

City of Cincinnati

AEP/B

EESW

An Ordinance No. 138

- 2023

MODIFYING the provisions of Chapter 321, "Procurement and Disposal of Supplies, Services and Construction," of the Cincinnati Municipal Code by ORDAINING new Section 321-163, "Invalid Terms and Conditions."

WHEREAS, many vendors do not offer the opportunity to negotiate the terms and conditions accompanying the use of their products and services, particularly in the context of click-wrap-type agreements where the purchaser must click on a form contract online agreeing to all of its provisions; and

WHEREAS, more vendors are using this type of contract as the only method available for a customer to purchase the services offered, which impacts the City's ability to contract for necessary goods and services; and

WHEREAS, the City has certain legal obligations under Ohio and City law that prevent it from agreeing to various types of contract provisions that may be included in these non-negotiated contracts; and

WHEREAS, declaring such provisions invalid protects the City's legal interests and promotes significant efficiencies in the City's contracting processes; now, therefore,

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

Section 1. That Section 321-163, "Invalid Terms and Conditions," is hereby ordained as follows:

Sec. 321-163. - Invalid Terms and Conditions.

(a) Except as otherwise required or permitted by state or federal law, a contract entered into by the city for the procurement of supplies, services, professional services, or construction as defined in Section 321-1 shall not include any of the following:

(1) A provision that requires the city to indemnify or hold harmless another person;

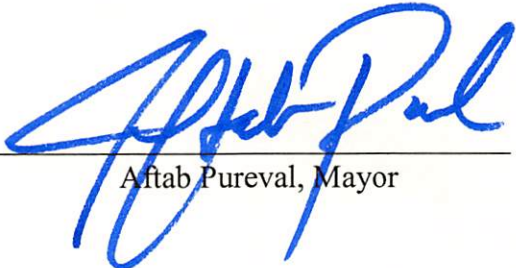
(2) A provision that requires the city to agree to limit the liability for any direct loss to the city for bodily injury, death, or damage to property of the city caused by the negligence, intentional or willful misconduct, fraudulent act, recklessness, or other tortious conduct of a person or a person's employees or agents, or a provision that would otherwise impose an indemnification obligation on the city;

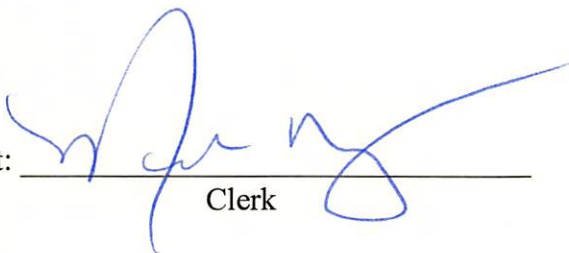
- (3) A provision that requires the city to be bound by a term or condition that is unknown to the city at the time of signing a contract or that may be unilaterally changed by the other party;
  - (4) A provision that is not specifically negotiated with the city or that is electronically accepted by a city employee without authority to accept the contract on behalf of the city;
  - (5) A provision that provides for a person other than the city solicitor to serve as legal counsel for the city without the approval of the solicitor;
  - (6) A provision that is inconsistent with the city's public records obligations under sections 149.351 or 149.43 of the Ohio Revised Code;
  - (7) A provision for automatic renewal such that city funds are or would be obligated in subsequent fiscal years without a subsequent appropriation by city council and certification by the director of finance;
  - (8) A provision that would require the payment of interest or a penalty inconsistent with Chapter 319 of the Cincinnati Municipal Code; or
  - (9) A provision whereby the seller agrees to provide financing to the city for the transaction without authorization by city council.
- (b) If a contract contains a term or condition described in division (a) of this section, the term or condition is void ab initio, and the contract containing that term or condition otherwise shall be enforceable as if it did not contain such term or condition.
- (c) A contract that contains a term or condition described in division (a) of this section shall be governed by and construed in accordance with Ohio law notwithstanding any term or condition to the contrary in the contract.
- (d) This section does not apply to a contract awarded
- (1) as a sole source pursuant to Chapter 321-85;
  - (2) as a single available source pursuant to Chapter 321-86;
  - (3) as an emergency purchase pursuant to Chapter 321-89; and
  - (4) as a joint or cooperative purchase pursuant to Chapter 321-97.
- (e) This section does not apply to a contract in effect before the effective date of this section or to the renewal or extension of a contract in effect before the effective date of this section.

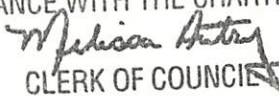
Section 2. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Section 1.

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

Passed: April 26, 2023

  
Aftab Pureval, Mayor

Attest:   
Clerk

I HEREBY CERTIFY THAT ORDINANCE NO. 136 2023  
WAS PUBLISHED IN THE CITY BULLETIN  
IN ACCORDANCE WITH THE CHARTER ON 5/9/2023  
  
CLERK OF COUNCIL