retention would appear to be helpful to the Contractor or Subcontractor in performing the Successor Service Contract. Once a person so exempted commences work under a Successor Service Contract, he or she shall be deemed an Employee as defined in this article.

(b) Nothing in this article shall limit the right of the DAA to waive the provisions herein with respect to a Contractor if it finds it is not in the best interest of the City.

Sec. 10.36.5. Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.

This article shall not be construed to limit an Employee's right to bring legal action for wrongful termination.

Sec. 10.36.6. Expenditures Covered by this Article.

This article shall apply to the expenditure, whether through Service Contracts let by the City or by City Financial Assistance Recipients, of funds entirely within the City's control and to other funds, such as federal or state grant funds, where the application of this article is consonant with the laws authorizing the City to expend such other funds. City Financial Assistance Recipients shall apply this article to the expenditure of non-City funds for Service Contracts to be performed in the City by complying with Section 10.36.2(i) and by contractually requiring their Contractors with Service Contracts to comply with this article. Such requirement shall be imposed by the recipient until the City financial assistance has been fully expended.

Sec. 10.36.7. Promulgation of Implementing Rules.

The DAA shall promulgate rules for implementation of this article and otherwise coordinate administration of the requirements of this article.

Sec. 10.36.8. Severability.

If any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this section, and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

HOLLY L. WOLCOTT, City Clerk

By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By *Basia Jankowski*
BASIA JANKOWSKI
Deputy City Attorney

Date 12-11-15

File No. _____