

Ordinance No. 599-2025

By Council Member Griffin
(by departmental request)

AN EMERGENCY ORDINANCE

To amend Section 185.41 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 794-03, passed June 10, 2003, relating to terms of payment.

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That Section 185.41 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 794-03, passed June 10, 2003, is amended to read as follows:

185.41 Terms of Payment

(a) The contractor shall be required to make current requests for payment in writing, not more than one (1) each month, and submit them to the director who executed the contract on behalf of the City ("director") for approval. The request shall be dated the last working day of the month and be submitted to the director by the fifth day of the following month. ~~At the same time, a copy of the request shall be mailed by the contractor to the resident engineer or architect.~~ The request for payment shall cover the materials in place complete, and the amount of work performed in accordance with the contract during the preceding payment period and the value thereof. At the discretion of the director, allowances may be made for nonperishable materials which are to be incorporated into the work, when delivered and properly stored upon the site. Upon approval of the contractor's request for payment, the director will make estimates in writing, one (1) each payment period of the materials in place complete and the amount of work performed, all in accordance with the contract. Upon approval by the director, the contractor shall be paid as follows, except as otherwise provided in divisions (b) and (c) of this section:

(1) ~~the amount of each such estimate less a deduction of five~~ three percent ~~(3%) (5%) which the City shall be retained-retain until final acceptance~~ satisfactory completion of fifty percent (50%) of the work of any separate phase of the contract or of all contract work, or of the estimated total contract amount of a public improvement by requirement contract, as applicable, as determined by the director of all work covered by any separate phase of the contract work or of all work covered by the contract, and less all prior payments;-

(2) upon the director's written certification of satisfactory completion as subdivision (a)(1) of this section provides, the amount of each such estimate less one and a half percent (1.5%) which the City shall retain until final acceptance of any separate phase of the contract or of all contract work, or of the estimated total contract amount of a public improvement contract, as applicable, as determined by the director, and less all prior payments; and

(3) upon the director's written certification of final acceptance as subdivision (a)(2) of this section provides, the whole amount of money then due to the contractor, except such sums which have already been paid and except such sums as may have been expended by the City or may be due the City or properly deductible under the contract terms and less all prior payments.

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(b) The director may, at any time, increase the retainage percentages set forth in division (a) of this section by not more than ten percent (10%) of the contract price or each separate phase's price or the estimated contract amount of a public improvement by requirement contract, as applicable, to protect the City's interests for incomplete, defective, delayed, or unsatisfactory work, or for costs or damages incurred by the City that are the contractor's obligations under the contract; or charges the City may assess against the contractor under the contract including, but not limited to, liquidated damages.

(c) Contracts below five hundred thousand dollars (\$500,000.00) are exempt from retainage requirements.

(d) The City will neither deposit retainage in an escrow account nor pay interest on such retainage.

~~(b) Upon written certification by the director of final acceptance of each separate phase of the contract work or of all contract work, as determined by the director, the City shall pay the contractor the whole amount of the money then due the contractor under that phase or all phases of the contract, as applicable, except such sums which have already been paid and except such sum as may have been expended by the City or may be due the City or properly deductible, under the provisions of the contract, and less a deduction of five percent (5%) to be retained for a further period of forty-five (45) days.~~

~~(c) Forty-five (45) days after the final acceptance of each separate phase of the contract work or of all contract work, as determined by the director, the contractor shall be paid the sums retained less proper deductions and less two percent (2%) of the total amount of that phase or of all phases of the contract, as applicable, which shall be retained for the balance of the guarantee period for work under that phase or all contract work, as applicable.~~

~~(d)~~(e) The payment of the moneys as provided in this section shall constitute a full and complete discharge of all the duties and obligations of the City under the contract.

Section 2. That the existing Section 185.41 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 794-03, passed June 10, 2003, is repealed.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

SKM/JBM:uo
5-12-2025
FOR: Director Barrett

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READ FIRST TIME on MAY 12, 2025.

and referred to DIRECTORS of Finance, Law;

COMMITTEE on Finance Diversity Equity and Inclusion

REPORTS

CITY CLERK

READ SECOND TIME

CITY CLERK

READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

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Published in the City Record

REPORT
after second Reading

**PASSAGE RECOMMENDED BY
COMMITTEE ON
FINANCE, DIVERSITY, EQUITY
and INCLUSION**

FILED WITH COMMITTEE