



**Project title:** An ORDINANCE relating to Project Labor Agreements and the Utilization of Apprentices on Public Works Construction Projects, adding new sections to chapter 3.80 EMC.

### City Council Agenda Item Cover Sheet

**Council Bill #**  
CB 2211-58

**Agenda dates requested:**  
11/30, 12/7

Briefing 11/30/22  
Proposed action (1<sup>st</sup> and 2<sup>nd</sup> Readings) 11/30/22  
Consent  
Action 12/7/22  
Ordinance yes  
Public hearing  
 Yes     X     No

**Budget amendment:**  
 Yes     X     No

**PowerPoint presentation:**  
 Yes     No

**Attachments:**  
Draft Ordinance

**Department(s) involved:**

**Contact person:**  
Councilmember Zarlingo

**Phone number:**

**Email:**  
bzarlingo@everettwa.gov

**Initialed by:**

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Department head

.....  
Administration

.....  
Council President

.....  
**Consideration:**

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**Project:**

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**Partner/Supplier:**

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**Location:**

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**Preceding action:** Resolution 7461; Resolution 5286

.....  
**Fund:**

**Fiscal summary statement:**

**Project summary statement:**

The proposed ordinance supersedes Resolutions #7461 and #5286, and offers an alternative to the CB 2211-52 draft ordinance.

This is an ordinance relating to Project Labor Agreements and the utilization of apprentices on public works construction projects, adding new sections to chapter 3.80 EMC.

See Ordinance draft for details on the proposed Ordinance.

**Recommendation (exact action requested of Council):**

Adopt an Ordinance relating to Project Labor Agreements and the Utilization of Apprentices on Public Works Construction Projects, adding new sections to chapter 3.80 EMC.

ORDINANCE NO. \_\_\_\_\_

**An ORDINANCE relating to Project Labor Agreements and the Utilization of Apprentices on Public Works Construction Projects, adding new sections to chapter 3.80 EMC.**

**WHEREAS,**

*Project Labor Agreement/Community Workforce Agreements*

- A. The City has an interest in awarding major construction project contracts in such a manner as to yield the lowest reasonable cost and the highest standard of quality and efficiency on the job.
- B. The City is committed to fiscal responsibility and prudent budgetary practices.
- C. The City has an interest in promoting increased opportunity for trade worker apprenticeships and training opportunities.
- D. As additional tools, Project Labor Agreements and Community Workforce Agreements can be of economic benefit for publicly funded major construction projects that involve a substantial number of contractors, subcontractors, and craft workers and that have a substantial project cost to City taxpayers.
- E. In appropriate circumstances, Project Labor Agreements and Community Workforce Agreements may facilitate the timely and efficient completion of major construction projects by making available a ready and reliable supply of highly trained and skilled craft workers, helping the City and contractors accurately determine project labor costs, establish working conditions for the duration of the project, and assuring labor stability and avoiding project disruptions such as strikes, lockouts or slowdowns over the life of the major construction project.
- F. The City desires to implement Project Labor Agreements and Community Workforce Agreements in a manner that maximizes participation of minority and women-owned businesses.

*Apprentices/Workforce Training*

- G. A highly skilled workforce is essential for enhanced economic growth and the continued prosperity of workers and the City of Everett.
- H. Shortages of skilled construction workers limit job growth and affect our economy.
- I. The responsibility to train the next generation of skilled workers rests with both the public and private sectors.

- J. The City of Everett is committed to working in partnership with labor and business to create a skilled workforce that reflects the diversity of our population and promotes community development.
- K. Growing participation in apprenticeship programs today will ensure a viable workforce in the construction trade industry tomorrow.
- L. In connection with apprentice utilization, the City Council in 2003 adopted Resolution 5286 (entitled "Promoting the Use of Apprentices in Public Works Projects"), which states that "the City shall require good faith efforts from contractors" so that the level of apprenticeship participation is fifteen percent (15%) of total labor hours "for contracts estimated to cost more than one million dollars (\$1,000,000.00) for the construction, remodeling, or renovation of City buildings."
- M. In Resolution 7461 (entitled "A Resolution of the City of Everett concerning Project Labor Agreements and Community Workforce Agreements"), the City Council in 2019 stated as follows regarding the apprenticeship requirement in Resolution No. 5286:

In practice, this apprentice requirement has been applied to projects relating to City buildings by the Facilities department. Past projects using this apprenticeship requirement include the Municipal Court project, the Key Bank remodel and the current Evergreen Branch Library expansion project. The City Council intends for City staff to continue the City's longstanding and successful apprenticeship requirements and practices under Resolution No. 5286.
- N. In light of the critical importance of training tomorrow's workforce, the City Council has now determined that the scope of City apprenticeship requirements should expand beyond the 2003 resolution to include all major public works projects as defined below.

**NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:**

**Section 1.** A new section (to be codified as EMC 3.80.060 and entitled "Project Labor Agreements/Community Workforce Agreements") is hereby added to Chapter 3.80 EMC as shown below. This section supersedes and replaces Resolution 7461.

**EMC 3.80.060 Project Labor Agreements/Community Workforce Agreements**

- A. Definitions. The following definitions apply this section.
  1. "Call for bids" means a call for bids for construction of a public work or, for public works under chapter 39.10 RCW, a request for proposals or request for qualifications, as applicable.
  2. "Medium Public Works Project" means any public works project with total estimated construction costs excluding taxes more than \$5,000,000 and less than or equal to \$35 million for which City Council authorizes a call for bids after January 1, 2023. Beginning

January 1, 2024, such amount will increase annually with the Engineering News-Record Construction Cost Index for the Seattle area through November (ENR-CCI).

3. "Large Public Works Project" means any public works project with total estimated construction costs excluding taxes more than \$35 million for which City Council authorizes a call for bids after January 1, 2023. Beginning January 1, 2024, such amount will increase annually with the ENR-CCI index.
4. "Project Agreement" refers to an agreement as set forth in this section, which may be in the form of a Project Labor Agreement or Community Workforce Agreement, as appropriate. A Project Agreement will typically be an agreement executed between the City and each union that represents the workers for trades that typically perform work on City public works projects, which sets out the terms and conditions between the City, the unions, and signatory contractors on a project and that meets the requirements of this section.
5. "Project Agreement Evaluation Factors" refers to following factors used in consideration of whether a Project Agreement should be used on a public works project:
  - i. The impact of a Project Agreement on the participation of the minority and women-owned businesses in the public works project.
  - ii. The potential for labor disruptions, such as strikes, lockouts, or slowdowns, that may delay completion of the public works project.
  - iii. The complexity of the public works project, to include the number of contractors, subcontractors, and craft workers necessary to complete the project in a timely manner.
  - iv. The public works project's need for multiple contractors or subcontractors who employ workers in multiple crafts or trades.
  - v. The existence of a shortage of skilled workers in the area of the public works project.
  - vi. The need and urgency of the project and the harm to the public if completion of the public works project were to be delayed.
  - vii. Benefits to the public by the use of a Project Agreement in terms of cost, efficiency, safety, quality, and timeliness.
  - viii. Whether Project Agreements have been used on comparable public or private projects.
  - ix. Other factors appropriate for the analysis of whether a Project Agreement should be used for the particular public works project.
6. "Public work" is as defined by RCW 39.04.010 as may be superseded or amended.

B. Consideration of Project Agreements.

1. Staff Analysis. Using the Project Agreement Evaluation Factors, City staff for each Medium and Large Public Works Project will prepare an analysis and recommendation regarding whether the City should implement a Project Agreement. City staff will present that analysis and recommendation to City Council.

2. City Council Determination. For each Medium and Large Public Works Project, the City Council will determine whether the City should implement a Project Agreement.
    - i. Large Public Works Projects. For Large Public Works Projects, the City presumes that a Project Agreement will be appropriate in most cases. Accordingly, a City Council determination to not implement a Project Agreement on a Large Public Works Project shall be by City Council resolution that includes written findings using the Project Agreement Evaluation Factors that clearly demonstrate how the use of the Project Agreement (A) will not benefit the project and (B) will not protect the interests of the public and the City in terms of cost, efficiency, quality, safety, and timely completion.
    - ii. Medium Public Works Projects. For Medium Public Works Projects, a case-by-case analysis is necessary, as some projects may be appropriate and not others. Accordingly, a City Council determination to implement a Project Agreement on a Medium Public Works Project shall be by City Council resolution that includes written findings using the Project Agreement Evaluation Factors that clearly demonstrate how the use of the Project Agreement (A) will benefit the project and (B) will protect the interests of the public and the City in terms of cost, efficiency, quality, safety, and timely completion.
- C. Contents of Project Agreements. Provisions such as the following will be considered for inclusion in each Project Agreement:
1. Provisions concerning the selection, through a competitive process, of a general contractor, project manager or similar construction firm that is experienced in the negotiation and administration of Project Agreements to manage and oversee the construction of the project, including the development and implementation of a labor relations policy for the major construction project.
  2. Provisions containing guarantees against strikes, lockouts, slowdowns or other similar action.
  3. Provisions setting forth effective, immediate, and mutually binding procedures for resolving jurisdictional and labor disputes arising before the completion of the work.
  4. Provisions binding on all contractors and subcontractors on the Covered Project through the inclusion of appropriate bid specifications in all relevant bid documents.
  5. Provisions requiring open competition for work to be performed by all union and nonunion contractors, subcontractors, and material suppliers willing to abide by the terms of the Project Agreement.
  6. Provisions prohibiting discrimination in job referrals as required by federal, state, and local law.

7. Provisions providing for and promoting increased opportunity for trade worker apprenticeships utilization and training opportunities. A project with a Project Agreement will require compliance with the EMC 3.80.070.
8. Provisions related to preservation and protection of trade worker health and safety on the job site.
9. Provisions stating that contractor or subcontractor non-compliance with Project Agreement apprentice requirements will cause, during the 2 years after project final acceptance by the City, any bid by such contractor or subcontractor for another City public works project to be deemed not responsible.

Project Agreements are likely to be project-by-project and may be different from project to project. In preparing a draft Project Agreement for City Council consideration, City staff should consider Project Agreement used in similar projects in Washington state. The City may, as it gains more experience with Project Agreements, develop a master project agreement with standardized provisions. The form of Project Agreement on a Large or Medium Public Works Project will be approved by the City Council as part of the City Council's authorization of the call for bids.

- D. No Specific Promotion. This section does not authorize or promote the selection of any particular contractor, subcontractor, union, trade council, or labor organization.
- E. Annual Report. City staff will annually prepare a report for the City Council regarding the City's use of Project Agreements. The report must include analysis of the usefulness of each Project Agreement used by the City during the previous year. The report should consider the Project Agreement Evaluation Factors, with particular emphasis on Project Agreement impact on minority and women-owned businesses.

**Section 2.** A new section (to be codified as EMC 3.80.070 and entitled "Apprentice Utilization") is hereby added to Chapter 3.80 EMC as shown below. This section supersedes and replaces Resolution 5286 (entitled "Promoting the Use of Apprentices in Public Works Projects") for all public works with City Council authorizations for call for bids on or after January 1, 2023. Resolution 5286 remains in effect for projects with City Council authorization for calls for bids prior to that date.

#### **EMC 3.80.070 Apprentice Utilization**

- A. Definitions. The following definitions apply this section.
  1. "Apprentice" means an apprentice enrolled or registered in an apprenticeship training program approved or recognized by the Washington State Apprenticeship and Training Council.
  2. "Apprentice Utilization Rate" means the percentage of contract labor hours, including contractor and subcontractor hours, performed by apprentices.

3. "Call for bids" means a call for bids for construction of a public work or, for public works under chapter 39.10 RCW, a request for proposals or request for qualifications, as applicable.
4. "Contractor" means a person, corporation, partnership, limited liability company, or joint venture under contract with the City to construct a public work.
5. "Director" means the City department director whose department is undertaking the public work.
6. "Estimated cost" means the anticipated construction cost of a public work, as determined by the City, based upon the expected costs of materials, supplies, equipment, and labor, but excluding taxes.
7. "Major Public Works Project" means:
  - a. any public works construction project with estimated cost in excess of \$3 million; or
  - b. any public works construction project for the Parks and Facilities Department relating to City buildings with estimated cost in excess of \$1 million.

Beginning January 1, 2024, such amounts will increase annually with the ENR CCI index.

8. "Labor hours" refers to the total number of hours worked by workers receiving an hourly wage who are directly employed by the contractor or subcontractor of any tier on the site of the public work and who are subject to state or federal prevailing wage requirements.
  9. "Public work" is as defined by RCW 39.04.010 as may be superseded or amended.
  10. "Subcontractor" means a person, corporation, partnership, limited liability company, or joint venture that has contracted with the contractor or subcontractor of any tier to perform all or part of the public work.
- B. Apprentice Utilization. Apprentices shall be utilized by contractors and subcontractors in accordance with this subsection B for all Major Public Works Projects that have a City Council authorization for call for bids on or after January 1, 2023.
1. Apprentice Utilization Requirement. For each Major Public Works Project, the City shall require good-faith efforts from the contractor to achieve at least a 15 percent Apprentice Utilization Rate. However, this requirement does not apply if the Major Public Works Project is funded by state or federal funds and those funds mandate their own apprentice utilization requirement(s).
  2. Contract Requirements. Contract documents for such public works shall include provisions detailing the apprentice labor requirements, including provisions requiring monitoring and periodic reporting.

3. Waiver/Adjustment at Call for Bids. The apprentice utilization requirement in subsection B.1 above may not be appropriate for some public works that may meet the thresholds for Major Public Works Projects. If the Director believes that is the case for a particular project, when the authorization for call of bids for such a project is presented to City Council for approval, the City Council agenda coversheet will clearly state that the proposed project will not meet the apprentice utilization requirements of this section and will request that the City Council waive or adjust the apprentice requirements for that project. As determined by City Council, factors in consideration of such a waiver or adjustment may include:
  1. A demonstrated lack of availability of apprentices;
  2. A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum level of apprentice participation.
  3. Contractors on similar projects have demonstrated good faith efforts to comply with similar requirements, but have been unable;
  4. The reasonable and necessary requirements of the contract render apprentice utilization infeasible at the required levels;
  5. Other appropriate reasons not inconsistent with the purpose and goals of this section.
4. Waiver/Adjustment During Contract Performance. During construction of the Major Public Works Project, the Director may adjust or waive the requirement of subsection B.1 upon determination that the contractor has demonstrated that it has utilized good faith efforts but remains unable to fulfill the requirement or that the contractor has demonstrated that one or more factors in subsection B.3 apply. If the Director makes such an adjustment or waiver, the Director will promptly notify City Council.

**Section 3.** The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

**Section 4.** The City Council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

**Section 5.** The enactment of this Ordinance shall not affect any case, proceeding, appeal, or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

**Section 6.** It is expressly the purpose of this Ordinance to provide for and promote the health, safety, and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance



is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees, or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

\_\_\_\_\_  
Cassie Franklin, Mayor

ATTEST:

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Marista Jorve, City Clerk

PASSED: \_\_\_\_\_

VALID: \_\_\_\_\_

PUBLISHED: \_\_\_\_\_

EFFECTIVE DATE: \_\_\_\_\_