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**- 2006**

**MODIFYING** the provisions of Title VIII, Business Regulations, of the Cincinnati Municipal Code by enacting a new Chapter 830, Day Labor Agencies.

WHEREAS, the City of Cincinnati has an interest in protecting the health, safety and welfare of the community; and

WHEREAS, day labor service agencies are not specifically regulated by the City of Cincinnati; and

WHEREAS, the City of Cincinnati has an interest in protecting the citizens engaged in day labor from detrimental conditions; and

WHEREAS, without regulation, day laborers may be exposed to substandard wages, unreasonable deductions in pay and unsafe conditions; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Title VIII, Business Regulations, of the Cincinnati Municipal Code is hereby modified by enacting a new Chapter 830, Day Labor Agencies, which is hereby ordained to read as follows:

Chapter 830. DAY LABOR AGENCIES

**Sec. 830-1. Definitions.**

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the

future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

**Sec. 830-1-D. Day Labor.**

*"Day Labor"* shall mean:

Labor or employment for which a person is employed for not longer than the time required to complete the assignment for which the person was hired and where wage payments are made directly or indirectly to the day laborer by the day labor agency or the third party employer for work undertaken by one or more day laborers. For purposes of this chapter, day labor does not include secretarial, clerical or professional services.

**Sec. 830-1-D1. Day Labor Agency.**

*"Day Labor Agency"* shall mean:

Any person or entity that recruits, dispatches, provides or otherwise facilitates the employment of day laborers by a third party employer. Not-for-profit agencies are not considered day labor agencies for the purposes of this chapter.

**Sec. 830-1-T. Third Party Employer.**

*"Third Party Employer"* shall mean:

A person or entity that obtains the services of or permits one or more individuals to perform day labor activities by contracting for personal services through an agreement, regardless of whether in writing, with a day labor agency.

**Sec. 830-1-D2. Day Laborer.**

*"Day Laborer"* shall mean:

A person referred by a day labor agency to a third party employer to perform day labor, or seeking such a referral.

**Sec. 830-3. License Required.**

Effective January 1, 2007, no person or entity shall engage in the

business of a day labor agency without first obtaining a license from the city treasurer.

**Sec. 830-5. Application for Day Labor Agency License.**

Each applicant for a day labor agency license shall file an application with the city treasurer in such form as prescribed by the city treasurer. The application shall contain:

The full name of the applicant;

The business address and telephone number of the applicant;

The full name, residence address and telephone number of every owner, officer, director, partner and manager of the applicant;

A description of the applicant's day labor agency business in any other jurisdiction, including name, address, location and disciplinary history;

The license fee as specified in this chapter and rules and regulations promulgated by the city manager;

Such other information as the city treasurer may require concerning the operation of the applicant's business.

**Sec. 830-7. Requirements to License.**

No applicant shall be eligible for a license under this chapter if the applicant or any of its owners, who owns one-quarter (25%) or more of an interest in the day labor agency, has been convicted within the preceding five years of a misdemeanor involving moral turpitude or dishonesty or convicted within the preceding ten years of a felony. No license shall be issued if the applicant or any of its owners, officers, directors, partners or managers is under the age of eighteen or has been involved, as owner, officer, director, partner or manager of any day labor agency whose license, permit, certificate or any form of authorization to operate a day labor agency has been revoked within the past ten years prior to filing the application.

**Sec. 830-9. Rules and Regulations.**

The city manager, or the manager's designee, is authorized to establish rules, regulations and procedures consistent with the intent of this chapter, and to perform such duties as are necessary and appropriate to the

administration of this chapter. Such rules and regulations shall include, but not be limited to, license and application requirements, application forms, late fees, fines, assignment requirements, revocation, suspension or expiration of license, insurance and bond requirements, chapter enforcement and all other relevant issues as he or she deems necessary for implementation of this chapter. Said rules and regulations may not be inconsistent with the provisions of this chapter or any applicable state or federal law or regulation.

**Sec. 830-11. Operating Standards.**

A day labor agency shall provide adequate seating in the area of the day labor agency where day laborer await referral or transportation to a third party employer. This area shall allow for access to restrooms and water for the day laborers.

The temperature in the area of the day labor agency where day laborers await referral or transportation to a third party employer shall not differ from the temperature of the area reserved for non-day labor employees by more than three degrees fahrenheit.

A day labor agency shall pay a day laborer for each hour the laborer works, or for each hour for which the agency receives compensation from a third party employer in relation to that day laborer, whichever is greater.

A day labor agency or third party employer shall charge no more than a reasonable amount to transport a worker to or from the designated worksite or between worksites, but in no event shall the amount exceed the prevailing rate for public transportation in the geographic area unless otherwise authorized by state or federal law or regulation. Day laborers shall not be required to use the provided transportation to or from a worksite.

No day labor agency or third party employer may charge a day laborer for the use of any item of clothing or equipment that is returnable to the agency or third party employer. No agency or employer may require, as a condition of placing a day laborer with a third party employer, that the laborer purchase or rent from the agency or from the third party employer any item of clothing or equipment, if the employee has in his possession substantially equivalent clothing or equipment.

The day labor agency or third party employer shall provide at no cost to each day laborer any special safety equipment or other items required by law or custom to perform the work assignment unless authorized by state or

federal law. For any other equipment, clothing, accessories, or any other items the day labor agency or third party employer makes available for purchase, the day laborer shall not be charged more than the actual market value for the item unless authorized by state or federal law. In the event that the day laborer negligently fails to return equipment provided for a job, the day labor agency or third party employer is not precluded from charging the day laborer the market value of items temporarily provided to the day laborer. These costs must be disclosed to the day laborer at the time the day laborer applies for placement with a third party employer.

Any motor vehicle that is owned or operated by the day labor agency or third party employer which is used for the transportation of day laborers shall have proof of financial responsibility as provided in applicable state insurance laws and regulations. The motor vehicle shall be operated and equipped in accordance with all applicable local, state and federal laws and regulations. The motor vehicle shall transport any passengers and day laborers in accordance with all applicable local, state and federal laws and regulations.

A day laborer agency must provide a statement to the day laborer at time of dispatch of the day laborer with the following: name and nature of the work to be performed; wages offered; destination of the person employed; terms of transportation; whether a meal and equipment are provided, either by the day labor agency or third party employer, and the cost of the meal and equipment if any.

A day laborer agency shall post in a conspicuous location a sign in English and Spanish describing the rights and obligations of the agency and day laborers under this chapter and notice of any charges to the day laborer for equipment, transportation, clothing, accessories and meals unless otherwise provided by applicable state or federal law. A day labor agency shall post any other signs as required by and in accordance with applicable local, state and federal laws and regulations.

A day labor agency or a third party employer may not charge a day laborer more than the actual cost of a meal actually consumed. Purchase of the meal may not be a condition of employment. A day laborer may not be charged for a meal not consumed.

A day labor agency or a third party employer shall pay wages to day laborers in accordance with all applicable local, state and federal laws and regulations.

A day laborer who is contracted but not utilized by a third party employer shall receive a minimum of 4 hours pay at the agreed-upon rate.

A day labor agency must disclose the risk of exposure to hazardous conditions, chemicals or any other unsafe materials or working condition that requires the use of safety and protective equipment.

A day labor agency shall not directly or indirectly charge a day laborer for cashing a day laborer's paycheck.

**Sec. 830-13. Duty to Retain Records.**

A day labor agency shall create an accurate record of each transaction by which a day laborer was sent to a third party employer. The record shall include:

the date of the transaction;

the name and address, or contact information, if no address is available, of the day laborer;

the name, address and telephone number of the third party employer;

the name and title of the individual at the third party employer's place of business responsible for the transaction;

the type of work to be performed, including a description with specificity of those that pose the risk of exposure to hazardous conditions, chemicals or any other unsafe materials or working condition that requires the use of safety and protective equipment;

any specific qualifications or attributes of a day laborer, requested by the third party employer;

the hourly rate of pay to the day laborer;

the compensation payable by the third party employer to the agency;

the number of hours worked by the day laborer;

detailed deductions from the day laborer's compensation made either by the third party employer or by the day labor agency including, but not limited to, the day laborer's transportation, food, equipment, clothing, withheld income tax and withheld social security payments;

the nature, brand and unit price of any equipment provided to the day laborer for which a

deduction is taken from the laborer's pay; and

any additional information required by the rules and regulations issued by the city manager, or manager's designee.

The day labor agency shall maintain all records under this section for a period of five years from their creation, unless otherwise provided by state or federal law or regulation. The records shall be open to inspection by the city manager, or manager's designee with during normal business hours. An individual day laborer's records shall be available to him within a reasonable amount of time under the circumstances during normal business hours. It is a violation of this chapter to make any false, inaccurate or incomplete entry into any record required, or to delete required information from any such record.

**Sec. 830-15. Day Laborer to Receive Work Ticket.**

A day labor agency shall provide to each day laborer a work ticket every day the day laborer seeks employment at the day labor agency, signed by the manager or comparable employee of the agency. If the day laborer is not placed with a third party employer for that day, the ticket shall include the items described in subsections (a), (b) and (m) of section 830-13 of this chapter, including the time that the day laborer receives the ticket. If the day laborer is placed with a third party employer, the ticket shall include the information described in subsections (a), (b), (d), (f), (h), (l) and (m) of section 830-13 of this chapter, plus the time the day laborer is dispatched to the contract employer and the time of return. If the day laborer returns to the agency at the conclusion of the workday, the agency shall add the items described in subsections (j) and (k) of section 830-13 of this chapter to the ticket. All work tickets are subject to the requirements of this chapter.

**Sec. 830-17. Waiver.**

Any agreement between a day laborer and a day labor agency or third party employer to waive rights and responsibilities under this chapter is void and unenforceable.

**Sec. 830-19. Day Labor Agency, License Fee.**

Any person, or entity operating a day labor agency shall pay an annual license fee of \$250 for each agency operated.

Application for an original license as a day labor agency shall not be considered until the applicant has paid the fee of \$250 which shall not be refunded in whole or part should the applicant be denied a license as a day labor agency or if

a license is issued and thereafter revoked.

**Sec. 830-21. State and Federal Law.**

The provisions of this chapter shall be enforced unless otherwise provided, authorized or prohibited by state or federal law or regulation.

**Sec. 830-99. Penalties.**

Whoever violates any provision of this chapter, shall be subject to a fine of not less than \$200 and not more than \$500 for each offense. Whoever violates any provision of this chapter or any rules or regulations promulgated in accordance with section 830-9 of this chapter shall be subject to suspension or revocation of licensure. Each day's continuation of a violation shall be deemed a separate violation that is subject to the additional fine of \$100 per day.

Section 2. If a section of this ordinance is declared invalid by a court of competent jurisdiction, the remainder of the ordinance shall remain in effect.

Section 3. That this ordinance shall go into effect and be in force from and after the earliest period allowed by law.

Passed: \_\_\_\_\_, 2006

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Mayor

Attest: \_\_\_\_\_

Clerk

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