

INTRODUCED: 11/09/2009

REFERRED TO: Administration and Finance Committee

SPONSOR: Councillor Bateman

DIGEST: amends the Code to encourage economic revitalization by creating an Indianapolis based business preference for the City and County

SOURCE:

Initiated by: Councillor Bateman

Drafted by: Aaron E. Haith, Democrat Caucus Counsel

LEGAL REQUIREMENTS FOR ADOPTION:

Subject to approval or veto by Mayor

PROPOSED EFFECTIVE DATE:

Adoption and approvals

GENERAL COUNSEL APPROVAL: \_\_\_\_\_ Date: November 5, 2009

*GENERAL COUNSEL COMMENTS: The general counsel has several reservations about the legality of the proposal as submitted. The more serious ones are: State Law, IC 5-22-7-8. requires contracts for supplies to be awarded to "the lowest responsible and responsive bidder." If such bidder was not an IHB or an IBB, then the award might violate this requirement of state law. The definition of IBB requires that the business must pay "COIT on its net profits." Businesses do not pay COIT, so only sole proprietorships could meet that definition.*

CITY-COUNTY GENERAL ORDINANCE NO. \_\_\_\_\_, 2009

A PROPOSAL FOR A GENERAL ORDINANCE to amend the Chapter 202, Art. III, of the Revised Code of the Consolidated City and County, to encourage economic revitalization by creating an Indianapolis based business preference for the City and County.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE  
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. Chapter 202, Art. III, Sec. 231-221 of the Revised Code of the Consolidated City and County, is hereby is amended by deleting the stricken-through text and adding the language that is underlined, as follows:

**Sec. 202-204. Purchasing division; promotion of supplies manufactured in the United States and Indianapolis Based Business preference.**

(a) The office of finance and management shall include a purchasing division, which shall be the purchasing agency, as that term is defined and used in IC 5-22, for the city and county, and for each of their respective departments, divisions, offices and agencies.

(b) The powers and duties of the purchasing division shall include:

- (1) Acting as the agent in obtaining materials, supplies, equipment or contractual services, from the purchasing agent who shall, upon determining that appropriations are available for such purposes, acquire the items requisitioned in accordance with public purchase law. All contracts of purchase shall be made in the name of the city department or division or county office and be subject to the approval of the department, division, office or agency;
- (2) Establishing such purchasing and contractual procedures as may best be suited to obtain the greatest economic value to the city and the county;

- (3) Where bidding and publication of notice are required by law, preparing specifications and notice to bidders and seeing that the required notices are published;
- (4) Ensuring that adequate funds are available prior to making necessary purchases and acquisitions are within the limits of the budget appropriations of the department, division, office or body in need of the material;
- (5) Acting as the agent of any executive department to sell or exchange any personal property ordered to be sold by a city department or division or county office in accordance with procedures prescribed by law; and
- (6) Serving as the repository for all executed contracts of the city, the county, each of the city's and county's respective departments, divisions, offices and agencies, the city-county council except as provided by section 151-93(4) of the Code, the circuit court, Marion Superior Court, and the prosecuting attorney, and maintaining a database on these contracts listing all contracting parties and encumbrances; and
- (7) Exercising any other powers which may be granted by statute or ordinance or delegated by the mayor.

(c) To promote the purchase of supplies manufactured in the United States as set forth in IC 5-22-15-21, the city and county, and each of their respective departments, divisions, offices and agencies, shall specify and purchase supplies manufactured in the United States unless the purchasing agent first determines that any of the following circumstances apply:

- (1) The supplies are not manufactured in the United States in reasonably available quantities;
- (2) The price of the supplies manufactured in the United States exceeds by an unreasonable amount the price of available and comparable supplies manufactured outside the United States;
- (3) The quality of the supplies is substantially less than the quality of comparably priced available supplies manufactured outside the United States; or
- (4) The purchase of supplies manufactured in the United States is not in the public interest.

(d) To promote the policy of the city and county to employ residents of the county who previously were incarcerated for or convicted of a felony, the purchasing division:

- (1) May afford additional weight to the bids or proposals of business enterprises that have programs, or that participate in city and county programs, for the training or hiring of such residents; and
- (2) Shall have authority in requests for bids or quotes to specify targets for performance, sanctions for nonperformance, and criteria for evaluation of bids and quotes consistent with the provisions of this subsection.

The controller shall determine the extent of such additional weight, but may not apply it to instances where the delivery of goods or services by such residents would compromise public safety and security.

(e) To promote the economic revitalization and continued vitality of Indianapolis / Marion County, the city and county, and each respective department, division, office and agencies, shall, specify and purchase supplies or services from certified Indianapolis Headquartered Businesses or Indianapolis Based Businesses unless the purchasing agent first determines that any of the following circumstances apply:

- (1) The supplies or services are not available in reasonably available quantities from certified Indianapolis Headquartered Businesses or Indianapolis Based Businesses;

- (2) The price of the supplies or services exceeds by an unreasonable amount the price of available and comparable supplies available from businesses that are not headquartered or based in Indianapolis;
- (3) The quality of the supplies or services are substantially less than the quality of comparably priced available supplies or services from businesses that are not headquartered or based in Indianapolis; or
- (4) The purchase of supplies or services from businesses that are not headquartered or based in Indianapolis is not in the public interest; and
- (5) The purchases are made pursuant to the administrative procedure set forth at Sec. 202-209 of this Article.

SECTION 2. Chapter 202, Art. III, of the Revised Code of the Consolidated City and County, is hereby is further amended by adding a new Sec. 202-209 to read as follows:

**Sec. 202-209. Indianapolis Headquartered Business and Indianapolis Based Business Definitions and Administrative Guidelines.**

(a) Purpose. The council finds that an important component of the economic revitalization and continued vitality of Indianapolis is the utilization of certified Indianapolis Headquartered Businesses and Indianapolis Based Businesses in the City and County's contracting. The goal of the council is to award seventy percent (70%) of the total dollar value of City and County contracts to certified Indianapolis Headquartered Businesses and Indianapolis Based Businesses. The Council acknowledges that the ability of individual departments to achieve this goal may vary as a function of the types of goods and services required and the availability of certified Indianapolis Headquartered Businesses and Indianapolis Based Businesses to perform any given contract. However, all departments shall make their best efforts to meet this goal. All City and County departments and agencies are directed to review their contracting practices and procedures for the implementation of Sec. 202-204(e) of this Article.

(b) Nondiscrimination. Every contract entered pursuant to this provision shall be compliant with and subject to the provisions of Sec. 581-102 of this Code.

(c) Definitions. Unless defined otherwise in this Article, the following terms have the meanings specified below:

*Business* shall mean any association, cooperative, corporation, individual, joint venture, partnership, sole proprietorship or other legal entity; excluding non-profits.

*Certification* shall mean the qualification and registration of businesses pursuant to this section by the Purchasing Division. The Division shall establish, change and collect such fees or charges as are approved by the City-County Council for certification application services, re-certification services, certificates and or distribution of the City of Indianapolis-Certified Business Register. Such fees/charges, conditions and terms as applicable shall be made available in writing.

*City* shall mean the City of Indianapolis, Marion County, Indiana.

*City of Indianapolis-Certified Business Register* shall mean a listing of certified businesses which shall include, at a minimum with respect to each such business, (i) the begin date of the certification; (ii) the expiration date of the certification; (iii) the business certification category; and (iv) the Purchasing Division's determination of the goods and services for which the applicant business has received certification. The Division shall maintain, publish and distribute the register periodically in hard copy and maintain an online version that is continually updated. This compilation is primarily for public and private procurement officials, subject to applicable public disclosure requirements but is not required to make available hard copy to persons or organizations not on the Division's procurement mailing list.

*Indianapolis-Based Business ("IBB")* shall mean a business qualified, upon application, to be certified a Indianapolis Based Business pursuant to this section but among other requirements as may for time to

time be found, must be a business which pays COIT on its net profits and pays county/city property taxes: i) on a plant or an office and equipment which are ordinarily required for the furnishing of the goods or the performance of the services required by the contract and referred to in the application for certification as a Indianapolis Based Business; or (ii) other real or personal property in the City equivalent in value to such plant or office and equipment, for not less than one (1) taxable year prior to the date of the application for certification as a Indianapolis-Business Business. In addition, a Indianapolis-Based Business shall satisfy at least three (3) of the following eight (8) criteria:

- (1) Provide verification that an existing inventory of the products which the business offers to the City are physically located at a City site; or
- (2) Provide verification of the ability of the business to service/repair products to be sold to the City from a City site; or
- (3) Provide verification that the business has an adequate number of employees based at its City site to perform the services indicated in its application for certification; or
- (4) Provide verification that its headquarters are located within the City; or
- (5) Provide verification that the headquarters is located within the City of Indianapolis and is that place where the Chief Executive Officer and highest-level managerial employees of that business have their offices and perform their management function; or
- (6) Provide references, licenses or other means of verification acceptable to the Division that the services the business offers to the City have been provided for at least one (1) year at a City site; or
- (7) Provide documentation that a majority (51%) of the businesses' employees working at its City site are Indianapolis residents; or
- (8) Provide verification that the firm has the physical resources at its City site to provide the services indicated in its application for certification.

*Indianapolis Headquartered Business ("IHB")* shall mean a business as described herein found qualified to be certified an Indianapolis Based and Headquartered Business pursuant to this section, specifically the business must be an IBB whose headquarters is located within the City of Indianapolis and the headquarter is that place where the Chief Executive Officer and highest-level managerial employees of that business have their offices and perform their management functions. A business may demonstrate that its office in Indianapolis is the company headquarters by showing the following:

- (1) It has no business operation(s) or facilities that are located outside the corporate limits of Indianapolis; or
- (2) It does have business operation(s) or facilities that are a located outside the corporate limits of Indianapolis, but provides satisfactory proof to the Division that it has only one headquarter location and it is within Indianapolis by the following:
  - A. The Chief Executive Officer and each of the managers listed in the application must complete and submit an Income Tax Clearance Form to the Division which demonstrates that COIT has been paid to the benefit of the City for one year prior to submission of the application for certification;
  - B. Provide headquarter site access for review of the corporate records and the payroll records for those individuals identified as the Chief Executive Officer and each of the business highest level managers and for review of the business site and the business equipment; and
- (3) Produce an official and incontrovertible public notices, records, corporate filings, etc. that demonstrate that the headquarters is located within the City of Indianapolis.

**Note:** In the event that Division has information, which casts doubt on the applicant's assertion about the business headquarters, additional information may be required.

*Indianapolis Small Business ("ISB")* shall mean a business certified Indianapolis based and small business pursuant to this section. An Indianapolis Small Business shall/must be independently owned and operated and shall not be one of the recognized leaders or dominant firms in its field of operation. A business is not a "dominant firm in its field of operation" when it does not exercise a controlling or major influence in a kind of commercial activity in which a number of businesses are primarily engaged. The amount of annual receipts or the number of employees listed below constitutes the maximum permitted for a business (including domestic and foreign affiliates, regardless of whether they are organized for profit) to be considered small. Size limitations are to be defined by the Division based on the Federal Small Business Administration's regulations, 13 C.F.R. s 121.601 (1994) and the revisions thereto, 59 Fed. Reg. at 16,513, et seq. (1994), as amended, or as subsequently adopted or amended by the City-County Council.

- (1) General construction business whose average annual gross receipts are less than seventeen million dollars (\$17,000,000) in the three (3) fiscal years preceding the date of application;
- (2) Specialty construction business whose average annual gross receipts are less than seven million dollars (\$7,000,000) in the three (3) fiscal years preceding the date of application;
- (3) Manufacturing business which has provided full-time employment to fewer than five hundred (500) persons in the three (3) fiscal years preceding the date of application;
- (4) Service business whose average annual gross receipts are less than five million dollars (\$5,000,000) in the three fiscal years preceding the date of application;
- (5) Retail business whose average annual gross receipts are less than five million dollars (\$5,000,000) in the three (3) fiscal years preceding the date of application;
- (6) Wholesale business which has provided full-time employment to fewer than one hundred (100) persons in the three (3) fiscal years preceding the date of application; and
- (7) Professional Services business whose average annual gross receipts are less than three million dollars (\$3,000,000) in the three (3) fiscal years preceding the date of application.

*Indianapolis' Business Certification Program (IBCP)* shall be administered and regulated by the Purchasing Division.

*General construction business* shall mean a business that (i) is a general contractor for any of the following: industrial buildings, residential buildings, single family houses or warehouses or (ii) performs heavy construction which includes, but is not limited to, the following: bridges, communications lines, elevated highways, highways, pipelines, power lines, sewer lines, streets, tunnels or water lines.

*Purchasing* shall mean the Purchasing Division of the Office of Finance and Management of the City.

*Re-certification* is an abbreviated application process provided at the expiration of a standard two-year Indianapolis based certification applied for within ninety (90) days following expiration.

*Site Visit(s) Employee* interviews and examination(s) of personnel and business records, procedures, space, furnishings, office and operating equipment, supplies, inventory etc. as needed to further verify business eligibility for certification(s) occur during the site visit. It will be conducted by Human Rights Department staff for all initial DBB applicants, and may be conducted due to changes of a certified business affecting eligibility, additional new certification(s) applied for, re-certification(s) and to investigate evidence arising out of certification denials or allegations of misrepresentation regarding certification.

*Specialty construction business* shall mean a business that performs any of the following: carpentry; concrete work; electrical work; excavation work; floor laying; glass and glazing work; heating, ventilation

and air conditioning; installation or erection of building equipment; masonry, stone setting and other stone work; painting and paper hanging; plastering, drywall, acoustical and insulation work; plumbing; roofing, siding and sheet metal work; structural steel erection; terrazzo, tile, marble and mosaic work; water well drilling; or wrecking and demolition work, as well as other categories of specialty construction as may identified by the Purchasing Division.

*Successor Business Certification(s)* means a new business that assumes the rights and burdens of another Indianapolis certified business and obtains ownership of the predecessor's certification(s). The following six factors will be considered in deciding if a Indianapolis certification in a new business name can be transferred from another business to a new business:

- (1) the predecessor's certification must be in effect,
- (2) the new business must have conducted business less than one year and therefore unable to produce documentation requirements such as taxes, invoices etc.,
- (3) the successor can show continuity of management, assets, and general business operations of the predecessor business,
- (4) the predecessor business ceases operations and dissolves
- (5) the new business assumes the liabilities and obligations of the predecessor business; and
- (6) the new business holds itself out as the successor of the old business

**Note:** Certification rights to a successor business shall extend to the expiration date of the predecessor's certification or one year, whichever is longer. Upon the expiration predecessor's certificate, the successor business must complete the standard application process required of any business seeking certification for the first time and a new certification file will begin

(d) Certification Procedure:

- (1) Certificates may be granted a business for certification as an IBB, IHB and or ISB. All businesses found qualified for IHB will receive a certificate for IHB and not IBB. A business found qualified, for ISB will receive a certificate for ISB and also a IHB certificate if determined to be headquartered in Indianapolis. Businesses not qualifying as IHB or ISB may qualify as an IBB.
- (2) Certifications made under standard application procedures shall be for a two (2) year term, from the IBB certificate issue date. In the event that an IBB subsequently applies for and is granted an IHB or ISB after receiving an IBB certificate, the expiration date for the IHB and ISB shall correspond with its current IBB expiration date. The Division reserves the right to request follow-up documentation from a particular business if information changes or a complaint is filed.
- (3) The Division shall have the duty to certify businesses for the IBCP. The Division shall determine whether an applicant business satisfies the prerequisites for certification as an IBB, IHB and/or an ISB.
- (4) The Division shall prescribe the form of IBCP applications identify the supporting materials (e.g., tax filings, articles of incorporation and licenses etc.) that a business is required to submit for certification in each IBCP certification category (i.e., whether the applicant business is a IBB, IHB and or ISB). Before issuance, the IBCP application form must be approved by both the Division and the Office of Corporation Counsel.
- (5) IBCP application forms shall be available in the offices of the Division online. IBCP application forms will also be distributed by the Division to contracting departments.

- (6) If the Division concludes that an applicant business qualifies as a IBB, IHB and/or an ISB, it shall issue a "Notice of IBCP Certification" that includes the following:
  - (A) The inception date of the certification;
  - (B) The expiration date of the certification;
  - (C) The IBCP certification category (i.e., whether the applicant business is a IBB, IHB and/or ISB and;
  - (D) The Purchasing Division Commodity Class names and numbers for the goods and services for which the applicant business has received certification.
- (7) If an applicant business has been certified as a IBB, IHB and or ISB, the Division is to specify in the "Notice of IBCP Certification" the Purchasing Division Commodity Class names and numbers that pertain to each IBCP certification category.
- (8) If the Division determines that an applicant business does not satisfy the applicable requisites, it shall issue a "Denial of IBCP Certification" that explains the Division's reasons for its conclusion and that offers the applicant business the opportunity to informally discuss the denial with the Division. The procedure for appealing from a "Denial of IBCP Certification" is described herein below at subsection (e).
- (9) Within seven (7) calendar days of the date of its decision, the Division shall mail to the applicant business one of the notices described in paragraphs (5) and (6) by Certified Mail, Return Receipt Requested.
- (10) The Division shall follow up on incomplete files. If the Division determines that the applicant business' file is not complete after initially reviewing said file, the Division shall write to that business to obtain the remaining information. If the applicant business does not provide the requested information within two-weeks (10 business days) of the date of the Division's request, the Division may, in its sole discretion, deem the application abandoned. The Division may close abandoned files.
- (11) Small Business certifications from other governmental agencies. If, within the twelve (12) months prior to submitting a ISBP application and an applicant business is currently certified by another governmental agency, whose small business definitions are substantially the same as those contained in this section or are more restrictive (i.e., definitions requiring lower average annual gross receipts or fewer employees), the Division shall regard such certification as prima facie evidence of eligibility in meeting size requirements. In such circumstances, the Division shall have the right and duty to require supporting documentation to verify a business' small business certification status.
- (12) An IBCP certified business is required to immediately notify in writing the Division about any change in its circumstances that affect either the representations that it has made in its application materials or its status as a IBCP certified business.
- (13) Misconduct will result in decertification and disqualification from the IBCP. The Division shall decertify any business that either obtains its certification through fraud, deceit or misrepresentation or fails to report any changes that materially affect that business' qualification for certification. Upon such a finding, the Division shall remove the name of the business from all IBCP vendor lists, maintained pursuant to this section, for a period of three (3) years.

(e) Procedure for appealing from a denial of IBCP certification. This Subsection establishes the exclusive procedure for an applicant business that seeks relief from a "Denial of IBCP Certification," issued pursuant to subsection d.6. Further, the procedure set forth in this Subsection is available only to an applicant business seeking relief from a "Denial of IBCP Certification." The procedure for appealing from a "Denial of IBCP Certification" is as follows:

- (1) Within fourteen (14) calendar days of the date of receipt of a "Denial of IBCP Certification," as described in Subsection d.6., an applicant business may file with the Division a written request for an informal discussion, the purpose of which is to permit the business to discuss its concerns about the denial. A "Denial of IBCP Certification" may be modified or reversed at this stage of the appeal process.
  - (2) After the informal discussion, the Division shall issue a "Confirmation Notice" that outlines these subject matters:
    - (A) The issues discussed at and the outcome of the informal discussion and
    - (B) The applicant business' appellate rights.
    - (C) The Division shall mail to the applicant business a copy of the "Confirmation Notice" by Certified Mail, Return Receipt Requested.
  - (3) Only after it has exhausted the procedures set forth in the following subsections, may an applicant business appeal from a "Denial of IBCP Certification." A typewritten or printed "Claim of Appeal" shall be filed with the Division within fourteen (14) calendar days of the date of receipt of a "Confirmation Notice." A "Claim of Appeal" shall satisfy all of the following requirements:
    - (A) Include a detailed narrative of all of the bases for reversal of the HRD's decision to deny IBCP certification. Any basis omitted from the "Claim of Appeal" is waived;
    - (B) Include documentation supporting the applicant business' claim that it satisfies the requirements for IBCP certification;
    - (C) Include a copy of the "Confirmation Notice" described in Subsection (e) (2);
    - (D) Include a statement from the applicant business as to whether it desires an opportunity to discuss its appeal with the Division Director; and
    - (E) Exclude any reliance on or reference to changes in the applicant business= ownership, operation and/or management occurring after the date of the "Denial of IBCP Certification."
  4. A "Claim of Appeal" that does not substantially conform to the requirements of this section may be dismissed by the Division Director without a decision on the merits of the appeal.
  5. The decision of the Division Director, or designee, is final and is subject neither to further appeals pursuant to Subsection nor to the reconsideration procedure provided in Subsection (f). The Division shall dismiss any filing that violates the provisions of this Subsection.
- (f) Procedure for reconsideration of a Division decision other than a denial.
- (1) This Subsection establishes the exclusive procedure for an applicant business that seeks review of certification determinations made by the Division in a "Notice of IBCP Certification," issued pursuant to paragraph (11) of subsection (d). The procedure established in this Subsection is not available to an applicant business that has received a "Denial of IBCP Certification," the appeal process for which is described above in subsection e, hereof. An applicant business may seek reconsideration in the following types of circumstances:
    - (A) it has undergone substantive, documented changes in its, operation and/or management;
    - (B) it has compelling and substantial proof that the HRD committed an error in processing the business= application for certification; or

(C) it was not certified in all of the IBCP certification categories or for all of the Purchasing Division Commodity Codes for which it sought certification.

- (2) An applicant business may seek reconsideration only once per year, and it must include in its "Petition for Reconsideration" all of the bases upon which it seeks reconsideration. Any basis omitted from the "Petition for Reconsideration" is waived.
- (3) An applicant business shall file its typewritten or printed "Petition for Reconsideration" to the Division no earlier than six (6) months after and no later than twelve (12) months after the date of "Notice of IBCP Certification." A "Petition for Reconsideration" submitted more than twelve (12) months after the date of a notice will not be reviewed and the applicant business will be required to re-apply for IBCP certification.
- (4) The certification guidelines established shall apply to the evaluation of the merits of a "Petition for Reconsideration."
- (5) The Division's disposition of a "Petition for Reconsideration" is final and is subject neither to the appeal procedure of Subsection e. nor to further reconsideration pursuant to Subsection
- (6) The Division shall dismiss any filing that violates the provisions of this Subsection.

(g) Creation of Certified Business Register. The Division shall establish and maintain a database which is updated regularly (no less than annually) that list all IBCP businesses. This database will be used to compile the Certified Business Register book, which will be updated and distributed periodically in hard copy and online. The Register shall be made available and distributed to the Purchasing Division, contracting departments and, upon request, private parties and non-City governmental agencies that are associated with procurement activities.

(h) Departments, Division and Agency Required Use. All purchasing officials are to obtain online from the Division the most current Register listings. The Register shall be used to identify Indianapolis Based Businesses that may be assigned to contracts and subcontracting opportunities.

Section 3. This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

The foregoing was passed by the City-County Council this \_\_\_\_\_ day of \_\_\_\_\_, 2009, at \_\_\_\_\_ p.m.

ATTEST:

\_\_\_\_\_  
Bob Cockrum  
President, City-County Council

\_\_\_\_\_  
Melissa Thompson  
Clerk, City-County Council

Presented by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2009, at 10:00 a.m.

\_\_\_\_\_  
Melissa Thompson  
Clerk, City-County Council

Approved and signed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Gregory A. Ballard, Mayor