

## Legislation Text

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Amending Title 9 of The Philadelphia Code, entitled "Regulation of Businesses, Trades and Professions," by amending Section 9-1004, entitled "Contractors," to add additional requirements for obtaining and displaying contractor licenses, and to further provide for regulation, penalties and enforcement, all under certain terms and conditions.

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Title 9 of The Philadelphia Code is hereby amended as follows:

### TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS

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#### CHAPTER 9-1000. TRADES

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§ 9-1004. Contractors.

(1) *Declaration of Purpose.*

*The purpose of this Section is to provide standards for construction contracting that protect public health and safety and ensure compliance with applicable industry codes and standards by establishing appropriate licensing requirements and enforcement procedures for contractors performing construction work in Philadelphia. The City recognizes that inadequately qualified contractors jeopardize the health and safety of the public and workers employed on construction projects. The City also recognizes the importance of collecting appropriate fees from contractors that perform construction in Philadelphia to generate sufficient revenue to offset compliance and enforcement activities. This Chapter promotes the health and safety of the public and protects revenue owed from licensing fees, permit fees, and applicable tax requirements by requiring firms operating in the construction industry to obtain licenses before performing construction work as defined by this Section.*

[(1)](2) *Definitions.*

(a) *Contractor.* [Any person who performs or offers to perform any construction, repair, alteration, addition, remodeling, rehabilitation, demolition or any other residential or non-residential construction.] *Any person, corporation, partnership, sole proprietorship or other business entity that performs or offers to perform construction as defined in subsection 9-1004(2)(c). The term "contractor" includes subcontractors of any tier that perform construction as defined in subsection 9-1004(2)(c).*

(b) *Prime Contractor.* *Any contractor that is identified on a permit application as the contractor responsible for the construction authorized by the permit.*

(c) *Construction.* The demolition, erection, addition, conversion, improvement, modernization, rehabilitation, renovation, remodeling, repair or other alteration of any building, structure, real property or appurtenance thereto.

[(2)](3) *License required.*

(a) No person or business entity of any type shall act as a Contractor unless [that person] *the person or entity* possesses a current and valid license issued under this Section.

(b) *License exceptions.* The following persons shall not be required to obtain a license under this Section:

(.1) owners who perform their own construction [and/or demolition] work either for the purpose of making improvements on a property they own and occupy or to allow for them to occupy a property they own. Such owners must be listed by the Board of Revision of Taxes as the owner of record for the property where the work is being performed. The Department may require other proof of property ownership from any person claiming an exception under this subparagraph;

(.2) engineers or architects licensed by the Commonwealth of Pennsylvania;

(.3) governmental employees performing construction [or demolition] activity for their governmental employer as part of their official duties. This exception does not apply to Contractors retained by a governmental entity;

(.4) a Contractor already licensed by the Department; and

(.5) a Contractor who does not perform any job for which the Contractor is paid more than five hundred dollars (\$500).

(c) A license under this Section shall be renewed every [three (3) years] *year* upon payment of [the] *a fee of one hundred dollars (\$100)* [two hundred (\$200) dollar renewal fee, subject to the conditions set forth in subsections 9-1004(3), (4), (5), and (6)].

(d) *A license under this Section shall be renewed subject to the conditions set forth in subsections 9-1004(4), (5), (6), and (7).*

(e) *A Contractor licensed by the Department pursuant to other contractor licensing Sections of Title 9 shall be subject to and comply with the requirements of this Section to the extent this Section does not conflict with such other provisions. This Section shall not apply to persons holding journeyman or master trade licenses unless such persons also operate as a Contractor within the meaning of this Section.*

[(3)](4) *Application Requirements.* Applications for a Contractor's license shall be made on forms to be supplied by the Department. No license shall be issued until the applicant:

(a) provides the Department with a copy of the applicant's commercial activity license and tax identification number;

(b) provides the Department with proof that the applicant has obtained the insurance required by this Section;

(c) pays [a] *an initial* non-refundable application fee of [\$200.00] *\$100*; [and]

(d) complies with any additional requirements imposed by the Department by regulation; *and*

(e) *certifies the following statements:*

*(.1) that all City tax obligations are satisfied;*

*(.2) that the applicant is financially solvent;*

*(.3) that the applicant is not debarred by any public body or governmental agency; and*

*(.4) that the applicant is in compliance with all applicable laws of the Commonwealth relating to the operation of its business.*

[(4)](5) *Insurance Requirements.*

(a) All Contractors licensed under this Section shall maintain, at a minimum, the following types and amounts of insurance:

(.1) workers' compensation where applicable: statutory limits;

(.2) comprehensive general liability insurance: in an amount determined by the Law Department and the Risk Manager;

(.3) products and completed operations, and/or errors and omissions: in an amount determined by the Law Department and the Risk Manager; and

(.4) motor vehicle liability insurance: in an amount determined by the Risk Manager.

(b) Copies of insurance certificates shall be submitted to the Department to show proof of insurance coverage before a license will be issued.

(c) Failure to maintain proper insurance, and to provide proof of continued coverage by submitting renewal certificates to the Department, will result in the revocation or non-renewal of the license.

[(5)](6) *Required Conduct.*

(a) Every licensed Contractor shall notify the Department in writing within ten days of any change in any of the information required to be submitted to the Department under § 9-1004[(3)](4);

(b) A Contractor must secure all required permits prior to commencement of *any* construction [or demolition];

(c) *Contractors shall display their Contractor license number on the following:* [All advertisements and Contractor's stationery shall include the Contractor's license number; and]

*(.1) Advertisements;*

*(.2) Contractor's stationery;*

*(.3) Contractor's main place of business;*

(.4) *Job sites;*

(.5) *Proposals and Contracts; and*

(.6) *Vehicles displaying the Contractor's business name which are used during the course of business.*

*(d) License numbers displayed on vehicles as required by this subsection must be in letters at least 2 inches in height and clearly visible.*

*(e) Contractors shall submit subcontractor identifying information in accordance with subsection 8 (a) of this Section.*

[(d)](f) Contractors [must] *shall* comply with all provisions of The Philadelphia Code;

[(e)](g) Contractors [must] *shall* correct any code violation cited by the Department as a result of such Contractor's work activity within the period for compliance specified in the notice from the Department;

[(f)](h) Contractors shall maintain complete financial and construction records (including plans) for each job performed, for four years after the completion of the job.

[(6)](7) *Prohibited Conduct.*

(a) No Contractor shall perform any construction [or demolition] work without first securing all required permits.

(b) No Contractor shall deviate from or disregard in any material respect the plans and specifications approved by the Department, unless such change has been approved by the Department.

(c) No Contractor shall *sell, transfer, or* permit another person to use the license assigned to the Contractor to secure permits or perform activity regulated under this Section.

*(d) No Contractor shall sell, transfer, or otherwise allow another person or business entity to use a permit issued to the Contractor to perform construction work.*

[(d)](e) No Contractor shall provide false information on any license or permit application filed with the Department.

[(e)](f) No Contractor shall employ an unlicensed subcontractor to perform any activity regulated under this Section.

*(g) No project owner, developer, or other entity shall employ an unlicensed Contractor to perform any activity regulated under this Section.*

[(7)](8) *Contractor and Subcontractor Information.* [The contractor and subcontractor shall comply with the requirements of subsection (7)(a) of this Section with respect to the following construction projects: (i) the construction of or alteration to any commercial building; (ii) any project involving the new construction of more than two dwelling units or (iii) any project involving the complete rehabilitation or reconstruction of a building containing more than two dwelling units.]

*(a) A Prime Contractor performing construction work, except for work on residential buildings of two dwelling units or less, shall submit the following information in writing, either electronically or otherwise*

as required, to the Department within three (3) business days after the commencement of any work at the construction site and shall notify the Department promptly of any changes to the information submitted.

(.1) The address of the construction site;

(.2) The *Prime Contractor's* [or subcontractor's respective] business name, business address, *and contractor license number*; [email address and telephone number;]

(.3) *A list of all subcontractors of any tier used on the project with their respective contractor license numbers*;

[(.3)](.4) Documentation that the contractor or subcontractor possesses all licenses required by The Philadelphia Code and that such licenses are current and valid;

[(.4)](.5) The name of the Property Owner; and

[(.5)](.6) Such other information as the Department requires.

(b) The Department shall provide confirmation of receipt to the contractor [or subcontractor] of the information submitted under subsection *9-1004(8)(a)* [(7)(a)]. Upon review of such information, the Department shall notify the contractor [or subcontractor] of *any* noncompliance and also notify the Property Owner.

(c) The Department shall publish the information required by subsection *9-1004(8)(a)* [(7)(a)] above on the City's official website.

(d) *The Prime Contractor shall post the information submitted under subsection 9-1004(8)(a) at each jobsite in a conspicuous space clearly visible to public view, or as otherwise directed by the Department.*

[(d)](e) The Department is authorized to promulgate such regulations as are necessary and appropriate to implement the provisions of subsection [(7)](8).

[(8)](9) *License Suspension and Revocation; Other Remedies.*

(a) The Department may suspend or revoke any license granted under this Section for any of the following reasons, after an administrative hearing conducted after notice of the proposed suspension or revocation has been sent to the licensee:

(.1) *fraud or deceit in obtaining or renewing a license or permit*;

[(.1)](.2) repeated failure to comply with the provisions of The Philadelphia Code;

[(.2)](.3) failure to obtain or maintain the insurance required by this Section;

[(.3)](.4) failure to pay any fine imposed for a violation of any provision of this Section or of Title 4 of The Philadelphia Code within ten days of imposition by a final order from which all appeals have been exhausted;

[(.4)](.5) failure to pay a tax or charge imposed in connection with the activity licensed under this Section;

[(.5)](.6) repeated failure to secure required permits;

[(.6)](.7) repeated failure to provide the Department with accurate cost estimates of construction activity on permit applications; or

[(.7)](.8) repeated failure to comply with violation notices issued by the Department;

(.9) *removal or destruction of a stop work order;*

[(.8)](.10) conviction of a crime of fraud or dishonesty [and] *in connection with the licensed activity.*

[(.9)](b) Where there has been a final determination that a contractor or subcontractor has violated the provisions of subsection [(7)(a)](8)(a) of this Section on at least two (2) occasions within one (1) year, the license issued to the contractor or subcontractor under this Section shall be revoked for a period of one (1) year and the contractor or subcontractor shall be prohibited from obtaining any building permits during that one (1) year period. For purposes of this subsection (9)(b)[(8)(a)(.9)], a final determination refers to payment of the fine for a violation, a default or a final adjudication on the merits from which no timely direct appeal is available.

[(b)](c) The Department may refuse to issue permits to any Contractor who has failed to correct any outstanding code violations resulting from work performed under previously issued permits.

[(c)](d) License revocation for violations of subsection (9)(a)(.10)[(8)(a)(.8)] above shall be *for* a period of five (5) years.

[(9)](10) *Penalties.*

(a) Notwithstanding any other provision of this Title (including, but not limited to, Section 9-105), any person who violates any provision of this Section, except for subsection (8)[(7)], or any regulation adopted pursuant to this Section shall have committed a Class II offense and be subject to the fines set forth in subsection 1-109(2) of The Philadelphia Code or to imprisonment not exceeding ninety (90) days or to both. The penalties set forth in subsections (10)(a)[(9)(a)] through (10)(d)[(9)(d)] shall be in addition to the remedies set forth in subsection (9)[(8)].

(b) [Failure of a contractor or subcontractor to comply with the provisions of subsection (2) of this Section shall result in the issuance by the Department of a stop work order only to such contractor or subcontractor that is not in compliance which shall remain in effect for at least forty-eight (48) hours, or until there is complete compliance with all applicable provisions, whichever is longer.] *Failure of any person working at a jobsite to comply with the provisions of subsection (3) of this Section shall result in the issuance by the Department of a stop work order to the contractor not in compliance, or to the Prime Contractor and any subcontractors working at the jobsite, as the Department may determine, until there is complete compliance with all applicable provisions.*

(c) Any person who violates any provision of subsection [(7)](8) or any regulation adopted pursuant to this subsection shall have committed a Class III offense and shall be subject to the fines set forth in subsection 1-109(3) of The Philadelphia Code. Each day that a contractor or subcontractor remains out of compliance with subsection (8)[(7)] shall constitute a separate violation.

(d) Any contractor or subcontractor who hires independent contractors that have not paid any fees or taxes required to be paid to the City with respect to work performed at a respective construction site shall be liable for the payment of such fees and taxes. For purposes of this subsection (10)(d)[(9)(d)], an independent contractor is a person who is not an employee of either a contractor or subcontractor at such construction site.

*(11) Review of Unlicensed Contractors by Revenue Department.*

*(a) The Department shall provide notice to the Department of Revenue on a monthly basis of any person or business entity that is found working as an unlicensed contractor in violation of this Section.*

*(b) The Department of Revenue shall conduct an appropriate review or audit of unlicensed contractors to determine if they are in compliance with applicable City tax laws, including City wage tax and undertake necessary enforcement actions to collect any taxes, interest and penalties owed in such cases.*

*(c) The Department of Revenue shall prepare an annual report for the Mayor and City Council on all activities undertaken pursuant to this subsection and results thereof, which shall make such reports available to the public.*

*(12) Civil Actions under this Section.*

*(a) The City Solicitor, or any private person with the approval of the City Solicitor, may institute a civil action alleging violations of this Section in a court of competent jurisdiction.*

*(b) Any action brought by a private person pursuant to this Section shall be subject to the procedures and conditions set forth in Section 19-3603 of this Code (relating to False Claims), except for the monetary limitation of §19-3603(a).*

*(13) Retaliatory Action Prohibited.*

*(a) No employer shall discharge, demote, suspend, threaten, harass or in any other manner discriminate against an employee in the terms and condition of employment because of lawful acts done by the employee in furtherance of an action under this Section, including investigation for, initiation of, testimony for, or other assistance in an action filed or to be filed under this Section.*

*(b) Any person who suffers retaliatory conduct as defined in this subsection may institute a civil action in a court of competent jurisdiction. Any employee that a court of competent jurisdiction determines suffered retaliatory action as defined in this subsection shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.*

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**Explanation:**

[Brackets] indicate matter deleted.

*Italics* indicate new matter added.