

Ordinance No. 478

AN ORDINANCE OF THE TOWN OF YACOLT, WASHINGTON DIRECTING THE TOWN'S PARTICIPATION IN THE FEDERAL E-VERIFY PROGRAM; DIRECTING THE VERIFICATION OF THE NEW HIRE EMPLOYMENT OF ELEGIBILITY THROUGH THE E-VERIFY PROGRAM; REQUIRING CONTRACTORS AND BUSINESS ENTITIES CONTRACTING WITH THE TOWN OF YACOLT TO PARTICIPATE IN THE E-VERIFY PROGRAM; DIRECTING THE TOWN CLERK TO CREATE CONTRACTING PROTOCOLS CONSISTENT WITH THE NEW REQUIREMENTS' AND ESTABLISHING AN EFFECTIVE DATE HEREOF.

WHEREAS, the Town has an interest in ensuring that those who contract with the Town of Yacolt employ only individual who are employment eligible; and

WHEREAS, "E-Verify" , an internet based system operated by the Department of Homeland Security in partnership with the Social Security Administration, is free and voluntary; and

WHEREAS, "E-Verify" is the best means available for determining employment eligibility of new hires and the validity of their Social Security number; now, therefore,

THE TOWN OF YACOLT, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1

Definitions The words herein shall be defined as follows for the purposes of their interpretation in this ordinance:

- A. "Business Entity" means any person or group of persons performing or engaging in any activity. Enterprise, profession, or occupation for gain or benefit, advantage, or livelihood, whether for profit or not for profit with the Town. The term "business entity" shall include, but not limited to, partnerships, corporations, contractors, and subcontractors doing business with the Town of Yacolt
- B. "Contractor" for the purposes of this ordinance, means a person, employer, or business entity that enters into an agreement with the Town of Yacolt to perform any service or work or to provide a certain product in exchange for valuable consideration. For purposes of this ordinance, the term "contractor" shall not include government agencies; legal, architectural, and engineering service providers; those whose contracts would be exempt from competitive bidding under Town ordinance; those whose contracts issue under Town ordinance; those whose supplies and services are purchased under Town

ordinance; regulated providers of insurance, bonding, banking, or investment services; or public utilities.

- C. "E-Verify" shall mean the electronic verification of work authorization program of the illegal immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, Division C, Title IV s. 403 (a), as amended and operated by the United States Department of Homeland Security, or a successor electronic verification of work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees pursuant to the immigration Reform and Contract Act of 1986, Pub. L. No. 99-603.
- D. "Unauthorized alien" means a person who is unauthorized to be lawfully employed in the United States, pursuant to 8 U.S.C. {1324 a (h) (3)}. The Town of Yacolt shall not conclude that a person is an unauthorized alien unless and until an authorized representative of the Town has verified with the federal government, pursuant to 8 U.S.C. {1373 (c)}, that the person is an unauthorized alien.

Section 2

Application of E-Verify Requirements

- A. As a condition for the award of any Town contract for public works or any other Town contract, the contractor shall enroll in E-Verify program or its successor, and thereafter shall provide the Town documentation affirming its enrollment and participation in the program. The conditions of this section shall not apply to contracts that :
 - 1. Are only for work that will be performed outside the U.S.
 - 2. Are for a period of performance of less than sixty (60) days; or
 - a. Are only for : Commercially available off the shelf items (COTS) as defined by federal law;
 - b. Items that would be COTS items, but for minor modifications;
 - c. Items that would be COTS items if they were not bulk or cargo; or Provide commercial services that are:
 - a. Part of the purchase of a COTS item (or an item that would be COTS item, but for minor modifications);
 - b. Performed by the COTS provider; and are normally provided for that COTS item.

- B. Contractors shall be required to continue participation in the E-Verify program throughout the course of their business relationship with the Town of Yacolt.
- C. If a contractor described in subsection A uses a subcontractor whose work in connection with the performance of the contract would be subject to the requirements of subsection were the contract to be with the Town of Yacolt, the subcontractor shall, as a condition of the contract certify to the contractor in a manner that does not violate federal law that the subcontractor was registered and participating in the E-Verify program and will not knowingly employ or contract with an unauthorized alien.
- D. The Town shall include specific written notice in all requests for bids or proposals subject to this section that contractors may be required to enroll in E-Verify program pursuant to subsection as a condition of the award. Contractors are exempt from this section if they received requests for bids or proposals not containing such notice.
- E. Nothing provided in this section or any Town ordinance shall relieve contractors otherwise subject to federal E-Verify requirements from complying with the requirements of federal law.

Section 3

Enforcement of E-Verify Contract Terms

- A. The Town Clerk of his/her designee shall develop contracting protocols facilitating enforcement of the requirements of this ordinance. The Town shall suspend a contract with any business entity or contractor that the United States Attorney General or the Secretary of Homeland Security has found to have been in violation of 8 U.S.C. {1324a should the business entity or contractor fail to correct the violation within thirty (30) business days of receiving the notice of violation from the United States Attorney General or the Secretary of Homeland Security.
- B. The Town shall not suspend the contract of any business entity or contractor per subsection A of this section if, prior to the date of the violation, the business entity or contractor verifies the work authorization of any alleged unlawful workers using the E-Verify program and demonstrates the same to the Town of Yacolt.

- C. The Town of Yacolt shall have the additional authority to forfeit the portion of any retain age held by the Town on any such contract as an added penalty for breach of the compliance requirements of the E-Verify law. In order for this additional penalty to be enforceable, reference to the same must be included in the bid specifications, or notice to acceptance of the contract, provided by the Town of Yacolt to the contractor.

Section 4

This ordinance shall become effective the immediately upon adoption and publication as required by law.

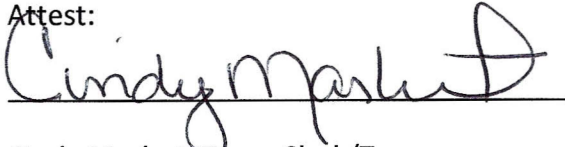
PASSED BY THE TOWN COUNCIL OF THE TOWN OF YACOLT AT A REGULAR MEETING ON THIS DAY 21st OF MARCH 2011.

TOWN OF YACOLT



Dave Hancock, Mayor Pro Tem

Attest:



Cindy Marbut, Town Clerk/Treasurer

Approved as to Form



David W. Ridenour, Town Attorney

Ayes: 5

Nays: 0

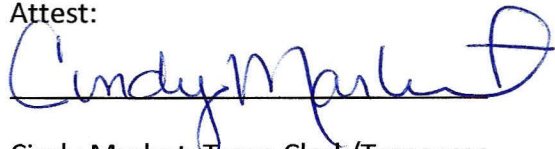
Absent: 0

Abstain: 0

Town Clerks Certification

I hereby certify that the foregoing Ordinance is a true and correct copy of Ordinance # 478 of the Town of Yacolt, Washington entitled "Direction of E-Verify Program ". The Ordinance has been published or posted according to law.

Attest:

A handwritten signature in blue ink that reads "Cindy Marbut". The signature is written over a horizontal line.

Cindy Marbut, Town Clerk/Treasurer

Published: 4-5-11

Effective Date: 4-5-11

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