

AN ORDINANCE AMENDING CHAPTER 100 OF THE CITY OF FRONTENAC, MUNICIPAL CODE OF ORDINANCES, RELATING TO ENFORCEMENT OF CITY ORDINANCES, REIMBURSEMENT OF CITY EXPENSES, AND REMEDIES FOR MISCONDUCT BY CITY VENDORS AND CONTRACTORS.

WHEREAS, it is the intent of the Board of Aldermen that all avenues to assure current and future compliance with city ordinances and standards of conduct should be available to protect the public health, safety and welfare; and

WHEREAS, the Board of Aldermen finds and believes that adoption of the following additions to the City Code can reasonably be expected to enhance compliance with City ordinances and deter would-be violators from engaging in misconduct to the detriment of the City and its residents;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FRONTENAC, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section One:

Chapter 100 of the Code of Ordinances of the City of Frontenac, Missouri, is hereby amended by the addition of four (4) new Sections, initially to be designated as Sections 100.132, 100.134, 100.136, and 100.138, to read as follows:

Chapter 100. General Provisions

Article III. Miscellaneous Provisions

Section 100.132. Other Relief To Aid in Enforcement of Code Provisions.

Equitable Relief. In addition to any other penalties established for violations of any of the ordinances of the City and/or any provisions or Sections of this Code, the City Administrator and/or officials of the City responsible for enforcement of any such ordinance or Code Section may apply to a court of competent jurisdiction for such legal or equitable relief as may be necessary to enforce compliance with the provisions of this Code and any other ordinances adopted by the City. In such action the court may grant such legal or equitable relief, including, but not limited to, mandatory or prohibitory injunctive relief, as the facts may warrant.

Section 100.134. Restrictions on Delinquent Applicants.

A. For the purposes of this Section, the following terms shall have the following

meanings:

APPLICANT

An individual or a corporation, firm, partnership, joint venture, association, organization or entity of any kind, including any shareholder, owner, officer, partner, joint venturer or member of such entity or any other person holding an ownership interest in such entity, requesting any City permit, license, franchise or other approval.

RELATED PERSON OR ENTITY

1. A firm, partnership, joint venture, association, organization or entity of any kind in which the applicant holds any stock, title, or other ownership interest of at least twenty percent (20%);
2. A firm, partnership, joint venture, association, organization or entity of any kind which holds any stock, title, or other ownership interest in the applicant of at least twenty percent (20%); or
3. An individual, firm, partnership, joint venture, association, organization or entity of any kind, whose affairs the applicant has the legal or practical ability to direct, either directly or indirectly, whether by contractual agreement, majority ownership interest, any lessor ownership interest, familial relationship or in any other manner.

RELEVANT LAW

1. Any statute or regulation of the United States or the State of Missouri;
 2. Any ordinance or Code Section of the City, or any rule, regulation, notice, condition, term or order promulgated by any officer or agency of the City under duly vested authority of the City; or
 3. Any final judgment or order of any court of competent jurisdiction, when a statute, ordinance, Code Section, rule, regulation, notice, condition, term, order or judgment at issue regulates conduct or conditions germane to the issuance of the requested permit, license, franchise or other approval as provided by the applicable ordinance or Code Section of the City.
- B. In enforcing or administering the ordinances of the City, no permit, license, franchise or approval of any kind shall be granted to any applicant if the applicant or a related person or entity is charged with or in violation of any relevant law until such time as the applicant or the related person or entity resolves the pending charge or comes into compliance with the relevant law.
- C. In acting on any new application or on any reapplication by an applicant whose prior permit, license, franchise or other approval has been denied, suspended, revoked or forfeited, the reviewing or enforcement officer may consider past violations of relevant law by the applicant or a related person or

entity in considering whether to issue the permit, license, franchise or approval requested by the applicant. Taking into account the nature and character of the permit, license, franchise or other requested approval in question and the need for the City to rely on representations and/or future conduct by the applicant when acting pursuant to the permit, license, franchise or other requested approval by the City, the reviewing or enforcement officer may deny the application or reapplication if the past violations of relevant law are reasonably recent in time and of such character or magnitude as to reasonably call into question the fitness of the applicant or the City's ability to rely on representations and/or future conduct by the applicant.

D. If a permit, license, franchise or other approval has been denied, suspended, revoked or forfeited, the applicant may not submit a new application for one (1) year from the date of the denial, suspension, revocation or forfeiture unless the reviewing or enforcement officer finds that substantial new facts or a change in circumstances warrant reconsideration; provided, however, that if the ordinances governing the particular permit, license, franchise or other approval in question prescribe a different disqualification period, those ordinances shall govern.

E. Any aggrieved applicant may appeal the decision of the reviewing or enforcement officer to the City Administrator within five (5) business days of said decision. The City Administrator may reverse or modify the decision of the reviewing or enforcement officer, provided the applicant:

1. Establishes an inability to effect compliance with any relevant law because of the ownership structure of any pertinent related entity, if the denial in question was due to conduct or circumstances of a related person or entity; or
2. Establishes that the applicant has not been charged with, or is or, if applicable, was not in violation of any relevant law.

Section 100.136. Reimbursement Of City Costs For Processing Applications.

A. Definitions. For purposes of this Section the following terms shall have the meanings given in the following definitions.

APPLICANT

Any person or entity who: (a) applies for any license, permit, regulatory approval or other authorization required by the ordinances of the City of Frontenac; or (b) applies for, seeks or proposes any economic development or redevelopment incentive, public-private partnership, or other grant or benefit of any sort related to a proposed development within the City, or (c) applies for or proposes adoption of any new ordinance or amendment to any

existing ordinance for the purpose of enabling a course of conduct desired by the applicant.

COSTS

All charges incurred or likely to be incurred by the City for services rendered by any person or organization other than a City employee in order to assist the City in acting upon any request of an Applicant. Such services may, include, but are not limited to, accounting, architectural, communications services, design, engineering, environmental, financial, landscaping, land use, legal, parking, planning, public engagement, public finance, technical code assessment, inspection or enforcement, traffic, zoning and any other field of expertise, professional judgment or specialized knowledge which the City, in its sole judgment, seeks in order to assist in considering the request of an Applicant.

OVERHEAD

Employee time, resources and expenses for things such as (but not limited to) facilities and/or equipment rental, stenography, mailing, security, publication, etc., expended or incurred by the City in the course of acting on the request of an Applicant.

B. It is the policy of the City of Frontenac that an Applicant should bear and reimburse to the City in a timely manner any and all Costs and Overhead incurred by the City to assess, process, evaluate, act upon, effectuate and, if necessary, litigate issues associated with the request of an Applicant. Therefore, in addition to and, not in lieu of, the fees for various applications, permits, etc. specified in this Code of Ordinances and other obligations to reimburse City expenses with respect to certain land use procedures such as those specified in Sections 400.150 and 410.020(A)(2), the following principles and requirements are hereby adopted.

C. If the City Administrator determines that any fee, charge or payment previously established by law for submitting or processing an application is insufficient to adequately reimburse the City for Overhead and Costs associated with the request of an Applicant, or if there is no pre-established fee applicable to the request, the City Administrator may determine, and from time to time increase or decrease as circumstances may warrant, the amount and terms of an escrow fund to be deposited with the City by the Applicant to fully reimburse the City for Costs and Overhead incurred or likely to be incurred in considering the request of an Applicant.

D. The City Administrator shall notify the Applicant, in writing, of the amount and terms of the required escrow fund or of any change in the required amount of a previously established fund. The Applicant shall have ten (10) days to make the required deposit and fund the escrow as directed by the City

Administrator.

E. The escrow arrangements shall include a process for periodic reimbursement to the City for Costs and Overhead, notice of proposed reimbursement and opportunity for the Applicant to dispute the amount of reimbursement, and closure of the fund and return of unused funds to the Applicant.

F. If an Applicant is aggrieved by a determination of the City Administrator as to initial establishment or terms of an escrow fund or one (1) or more proposed expenditures from an established fund the Applicant may appeal to the Board of Aldermen to review the City Administrator's decision. Any such appeal must be filed with the City Clerk, in writing, within ten (10) days of the City Administrator's decision and shall set forth all reasons known to the Applicant as to wherein and why the decision of the City Administrator is in error. The Board of Aldermen may consider the appeal in such manner as it deems appropriate and may affirm, modify or reverse the decision appealed from. If an Applicant is aggrieved by a decision of the Board of Aldermen the Applicant must submit a written request for reconsideration to the City Clerk within five (5) days of the date of the Board's decision. An Applicant aggrieved by a decision of the Board of Aldermen on reconsideration may seek review of that decision in the Circuit Court of St. Louis County within fifteen (15) days of the Board's decision pursuant to the provisions of Chapter 536, RSMo.

G. If an Applicant fails to comply with the determination of the City Administrator as to the establishment of an escrow fund or subsequent additions thereto in a timely manner, or if an Applicant appeals the City Administrator's decision as to establishment or additional deposits to the Board of Aldermen, the City may suspend processing and consideration of the Applicant's request until the Applicant complies and/or the appeal is resolved. If there is a deadline for processing Applicant's request or application pursuant to the City's ordinances any such the time limit or deadline shall automatically be extended for so long as the Applicant is not in compliance or an appeal is pending.

Section 100.138 Debarment

A. *Policy.* In order to protect the public interest, it is the policy of the City to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with this Section, are appropriate means to implement this policy. Debarment and suspension are serious actions which shall be used only in the public interest and for the City's protection and not for purposes of punishment.

B. *Definitions.* For the purposes of this Section, unless the context requires

otherwise, the following terms shall mean:

AFFILIATE means persons related to one another in such a manner that directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: Interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension, debarment or voluntary exclusion of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, or voluntarily excluded person.

DEBARMENT means an action taken by the City in accordance with these regulations to exclude a person from participating in transactions with the City. A person so excluded is "debarred".

PARTICIPANT means any person who submits a proposal or bid for, or enters into, or reasonably may be expected to enter into, a transaction with the City. This term also includes any person who acts on behalf of or is authorized to commit a participant in a transaction as an agent or representative of another participant.

PERSON means any individual, corporation, partnership, association, unit of government or legal entity, however organized and.

PRINCIPAL means an officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence or substantive control over a covered transaction, whether or not employed by the participant.

PROPOSAL means a solicited or unsolicited bid, application, request, offer, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a transaction.

SUSPENSION means an action taken in accordance with this article that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal or debarment proceedings as may ensue. A person so excluded is "suspended."

TRANSACTION means any transaction between the City and a person

for procurement of goods and/or services, or public works contracts and any contract for goods or services between a participant and a person, whose goods or services are to be employed in a transaction with the City.

VOLUNTARY EXCLUSION or VOLUNTARILY EXCLUDED means a status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

C. *Grounds for Debarment.* A person may be debarred from consideration for award of contracts for any of the following reasons:

- (1) Conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of integrity or honesty which currently, seriously and directly affects responsibility as a city contractor or vendor.
- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
- (4) Failure without good cause to perform in accordance with contract specifications or within the time limit provided in the contract.
- (5) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor or vendor shall not be considered a basis for debarment.
- (6) The person is in arrears on any debt owed the city or has a history of being chronically in arrears on debts owed the city or attempting to obtain excessive or unwarranted payment or preference from the City.
- (7) Any other cause so serious and compelling as to affect responsibility as a city contractor or vendor, including debarment by another governmental entity.

D. *Procedure.*

- (1) Debarment shall be initiated by serving written notice of the debarment to the person intended to be debarred. The notice shall set forth the specific grounds for the debarment and advise the person of the right to appeal. The notice shall be served by registered or certified mail or by delivering a copy of the notice to the person subject to debarment or the person's agent or employee. The debarment shall take effect ten (10) days after service of the notice unless an appeal is taken to the city administrator. If an appeal is taken, the debarment shall not take effect until a final order upholding the debarment is entered by the city administrator or until the appeal is dismissed by the appellant.
- (2) Within ten (10) days after service of a written notice of debarment, the person affected by the notice may file a written request for a hearing before the city administrator contesting the debarment.
- (3) The city administrator shall give the appellant at least ten (10) day notice of a hearing. At the hearing, the City and the appellant shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses and impeach any witness. Oral evidence shall be taken on oath or affirmation. All evidence shall be suitably recorded and preserved. The technical rules of evidence shall not apply, but the city administrator may exclude evidence which is irrelevant or repetitious. The City and appellant shall be entitled to present oral arguments or written briefs at or after the hearing.
- (4) The city administrator shall make written findings of fact and conclusions of law and issue a final order. Findings of fact shall be based upon competent and substantial evidence found in the record as a whole. A copy of the city administrator's order, findings of fact and conclusions of law, shall be delivered or mailed to the appellant.
- (5) An appellant aggrieved by the decision of the city administrator may, within five (5) days of the decision for which redress is sought, file with the Board of Aldermen a written request for reconsideration and appeal of any decisions of the city administrator under this Section. The written request must set forth in a concise manner the decision being appealed and all grounds known to the appellant as to wherein and why the decision is allegedly in error. The request for reconsideration and

appeal must be filed with the City Clerk within five (5) days of the date of the city administrator's decision. A copy of the request and any supporting documents or materials filed by the appellant must be served by the appellant party on the city administrator within three (3) days of filing with the City Clerk. The Board of Aldermen may consider the appeal on the record of the prior decision by the city administrator or may, at its sole discretion, receive additional evidence in such manner as it deems appropriate in light of the circumstances.

- (6) Any appellant aggrieved by the final determination of the Board of Aldermen may file a petition for review pursuant to Chapter 536, RSMo., as amended, in the Circuit Court of St. Louis County. Such petition shall be filed within ten (10) days after the final determination.
- E. *Effect of Debarment.* Except to the extent prohibited by law, persons who are debarred or suspended by the City or by the State of Missouri and their affiliates shall be excluded from transactions with the City as either participants or principals for the period of their debarment or suspension. Accordingly, the City shall not enter into transactions with or involving such debarred or suspended persons or their affiliates during such period.
- F. *Length of Debarment.* Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. Debarment generally should not exceed three years; however, where circumstances warrant, a longer period of debarment may be imposed.
- G. *Voluntary exclusion.* The City may, at any time, settle a debarment or suspension action when it determines that such settlement is in the best interest of the City. Persons who accept voluntary exclusion are excluded in accordance with the terms of their settlements.

Section Two:

The Chapter, Article, Division and/or Section assignments designated in this Ordinance may be revised and altered by the codification company servicing the City's Code of Ordinances upon supplementation of such code if, in the discretion of the editor, an alternative designation would be more reasonable. In adjusting such designations the editor may also change other designations and numerical assignment of code sections to accommodate such changes.

Section Three:

It is hereby declared to be the intention of the Board of Aldermen that the sections, paragraphs, sentences, clauses, phrases and words of this ordinance are severable, and if any section, paragraph, sentence, clause, phrase or word(s) of this ordinance shall be declared unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, phrases and words or this ordinance since the same would have been enacted by the Board of Aldermen without the incorporation in this ordinance of any such unconstitutional or invalid portion of the ordinance.

Section Four: This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and approval by the Mayor.

PASSED BY THE BOARD OF ALDERMEN FOR THE CITY OF FRONTENAC, MISSOURI, THIS 28TH DAY OF FEBRUARY 2023.

Presiding Officer

Attest:

Leesa Ross, City Clerk

APPROVED THIS 28TH DAY OF FEBRUARY 2023.

Kate Hatfield, Mayor

Attest:

Leesa Ross, City Clerk