

DATE: October 24, 2006

STAFF: Steve Roy
Diane Jones
Jenny Lopez Filkins

**WORK SESSION ITEM
FORT COLLINS CITY COUNCIL**

SUBJECT FOR DISCUSSION

Implementation of New State Immigration Laws.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

This item discusses the City's efforts to comply with several new state laws which govern the ways in which the City is to deal with persons who may have entered the country illegally. It also discusses the pros, cons and potential costs of adopting a local ordinance on the same subject.

1. Does Council have any concerns or direction with regard to staff's implementation of the new state immigration laws?
2. Should staff proceed with preparation of a local ordinance that would impose additional local sanctions upon any City contractors or subcontractors who employ illegal aliens to perform work for the City?

BACKGROUND

Three new laws dealing with the immigration status of persons who come into contact with the City in various capacities have been enacted by the State legislature. (Two other new immigration laws are not addressed here because one applies only to State agencies and the other, which pertains to verifying the status of City employees, is preempted by federal law and the City is in compliance with the federal law.)

- SB-90 imposes reporting requirements on the City Council and on Police Services with regard to persons arrested for crimes who are believed to be in the country illegally.
- HB 06-1023 requires the City to verify the legal status of all individual persons over the age of 18 before providing such persons with certain "local public benefits."
- HB 06-1343 requires the City to ensure that illegal immigrants are not allowed to perform work on any of its contracts for services.

In addition, staff has been directed by the Council, at the request of Councilmember Ohlsen, to provide feedback with regard to the pros, cons and potential costs of a local ordinance that would impose more stringent requirements than the new state laws on City contractors and subcontractors.

THE NEW STATE LAWS

SB-90 (Effective May 1, 2006). Persons Contacted by Police AgenciesRequirements

- a. Each local government must inform its police force, in writing, that they must cooperate with federal officials regarding immigration enforcement; must provide the General Assembly with written confirmation that it has so informed its police force; and must annually provide the General Assembly with the number of referrals the police officers made to the United States Immigration and Customs Enforcement ("ICE").
- b. Officers are required to notify ICE of all persons arrested for a crime (as opposed to traffic offenses) that the officer has probable cause to believe may be in the country illegally. If the person is held in a detention facility, then the sheriff is to make the referral. The bill also requires that on domestic violence cases, ICE is not to be notified until a conviction has entered.
- c. Local governments may not pass any ordinance or policy that would limit or prohibit a peace officer, local official or local government employee from communicating or cooperating with federal officials with regard to the immigration status of a person within the state.

SB-90 does not create any specific penalty against a state agency or local government for not requiring the specified forms of identification. The Attorney General's Office has opined that, under existing law, a person with standing could sue the state agency or local government and receive a court order compelling compliance with the law.

HB 06-1023 (Effective August 1, 2006) Persons Who Receive Public Benefits From the CityRequirements

All municipalities must obtain proof from individual persons 18 eighteen years of age or older of their lawful presence in the United States before providing such persons with certain "local public benefits." The definition of "local public benefits" is derived from a federal statute and can be broken down into two categories:

- a. any grant, contract, loan, professional license (e.g., electrician contractor's license), commercial license (e.g., commercial liquor license) provided by the City of Fort Collins or by appropriated funds of our government; and
- b. any retirement, welfare, health, disability, public or assisted housing, post secondary education, food assistance, unemployment benefit, or any other similar benefit.

If City funds have been appropriated, even where the City is not the entity actually distributing the funds, and if the ultimate recipient is an individual person, household or family unit, this law applies. Certain exceptions to the local public benefits definition are contained in the bill, such as health care

items and services that are necessary for the treatment of an emergency medical condition; disaster relief; public health assistance for immunizations and testing and treatment of communicable diseases; for programs, services or assistance such as soup kitchens, crisis counseling and intervention, and short term shelter and which are not conditioned upon the individual recipient's income or resources. (See Attachment 1 for a list of the types of "local public benefits" to which this law applies.)

The verification process requires the City to ask any individual applying for a "local public benefit" to: (a) produce a valid Colorado driver's license or a Colorado identification card, a U.S. military card or military dependent's identification card, or a U.S. Coast Guard merchant mariner card; or a Native American tribal document; and (b) execute an affidavit stating that he or she is a U.S. citizen or legal permanent resident or that he or she is otherwise lawfully present in the U.S. pursuant to federal law.

If an individual indicates on the affidavit that he or she is an alien lawfully present in the U.S., the City must verify that individual's lawful presence through the Federal Systematic Alien Verification of Entitlement Program, the "SAVE" program maintained by the Department of Homeland Security.

Again, this bill does not create any specific penalty against a state agency or local government for not requiring the specified forms of identification. The Attorney General's Office has opined that, under existing law, a person with standing could sue the state agency or local government and receive a court order compelling compliance with the law.

HB 06-1343 (Effective August 7, 2006) Persons Contracting With the City

Requirements

- a. All state agencies and political subdivisions must take certain measures to ensure that illegal aliens are not allowed to perform work on public contracts for services. The City may not enter into or renew a public contract for services with a contractor who knowingly employs or contracts with an illegal alien to perform work under the contract, or who knowingly contracts with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract. A contract for services is defined as the furnishing of labor, time, or effort by a contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.
- b. Before executing a public contract for services, a contractor must certify that it does not knowingly employ or contract with an illegal alien and has participated or attempted to participate in the "Basic Pilot Program"¹ in order to verify that it does not employ any illegal aliens.
- c. Contracts for services must include a number of provisions that are spelled out in the Bill, relating to the requirement that the contractor did not knowingly employ illegal aliens, and that it has participated in the pilot program or will continue to apply to participate every three months.

¹The Basic Pilot Program is also a web-based program, maintained by the Department of Homeland Security. The Pilot Program allows employers to confirm the employment eligibility of all newly hired employees.

Violation by the contractor of any of these mandatory provisions can be grounds for termination of the contract, but termination is not required. The Secretary of State must be notified if the City terminates a contract because of a violation of one of the required contract provisions or if a court finds there was not a breach of one of the mandatory provisions. The Secretary of State will maintain for two years a list of contractors and the political subdivisions that terminated a public contract for services due to violation of this statute, as well as the date of termination.

CITY COMPLIANCE EFFORTS

The City Attorney's Office has spent considerable time analyzing and interpreting the language of the new state law. Several ambiguities in the new laws have made this a substantial undertaking, not only for the City but for all state and local governments and agencies affected by the laws. Advisory opinions, guidelines and "emergency rules" have been issued by various state offices and agencies, including the State Attorney General's Office, the State Office of Legislative Affairs, the State Controller, and the Executive Director of the Colorado Department of Revenue. In addition, the Colorado Municipal League has been actively involved in providing information and advice with regard to the new laws, including a recent attorney's forum on the subject. Having received that input and conducted its own research and analysis of the three new laws, the City Attorney's Office has provided management staff with guidelines for implementation, and management is in the process of implementing compliance with the laws and is developing a system for monitoring ongoing compliance.

Compliance with SB-90

On August 15, 2006 Council passed a resolution to inform Police Services that the department must cooperate with federal officials regarding immigration enforcement. The State Division of Local Affairs (DOLA) representative has been notified that the resolution has been passed, and it will be circulated by Police Services as part of the training bulletin regarding the other requirements of SB-90.

SB-90 also requires that Council provide the General Assembly with the number of referrals to ICE that the police have made during the past year. The Records Division of FCPS has made the changes necessary to track such referrals and will be able to pull that data at year end for Council to report to the General Assembly. Police Services and the City Attorney's Office are finishing up the training bulletin to guide officers on how to determine that probable cause exists to believe a person is in the country illegally so that the names of such persons may be submitted to ICE. The victim's advocate coordinator for the District Attorney's Office will work with that office regarding disposition of domestic violence cases and referrals to ICE.

Compliance with HB-1023

With HB-1023, the primary task has been to try to understand the meaning of the term "local public benefit" as applied to City operations. That has entailed identifying and analyzing which City programs, contracts and licenses entail the kinds of benefits that are governed by 1023. Over fifty such programs, contracts and licenses have been identified. The most recent list of those is attached. Thus, each year thousands of applicants will need to be screened to see if they are legally in this country.

The process for verifying the legal status of applicants under 1023 involves asking each individual applying for a "local public benefit" to: (a) produce either a valid Colorado driver's license or a Colorado identification card; a U.S. military card or military dependent's identification card; a U.S. Coast Guard merchant mariner card; or a Native American tribal document; and (b) execute an affidavit stating that he or she is a U.S. citizen or legal permanent resident or that he or she is otherwise lawfully present in the U.S. pursuant to federal law.

The mandates of 1023 are being met in several departments of the City, but the process of implementing compliance in other departments, which requires extensive education and training of City staff, is ongoing. In order to facilitate compliance, a flowchart has been developed which explains the 1023 verification process. A copy of the flowchart is also attached.

Compliance with HB-1343

Compliance with 1343 is a more centralized effort, although, depending upon the way in which 1343 is ultimately interpreted and implemented by the City, it, too, may entail the training of City personnel on an organization-wide basis. As noted above, 1343 essentially requires the City to include in any contracts for services a provision stating that the contractor will not knowingly employ or contract with an illegal alien to perform work under the contract. Several other related provisions must also be included in the contracts governed by 1343. The law also imposes certain requirements on the contractors to verify the status of its employees. If a contractor violates a contract provision required under 1343, the City may terminate the contract, in which case the contractor is liable for any damages that the City may sustain as a result of having to terminate the contract. Monitoring a contractor's compliance with 1343 is discretionary, and the City's intended practice will be to check on compliance only if a complaint is received.

The main question of interpretation in 1343 has to do with the statutory definition of the term "contract for services." Under 1343 "services" means "the furnishing of labor, time, or effort by a contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance." Surprisingly, the State Controller has interpreted the term "services" to include construction contracts. The City has not adopted that interpretation since it seems apparent that construction contracts involve the delivery of a "specific end product," namely, the improvements to be constructed pursuant to the contract.

Because 1343 deals with the form of contracts awarded by the City, the burden of compliance falls primarily on the City's Purchasing Department. However, if 1343 applies to purchase orders--and even to so-called "mini-orders" (purchase orders for materials or supplies costing \$2,000 or less)--then almost every department in the City will be affected, and personnel in each department will need to be trained with regard to the requirements of 1343. This is because City departments are authorized to issue mini-orders without involving the Purchasing Department. The City issues approximately 15,000 mini orders and approximately 7,000 purchase orders per year.

COSTS OF COMPLIANCE

City staff is continuing to gather the estimated costs of complying with these new laws. To date, the following initial costs have been identified. They do not include any staff time expended to date in coming to grips with the interpretation and application of the laws. They do include cost estimates for revising terms and procedures, carrying out compliance actions, and for monitoring compliance.

The breakdown of projected costs is as follows:

- a. Finance.....\$ 22,710
 - Revising forms for the grocery tax rebate program
 - Processing purchase orders and contracts
 - Reviewing sales tax licenses

- b. Utilities \$ 38,081
 - Revising rebate and payment assistance program forms
 - Designing and using an application form for all utility services requiring an affidavit
 - Hiring and training a customer service representative for peak periods
 - Records management and retention of applications
 - Verifying work orders from developers, builders, homeowners, electricians

- c. Transportation \$ 5,000
 - Verifying Dial-a-Ride eligibility

- d. Community Planning and Environmental Services..... \$ 80,127
 - Verifying applicants for CDBG and HOME
 - Verifying applicants for Home Buyer Assistance Program
 - Verifying participants for the Landmark Rehabilitation Program
 - Verifying applicants for Natural Areas Enhancement grants
 - Verifying applicants for the ZILCH program
 - Verifying applicants for the HomeRun GED Program
 - Verifying participants in the Community Mediation Program

- e. Monitoring Compliance for the Entire Organization..... \$ 35,081
 - For a half-time person to check and assist with ongoing compliance actions and training throughout the entire organization

In addition to gathering cost estimates to comply with these new State laws, staff has identified a number of related questions and concerns regarding compliance:

1. Reports from some purchasing cooperative agencies is that some out-of-state firms are refusing to sign contracts containing language related to hiring of illegal aliens because the states in which they are located do not have this statute requirement. The result may be that we get fewer bid responses and/or a firm balks at signing a contract when we try to award it to them.
2. HB 1343 clauses are delaying turnaround time for contracts and renewals for vendors' legal departments to review the new clauses.
3. The added requirements may result in fewer applicants for rebates—this year about 50% of the applications for the grocery tax rebate were incomplete.
4. Decreased participation in programs designed to meet City goals (ZILCH Loan program, Lawnmower Rebate program, Payment Assistance Fund)
5. More people doing business in person—waste of citizens' time and gas money; inefficiencies grow (example--90% of Home Occupation Licensing is done by mail)

UNFUNDED MANDATE

One important issue staff has identified that could potentially affect both the costs of compliance with these laws and the way in which the City decides to implement them is whether the new immigration laws constitute an "unfunded state mandate." Section 29-1-304.5 CRS states that "No new state mandate... shall be mandated by the general assembly... on any local government unless the state provides additional moneys to reimburse such local government for the costs of such new state mandate.... In the event that such additional moneys for reimbursement are not provided, such mandate... shall be optional on the part of the local government." The statute goes on to define "state mandate" as "any legal requirement established by statutory provisions... which requires any local government to undertake a specific activity... including, but not limited to:... program mandates which result from orders or conditions specified by the state as to what activity shall be performed... and procedural mandates which regulate and direct the behavior of any local government in providing programs or services, including, but not limited to, reporting... record-keeping and performance requirements."

Staff believes that the new immigration laws may fall within this statutory definition of an unfunded state mandate and that compliance with the laws may therefore be optional on the part of the City. If that position is correct, it is up to the Council and the City Manager to determine the extent to which it is in the best interests of the City to expend local public funds to comply with the laws. In their compliance efforts to date, staff has been attempting to make judgment calls about the application of the laws, taking into consideration the unfunded mandate issue, and they have tried to balance the cost and administrative burden of extending the reporting and verification requirements to situations that are arguably within the scope of the laws, such as "contracts" between the City and each Utility customer, and mini-orders.

Staff needs direction from Council as to whether compliance efforts are headed in the right direction.

POSSIBLE LOCAL ORDINANCE

The second issue to be addressed by Council in the work session is whether there is support for preparing a local ordinance dealing with the immigration status of those who enter into contracts with the City. As noted above, both HB-1023 and HB-1343 deal with that subject. However, 1023 focuses on the immigration status of those individuals over 18 years of age who apply for contracts with the City. It does not speak to the question of whether those persons, if awarded a contract, employ illegal aliens in the performance of any work required under the contract, nor does it apply to contracts awarded to business entities rather than individuals.

HB-1343 does speak to the employment of illegal aliens by City contractors, but it does not apply to contracts other than service contracts or to subcontractors. It essentially requires only that contractors check the immigration status of their employees and not knowingly employ illegal aliens. And the penalty for noncompliance with 1343 is limited to the possible invalidation of contracts and barring offending contractors from future contracts for a period of time.

A local ordinance could impose more stringent requirements on City contractors and subcontractors. For example, it could prohibit the employment of illegal aliens by either a contractor or subcontractor, require that the most reliable forms of identification be used to verify the status of all employees, and impose criminal penalties on contractors or subcontractors who violate the

provisions of the ordinance.

In reviewing the pros, cons and potential costs of such an ordinance, staff has noted the following.

Possible Local Ordinance: Some Pros and Cons

Pros

- Provides public benefit programs for tax paying citizens
- Supports state laws enacted by elected representatives
- Deters employment of illegal aliens on City projects

Cons

- A broader scope of a new ordinance than the current State law may make enforcement more time-consuming and costly to the City.
- National and international firms and individuals (national and international performers, for example) may decline to do business with the City. Local firms may also decide that the requirement is too onerous and decline to do business with the City.
- Currently, many items the City purchases, e.g., materials and equipment for utility services, are escalating in cost and lead time stretch to a year. Additional requirements will exacerbate this problem.
- Prices are likely to increase as firms decide to pass on the cost of complying with the new ordinance to the City.

Given the potential costs and benefits of a local ordinance on this subject, staff is seeking direction from Council as to whether such an ordinance is to be drafted for formal Council consideration.

ATTACHMENTS

1. List of "Local Public Benefits" Provided by City of Fort Collins, Preliminary Draft.
2. Flow Chart Determining Applicability of HB06S-1023 to City Services and Programs.
3. Unfunded State Mandate Law.
4. PowerPoint Presentation.

**LIST OF “LOCAL PUBLIC BENEFITS”
PROVIDED BY CITY OF FORT COLLINS
PRELIMINARY DRAFT**

A. Utilities (many of these have online applications)-

1. Integrated Design Assistance Program (IDAP)
2. Clothes washer \$50 rebate program
3. Zero Interest Loans for Conservation Help (ZILCH)
4. Air Conditioning/Cooling rebate program (with Platte River)
5. Reach (Free Weatherization service for customers meeting income guidelines)
6. Energy Efficiency Program (EEP) *Cash Incentives for Energy-Saving Improvements for Commercial Customers*
7. Payment Assistance Fund (Funds for this program are donated by Utilities customers and appropriated by the City. Catholic Charities Northern Colorado administers the program.)
8. Rebates for senior or disabled citizens – this program is administered by the City Finance department.
9. Mesa College scholarship
10. Refrigerator Recycling Program – cash incentives for recycling refrigerators/freezers
11. Residential Lighting Program – discounts for the purchase of energy efficient lighting
12. HotShot rebates for hot water heaters
13. Residential parallel generation PILOT – limited to 25 residents and terminates at the end of 2009.
14. Photovoltaic demonstration project – net metering program for parallel generation

B. Natural Areas-

Natural Areas Enhancement Fund

C. Finance-

1. Rebate of sales tax paid on food (~1,500 apply annually for the grocery sales tax and rent rebate programs)
2. Property tax or rent rebate program
3. Amusement devices and places license
4. Public auction license
5. Special sales license
6. Pawnbrokers license
7. Places of entertainment license
8. Secondhand dealers license
9. Outdoor vendors license
10. Solid waste collection and recycling services license
11. Sales tax license

D. Building and Zoning-

1. Alarm business permit (and renewal of same)
2. Special contractor alarm license (and renewal of same)
3. Certificate of compliance for alarm systems

4. Contractors license (and renewal of same)
5. Electrical contractors license
6. Plumbing contractors license
7. Home occupation license

E. City Engineer-

Right-of-way contractors license

F. City Clerk-

All types of commercial liquor licenses (and renewal of same)

G. City Forester-

1. Arborist license for tree services
2. Loan for costs of tree removal required by City Forester

H. Parks and Recreation-

1. Reduction or waiver of fees for recreation programs/usage of facilities (~1,400 households equating to 4,400 individuals applying for reduction or waiver of these fees on an annual basis)
2. Reduction by 50% of annual golf pass

I. CDBG grant funds programs-

1. Public housing
2. HOME program
3. Others are identified in a spreadsheet which is attached as Exhibit A.

J. Transportation-

Dial-a-Ride services

K. Neighborhood Services

1. "Neighbor" grants
2. HomeRun GED program
3. Community Mediation Program—volunteer mediators apply to receive training which the City pays for at a much-reduced cost

L. Library

Homebound delivery program

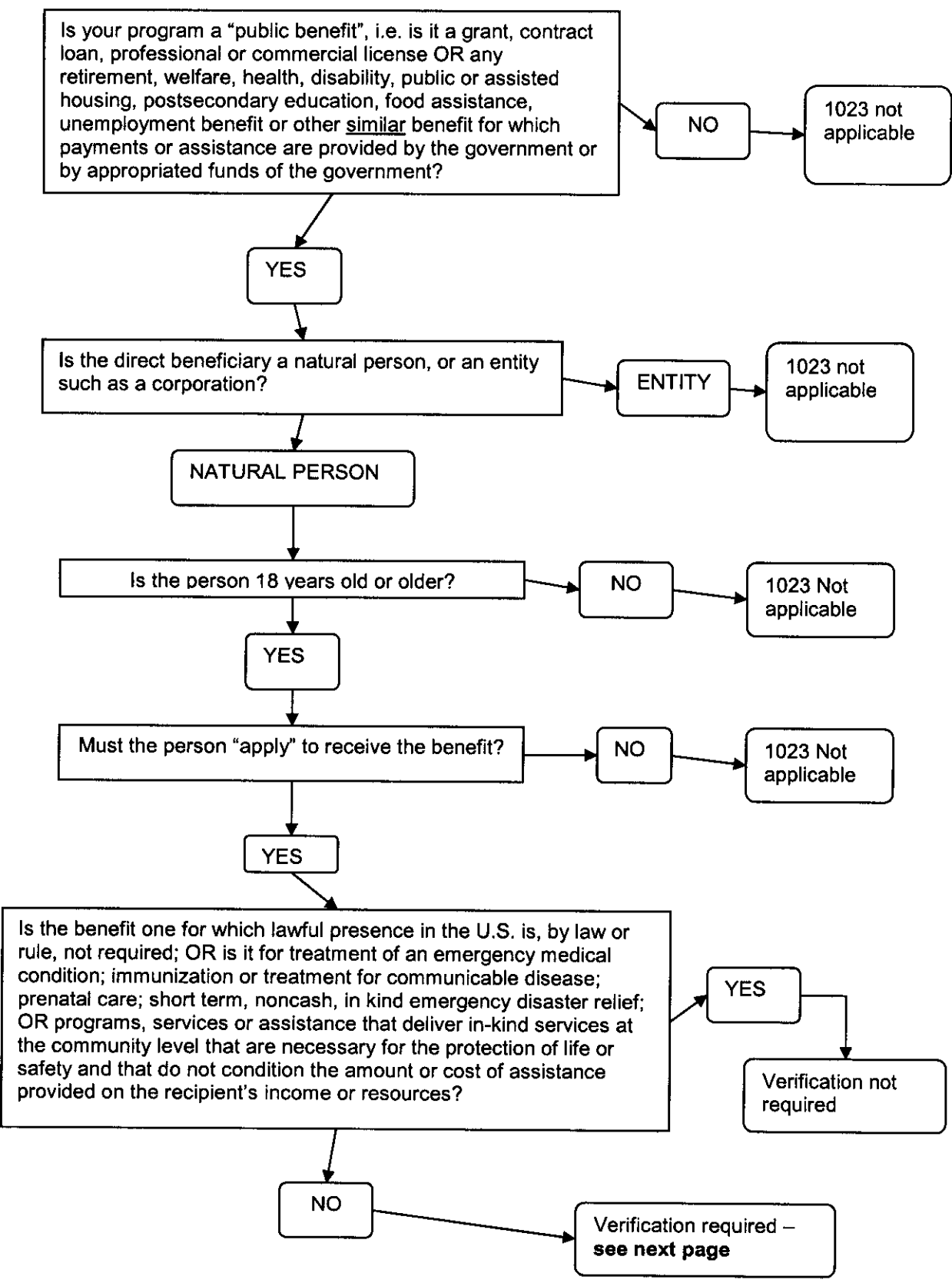
Exhibit A
2006 City of Fort Collins Competitive Process
Public Service Funding: HB 1023 Compliance
(Compiled: 8/06)

*CDBG = Community Development Block Grant Funding
HSP = Human Services Program Funding

Agency	Funding Amount	Funding Source*/Project	# of Clients Served w \$	HB 1023 Not Exempt	HB1023 Exempt	Notes
Springfield Court – Scholarship	\$ 18,000	CDBG/Childcare	30		X	Child under 18.
Springfield Court – CO Preschool	\$ 10,400	CDBG/Childcare	8		X	Child under 18.
BASE Camp	\$ 33,815	CDBG/Childcare	120		X	Child under 18.
RVNA	\$ 25,000	HSP/Healthcare	37	X		
Elderhaus	\$ 16,920	HSP/Elderly-disabled daycare	45	X		
Education Life Training Center (ELTC)	\$ 20,000	CDBG/Job Training	175	X		
Project Self-Sufficiency (PSS)	\$ 18,000	CDBG/Self-sufficiency	60	X		
UW - HPI	\$ 35,000	HSP/Rent assistance	412	X		
VOA	\$ 14,600	HSP/Elderly meals	64	X		
N2N – Housing Counseling	\$ 58,599	HSP/Housing counseling	3110	X		
N2N – Rent Assistance	\$ 15,000	HSP/Rent assistance	660	X		

Agency	Funding Amount	Funding Source/Project	# of Clients Served w \$	HB 1023 Not Exempt	HB1023 Exempt	Notes
NCAP	\$ 19,000	HSP \$ 16,409 CDBG \$ 2,591 HIV/AIDs: Case management – emergency assistance	149	X		
CCN Shelter	\$ 42,158	CDBG/Emergency shelter	800		X	
Respite	\$ 20,000	CDBG/Disabled: respite care	25	X		
Food Bank	\$ 15,472	HSP/Children: food	869		X	Child under 18
UDCC	\$ 60,500	HSP/Childcare	53		X	Child under 18.
Crossroads	\$36,400	HSP/Domestic violence advocacy	1230		X	
WRC	\$18,098	HSP: Healthcare	200	X		

Determining Applicability of HB06S-1023 to City Services and Programs



CAO
9/25/06

nce

1. Persons for whom verification is required must verify their lawful presence in the United States by doing BOTH of the following:

(a) producing one of these documents:

- (1) a valid Colorado driver's license
- (2) a valid Colorado identification card
- (3) a United States military card or military dependent's ID card
- (4) A United States Coast Guard Merchant Mariner's Card
- (5) A Native American tribal document

AND

(b) Executing an affidavit stating that he or she is a U.S. citizen or legal permanent resident; OR that he or she is otherwise lawfully present in the U.S. pursuant to federal law.

2. If a person's affidavit states that he or she is an alien lawfully present in the U.S., this must be verified through the federal Systematic Alien Verification of Entitlement or "SAVE" program. The affidavit is presumed to be proof of lawful presence until that verification is made.

Westlaw.

CO ST § 29-1-304.5
C.R.S.A. § 29-1-304.5

Page 1

CWest's Colorado Revised Statutes Annotated Currentness

Title 29. Government--Local

General Provisions

▣ Article 1. Budget and Services

▣ Part 3. Annual Levy--Increase or Reduction--Limitation

→ § 29-1-304.5. State mandates--prohibition--exception

(1) No new state mandate or an increase in the level of service for an existing state mandate beyond the existing level of service required by law shall be mandated by the general assembly or any state agency on any local government unless the state provides additional moneys to reimburse such local government for the costs of such new state mandate or such increased level of service. In the event that such additional moneys for reimbursement are not provided, such mandate or increased level of service for an existing state mandate shall be optional on the part of the local government.

(2) The provisions of subsection (1) of this section shall not apply to:

(a) Any new state mandate or any increase in the level of service for an existing state mandate beyond the existing level of service which is the result of any requirement of federal law;

(b) Any new state mandate or any increase in the level of service for an existing state mandate beyond the existing level of service which is the result of any requirement of a final state or federal court order;

(c) Any modification in the share of school districts for financing the state public school system;

(d) Any new state mandate or any increase in the level of service for an existing state mandate beyond the existing level or service which is the result of any state law enacted prior to the second regular session of the fifty-eighth general assembly or any rule or regulation promulgated thereunder;

(e) Any new state mandate or any increase in the level of service for an existing state mandate beyond the existing level of service which is undertaken at the option of a local government which results in additional requirements or standards; and

(f) Any order from the state board of education pertaining to the establishment, operation, or funding of a charter school or any modification of the statutory or regulatory responsibilities of school districts pertaining to charter schools.

(3) For purposes of this section:

(a) "Increase in the level of service for an existing state mandate" does not include any increase in expenditures necessary to offset an increase in costs to provide such service due to inflation or any increase in the number of recipients of such service unless such increase results from any requirement of law which either enlarges an existing class of recipients or adds a new class of recipients.

(b) "Local government" means any county, city and county, city, or town, whether home rule or statutory, or any school district, special district, authority, or other political subdivision of the state.

(c) "Requirement of federal law" means any federal law, rule, regulation, executive order, guideline, standard, or other federal action which has the force and effect of law and which either requires the state to take action or does not directly require the state to take action but will, according to federal law, result in the loss of federal funds if state action is not taken to comply with such federal action.

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(d) "State mandate" means any legal requirement established by statutory provision or administrative rule or regulation which requires any local government to undertake a specific activity or to provide a specific service which satisfies minimum state standards, including, but not limited to:

(I) Program mandates which result from orders or conditions specified by the state as to what activity shall be performed, the quality of the program, or the quantity of services to be provided; and

(II) Procedural mandates which regulate and direct the behavior of any local government in providing programs or services, including, but not limited to, reporting, fiscal, personnel, planning and evaluation, record-keeping, and performance requirements.

CREDIT(S)

Added by Laws 1991, H.B.91-1262, § 3, eff. June 7, 1991. Amended by Laws 2004, Ch. 357, § 23, eff. June 3, 2004.


HISTORICAL AND STATUTORY NOTES

2006 Electronic Pocket Part Update

This section is reprinted to conform to the state edition.

LIBRARY REFERENCES

2002 Main Volume

States  111.
Westlaw Topic No. 360.
C.J.S. States § § 194 to 195.

C. R. S. A. § 29-1-304.5, CO ST § 29-1-304.5

Current through the end of the 2006 First Extraordinary Session of the Sixty-Fifth General Assembly (2006)

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END OF DOCUMENT

DISCUSSION OF STATE IMMIGRATION LAW AND POTENTIAL LOCAL ORDINANCE

City of Fort Collins
City Council Work Session
October 24, 2006

Direction Sought

- Does Council have any concerns or direction with regard to staff's implementation of the new state immigration laws?
- Should staff proceed with preparation of a local ordinance that would impose additional local sanctions upon City contractors or subcontractors?

State Immigration Laws

- SB-90 imposes reporting requirements on the City Council and on Police Services with regard to persons arrested for crimes who are believed to be in the country illegally.
- HB 06-1023 requires the City to verify the legal status of all individual persons over the age of 18 who apply for certain “local public benefits”.

State Immigration Laws

- HB 06-1343 requires the City to include language in our service contracts which requires verification from the vendor that that illegal immigrants are not allowed to perform work on any of its contracts for services.

SB-90
**Persons Contacted by Police
Agencies**

- Effective May 1, 2006
- Each local government must inform its police force in writing.
- Requires reporting to General Assembly.
- Requires Officers to notify ICE of all persons arrested whom the officer has probable cause to believe may be in the country illegally.

SB-90
**Persons Contacted by Police
Agencies**

- Local governments may not pass any ordinance or policy that would limit this communication or cooperation.
- Does not create any specific penalty for not requiring the specific forms of identification.

HB06-1023

Persons who apply to receive public benefits from the City

- Effective August 1, 2006
- Requires proof from individual persons 18 or older of lawful presence in the United States.

HB06-1023

Persons who receive public benefits from the City

- "local public benefit" is derived from federal statute:
 - Any grant, contract, loan, professional license (e.g., electrician contractor's license), provided by the City, or by appropriated funds of our government; and
 - Any retirement, welfare, health, disability, public or assisted housing, post secondary education, food assistance, unemployment benefit, or any similar benefit.

HB06-1343

Persons contracting with the City

- Effective August 7, 2006
- All state agencies and political subdivisions must take certain measures to ensure that illegal aliens are not allowed to perform work on public contracts for **services**.

HB06-1343

Persons contracting with the City

- Contractor must certify that it does not knowingly employ or contract with illegal alien.
- Attempt to participate in the “Basic Pilot Program” – Federal immigration status verification program.

HB06-1343

Persons contracting with the City

- Contracts for **services** must include specific provisions.
- Violation by contract can be grounds for termination.
- City must notify Secretary of State of contracts terminated because of violation.
- Secretary of State maintains a list of violations and termination dates for two years.

City Compliance Efforts

- City Attorney's Office staff time to analyze and interpret.
- City staff time to learn what the laws require, determine the costs involved, train those responsible for carrying out actions required by laws and continue to monitor compliance.

City Compliance Efforts HB-90

- Council adopted resolution to inform Police Services of the law and required cooperation.
- Records Division of FCPS has made changes to track information that must be reported to the State.

City Compliance Efforts HB-1023

- Identification of City operations offering "local public benefit."
 - Over 50 City programs.
 - Thousands of applicants
- Individuals must:
 - Produce a valid Colorado Drivers license, or a Colorado identification card; a U.S. military or dependent identification card, a U.S. Coast Guard merchant mariner card; or a Native American tribal document.
- Several departments are meeting the requirements and other efforts are ongoing.

City Compliance Efforts HB-1023

- Flow chart attached to agenda materials

City Compliance Efforts HB-1343

- Applies to public contracts for services.
- Services means the furnishing of labor, time, or effort by a contractor or a subcontractor.
- Does not involve the delivery of a specific end product.
- The City has not applied this law to construction contracts.

City Compliance Efforts HB-1343

- Purchasing Division has the main burden of compliance; 1343 not being applied to mini-orders (purchases under \$2,000.)
- Approximately 7,000 purchases processed annually by the Purchasing Division. To the extent such purchases are for services, the Purchasing Division includes the language required by this new law in the contracts.

Current Estimated Costs of Compliance Efforts

- Finance - \$22,710
- Utilities - \$38,081
- Transportation - \$5,000
- Community Planning and Environmental Services - \$80,127
- Monitoring for Entire Organization - \$35,081

- Total - \$180,990

City Compliance Efforts Related Issues

- Reports from purchasing cooperative agencies that some out-of-state firms are refusing to sign agreement, which may result in fewer bid responses and higher costs.
- HB-1343 clauses are delaying turn around time for contracts.
- Fewer applicants for rebates – over 50% of applications were incomplete

City Compliance Efforts Related Issues

- Decreased participation in City programs to meet City goals (Zilch loan program, Lawnmower rebate, Payment Assistance Fund)
- Inefficiencies as more business must be done in person – waste of citizens' time and gas money; example--90% of Home Occupation Licensing is done by mail.

Possibly Unfunded Mandates

- Costs of compliance may constitute “unfunded State mandates.”
- Compliance may be optional.
- Council and City Manager direction needed.

Possible Local Ordinance

- Does the Council wish to adopt an ordinance more strict than State law which deals with all City contractors?
- State law re: contractors
 - Only applies to services agreements.
 - Limited penalties.

Pros of Local Ordinance

- Provide benefit for tax paying citizens.
- Support state laws enacted by elected representatives.
- Deters employment of illegal aliens on City projects.

Cons of Local Ordinance

- Firms may decline to do business with the City
- With the current shortage of qualified contractors and suppliers the new ordinance may make City of Fort Collins less desired as a customer.

Cons of Local Ordinance

- A broader scope of law may make enforcement more time-consuming and costly.
- Cost of compliance will be passed on to the City by contractors and suppliers.

Direction Sought

- Does Council have any concerns or direction with regard to staff's implementation of the new state immigration laws?
- Should staff proceed with preparation of a local ordinance that would impose additional local sanctions upon City contractors or subcontractors?