

SUBSTITUTE NO. 1 TO ORDINANCE NO. 09-062

AN ORDINANCE TO AMEND PART II, CHAPTER 5, ARTICLE II OF THE WILMINGTON CODE RELATING TO BUSINESS LICENSES FOR GENERAL CONTRACTORS, CONSTRUCTION MANAGERS, CONTRACTORS AND SUBCONTRACTORS

Rev.#2
#3255

Sponsor:

Council
Member
Freel

WHEREAS, the Council deems it necessary and appropriate to clarify the responsibilities of contractors, construction managers and subcontractors performing work within the City of Wilmington to acquire and maintain a current City of Wilmington business license; and

WHEREAS, the Council deems it necessary and appropriate to hold general contractors and construction managers accountable for assuring that all vendors of labor and materials on a construction project undertaken within the City of Wilmington who are subject to their direction or supervision have acquired and maintained a current and valid business license at all times relevant to the said construction project; whether such vendors are denominated as contractors, subcontractors or otherwise.

THE COUNCIL OF THE CITY OF WILMINGTON HEREBY

ORDAINS:

SECTION 1. Wilmington Code, Part II, Chapter 5, Article II, is amended by adding the underlined language and a new section 5-76 to read as follows:

Sec. 5-76. General contractor and construction manager liability; failure to identify and report contractors and subcontractors; effect on request for final inspection.

- (a) Each general contractor, construction manager, contractor and subcontractor that provides services, labor and/or materials on any construction project that is undertaken within the city of Wilmington must have a business license as provided in this chapter. Each individual working on a construction project within

the jurisdictional limits of the city of Wilmington must either be an employee of a business licensed to do business within the city of Wilmington or an independent contractor that is licensed to do business within the city of Wilmington,

- (b) Each general contractor, construction manager, or both, on any such construction project shall post and maintain for inspection a contractor and subcontractor's roster card on a form to be supplied by the city of Wilmington. This roster card shall be at the on-site construction trailer or some other prominent place on the construction site where it can be readily accessed and reviewed by inspectors of the city of Wilmington.
- (c) No general contractor, construction manager, contractor or subcontractor may commence work on any construction project unless and until it is identified on the roster card and all required information respecting such general contractor, construction manager, contractor or subcontractor is reported thereon. Failure to comply with the provisions of this subsection shall result in the assessment of fines as provided hereinafter in subsections (f), (g) and (i) of this section.
- (d) The roster card shall list the business name, city of Wilmington business license number, business address, business phone number and general scope of work of each general contractor, construction manager, contractor and subcontractor providing services, labor and/or materials on the construction project and such other information as may reasonably be required by the department of finance of the city of Wilmington.
- (e) No final inspection shall be conducted by the department of licenses and inspections of the city of Wilmington unless and until a certification on a form to be provided by the department of finance is received by the department of finance from the general contractor or construction manager on the construction project. The certification shall be submitted to the department of finance and shall be completed by the general contractor or construction manager responsible for obtaining the building permit for the construction project pursuant to Wilmington Code, Chapter 4, Subchapter 2. The certification shall be attached to the fully completed roster card and shall affirm under penalty of perjury that all information provided in the roster card is true and correct and that at all times relevant to the performance on or participation of the general contractor, construction manager, contractor or subcontractor, each such general contractor, construction manager, contractor or subcontractor obtained and kept in force a valid and

current city of Wilmington business license. The department of finance shall promptly notify the department of licenses and inspections of the city of Wilmington that it is in receipt of any such properly completed and submitted certification.

- (f) Any violation of subsections (b) through (e) of this section in which a general contractor, construction manager, contractor or subcontractor is neither timely disclosed on the roster card at the time of inspection by the department of finance nor otherwise has obtained and kept in force a city of Wilmington business license at all times relevant to its performance on or participation in the subject construction project shall result in the assessment of a civil administrative penalty by the department of finance in the amount of \$1,500.00 per day. The civil administrative penalty shall be assessed by the director of finance of the city of Wilmington against the general contractor and construction manager on the construction project, jointly and severally.
- (g) Any violation of subsections (b) through (e) of this section in which a general contractor, construction manager, contractor or subcontractor is not timely disclosed on the roster card at the time of the inspection by the department of finance but has obtained and kept in force a city of Wilmington business license at all times relevant to its performance on or participation in the subject construction project shall result in the assessment of a civil administrative penalty by the department of finance in an amount not to exceed \$250.00 for a first offense in the 24 month period next preceding the date of the violation and an amount not to exceed \$350.00 for a second or subsequent offense within the 24 month period next preceding the date of the violation.
- (h) Any civil administrative penalty assessed by the department of finance under subsections (f) through (g) of this section may be subject to suspension or abatement in whole or part in the discretion of the director of finance upon good cause shown.
- (i) If following issuance of a certificate of occupancy or certificate of compliance by the department of licenses and inspections for the construction project, it is determined by the department of finance that one or more general contractors, construction managers, contractors or subcontractors were not disclosed in the certification and roster card required to be filed with the department of finance as a condition precedent to the request for final inspection and issuance of the certificate of occupancy or certificate of compliance, then a civil administrative penalty shall be assessed by the department of finance against the construction manager and general contractor,

jointly and severally, in an amount not to exceed ten (10) percent of all sums paid to the general contractor, the construction manager, or any contractor or subcontractor that was omitted from disclosure in the required certification and accompanying roster card as provided in subsection (e) of this section.

- (j) Any civil administrative penalty assessed by the department of finance under subsection (i) of this section may be subject to suspension or abatement in whole or part in the discretion of the director of finance upon good cause shown.
- (k) The civil administrative penalties authorized by this section shall be cumulative and shall be imposed in addition to all other penalties for other violations under this section and this Code.
- (l) It shall be unnecessary to prove the state of mind of the general contractor, construction manager, or contractor or subcontractor with respect to any violation of the duties imposed by this section.
- (m) An aggrieved party against whom a civil administrative penalty has been assessed for a violation under this section may protest the assessment to the director of finance within 30 days of notice of the violation. The protest must be in writing and state the grounds supporting the protest. In the absence of a protest filed with the department of finance within thirty (30) days of the date of delivery of a notice of a violation under this section, the assessment of a violation under this section shall become a final determination of the violation.
- (n) The director of finance shall issue a final determination regarding any timely filed protest of an assessment under this section within sixty (60) days of filing of the protest. If a final determination of a protest does not issue by the director of finance within sixty (60) days of filing of the protest, then the assessment shall be deemed final.
- (o) Any final determination of an assessment under subsections (m) through (n) of this section, may be appealed to a court of competent jurisdiction, provided, however, that any such appeal must be filed within twenty (20) days of the date of final determination or thereafter an appeal of the final determination of a violation shall be deemed time-barred.
- (p) Any subcontractor who hires another subcontractor to assist it with performance of its duties under any agreement with any general contractor, construction manager, contractor or subcontractor on

any construction project to be undertaken within the city of Wilmington shall for purposes of this section be deemed a general contractor with respect to that subcontractor.

- (q) The provisions of this section shall apply to those construction projects for which a construction permit is obtained or required to be obtained in accordance with the requirements of Chapter 4, subchapter 2 of the Wilmington Code, provided, however, that any general contractor, construction manager, contractor or subcontractor on a construction project for which a construction permit was obtained or required to be obtained on or before December 31, 2009 and for which a final inspection has not been completed by the department of licenses and inspections on or before January 1, 2010 shall not be subject to an assessment of any civil administrative penalty under this section for noncompliance with the provisions of this section until the earlier either of March 31, 2010 or the transmittal of the certification and roster card required under subsection (e) of this section.
- (r) No assessment on any violation of this section may be issued and no enforcement action in any court of competent jurisdiction on any initial or final determination of any such assessment may be commenced by the department of finance of the city of Wilmington after the expiration of two (2) years dating from the later of the date of issuance of the certificate of compliance or the certificate of occupancy on the construction project on which the violation occurred.

SECTION 2. Effective date. This Ordinance shall be deemed to be effective as of January 1, 2010 following its date of passage by the Council and approval by the Mayor.

First ReadingOctober 15, 2009
Second ReadingOctober 15, 2009
Third ReadingNovember 19, 2009

Passed by City Council,
November 19, 2009

Norman D. Griffiths
President of City Council 11/19/09

ATTEST: Maribel Ruiz
City Clerk

Approved as to form this 16th
day of November, 2009

John E. Mair
City Solicitor

Approved this 16th day of Nov, 2009

J. M. Baker
Mayor

SYNOPSIS: This Ordinance amends Chapter 5, Article II of the Wilmington City Code by adding a new § 5-76 (general contractor and construction manager liability; failure to identify and report contractors and subcontractors' effect on request for final inspection). This Ordinance is effective as of January 1, 2010, following its date of passage by Council and approval by the Mayor.