

David Whitaker, Esq.  
Director  
Irvin Corley, Jr.  
Executive Policy Manager  
Marcell R. Todd, Jr.  
Senior City Planner  
Janese Chapman  
Deputy Director

LaKisha Barclift, Esq.  
M. Rory Bolger, Ph.D., AICP  
Elizabeth Cabot, Esq.  
Tasha Cowen  
Richard Drumb  
George Etheridge  
Deborah Goldstein


# City of Detroit

## CITY COUNCIL

LEGISLATIVE POLICY DIVISION  
208 Coleman A. Young Municipal Center  
Detroit, Michigan 48226  
Phone: (313) 224-4946 Fax: (313) 224-4336

Christopher Gulock, AICP  
Derrick Headd  
Marcel Hurt, Esq.  
Kimani Jeffrey  
Anne Marie Langan  
Jamie Murphy  
Kim Newby  
Analine Powers, Ph.D.  
Jennifer Reinhardt  
Sabrina Shockley  
Thomas Stephens, Esq.  
David Teeter  
Theresa Thomas  
Kathryn Lynch Underwood

TO: COUNCIL MEMBERS

FROM: David Whitaker, Director   
Legislative Policy Division Staff

DATE: August 20, 2018

RE: Report on the proposal to Repeal Article V (Slavery Ordinance)

Prior to recess in July, Council President Pro-Tem Sheffield requested that Legislative Policy Division (LPD) provide a report on the Proposed Ordinance to Amend Chapter 18 of the Detroit City Code, by repealing Article V (Slavery Ordinance). LPD was requested to answer:

1. When was Article V established and for what purpose?
2. Since the codification of Article V, how many contractors have disclosed ties to or profiting from the institution of slavery?
3. Can the requirement of this disclosure, if an affirmative answer is given, result in the collection of data to support the argument of reparations?
4. What does the disclosure include? How are the disclosures verified and by whom?
5. What burden does this requirement place on the (City's) procurement process?
6. Mass incarceration is considered the slavery of today, can the City amend Chapter 18 of the Detroit City Code to include a disclosure with respect to companies profiting from the prison industrial complex?

**When Article V was established and for what purpose (Slavery Ordinance):** On June 23, 2004, the Detroit City Council approved an ordinance (Ord. No. 20-04) sponsored by Council member Barbara-Rose Collins, which mirrored ordinances which were previously approved in May 2003 by the Los Angeles City Council, and in October 2002 by the City of Chicago.<sup>1</sup> According to Council member Collins, "The purpose of this ordinance is to set the groundwork for [slavery] reparations. First, you have to get the information and show the companies that benefited from the slave trade."<sup>2</sup>

<sup>1</sup> The City of San Francisco and the state of California both require insurers seeking to do business with these governments to disclose slavery ties, due to the industries long history of financing and profiting from that institution,

<sup>2</sup> The Washington Times - <https://www.washingtontimes.com/news/2004/jul/1/20040701-122147-7163r/>

The significance of the "Slavery Era Records and Insurance Disclosure," section of the Detroit City Code, is that it requires that prospective contractors with the City to disclose, or deny by an affidavit,<sup>3</sup> whatever it or any of its *corporate predecessors in interest*<sup>4</sup> had any interests in the slave industry, including any insurance policies issued to slave holders.<sup>5</sup> The ordinance's penalty provisions are only applied when a prospective "contractor has failed to comply," with the provisions of the ordinance and report accurately. The ordinance indicates that the City's Finance Director can make a "determination to void the contract for failure to comply with the provisions of the ordinance. The ordinance's enforcement provision is here:

***Sec. 18-5-91. - Scope.***

*(a) This division shall apply to each contractor for goods or services with which the City enters into a contract, whether or not the contract is subject to competitive bid. (b) Each contractor shall be responsible for searching and disclosing records of the entity which proposes to enter into a contract with the City as well as all records of any predecessor entity that are within the possession or knowledge of the contractor regarding records of investments or profits from the slave industry.... (Ord. No. 20-04, § 1, 6-23-04)*

***Sec. 18-5-92. - Affidavit of disclosure required.***

*(a) As part of its contract package, each contractor with which the City enters into a contract shall submit to the Finance Department Purchasing Division prior to the submission to City Council for approval of such contract, an affidavit that discloses the information indicated in Subsections (b) and (c) of this section. The affidavit shall be on a form provided by the Finance Department Purchasing Division. (b) The affidavit shall verify that the contractor has searched all records of the entity which proposes to enter into a contract with the City, as well as all records of any predecessor entity, that are within the possession or knowledge of the contractor regarding records of investments or profits from the slave industry, ... (c) The affidavit shall disclose any information discovered during the search regarding investments or profits from slavery or slave holder insurance policies which accrued to the current entity or to any predecessor entity.... (Ord. No. 20-04, § 1, 6-23-04)*

---

<sup>3</sup> An affidavit is a written statement that is then signed under oath. It is derived from the Latin word "affidare," which means "to pledge" or "declared upon oath." Typically, an affidavit must be notarized, which means that it must be signed in front of a notary official who also verifies the identification of the individual signing the statement. <https://www.liveabout.com>

<sup>4</sup> A predecessor in interest refers to a person or entity who previously held the rights or interests that are now held by another.

<sup>5</sup> Slavery officially ended in the US with the ratification of the Thirteenth Amendment to the Constitution on December 18, 1865. Obviously, the vast majority of corporations seeking to do business with the City today would not be able to trace their origins back more than 150 years. Therefore, compliance with the City's ordinance would be as simple as signing an affidavit of denial for most companies seeking to do business here.

**Sec. 18-5-93. - Voidability of contract.**

*(a) Failure to comply with this division shall render the contract voidable by the City. (b) A determination to void the contract for failure to comply with this division shall be made by the Director of the Finance Department at any time after reviewing, or becoming aware of, information which indicates that a contractor has failed to comply with this division.*

*(Ord. No. 20-04, § 1, 6-23-04)*

The remaining answers to the questions asked are as follows:

- **Since the codification of Article V, how many contractors have disclosed ties to or profiting from the institution of slavery?**  
*The answer is zero, since the ordinance's inception.<sup>6</sup>*
- **Can the requirement of this disclosure, if an affirmative answer is given, result in the collection of data to support the argument of reparations?**  
*In 2013, the German government as a result of negotiations between the German Finance Ministry and the Claims Conference, a Jewish fund for victims of Nazi aggression, has committed to pay nearly 772 million euros (equivalent to \$1 billion US dollars at the time) for the care of 56,000 elderly Holocaust survivors.<sup>7</sup> Historically, there has been no significant effort made by the United States Government to provide any reparations for slavery. However, if a company were to answer in the affirmative, this could be a catalyst to negotiations at some level.*
- **What does the disclosure include? How are the disclosures verified and by whom?**  
*As indicated earlier in the report, the ordinance requires that all contractors must disclose or deny whether it or any of its corporate predecessors in interest<sup>8</sup> had any interests in the slave industry, including any insurance policies issued to slave holders. The ordinance further indicates that the City's Finance Director verifies the veracity of the information in the affidavit, but the ordinance is silent on how this is done.*
- **What burden does this requirement place on the (City's) procurement process?**  
*It is LPD's opinion that this requirement places little to no burden on the procurement process, since it simply requires a prospective contractor to sign an affidavit.*

---

<sup>6</sup> Although LPD was unable to find a single affidavit filed with the City in the affirmative, some relevance for this type of ordinance does exist: The predecessors of JP Morgan/Chase got their start with loans to slave owners, at times with enslaved Africans as collateral. In 2005 JP Morgan apologized for its predecessors' slave trading activities in Louisiana. Chase subsequently established a \$5M college scholarship fund for black students in Louisiana to "both acknowledge the past and improve the future." –The Guardian, David Teather, Jan 21, 2005. Bank of America and Wachovia also apologized for their early involvement with slave trading.

<https://www.commondreams.org/views/2014/04/14/four-eras-slavery-benefit-corporations>

<sup>7</sup>SPIEGEL ONLINE <http://www.spiegel.de/international/germany/germany-to-pay-772-million-euros-in-reparations-to-holocaust-survivors-a-902528.html>

<sup>8</sup> Predecessor in interest refers to a person or entity who previously held the rights or interests that are now held by another.

- **Mass incarceration is considered the slavery of today, can the City amend Chapter 18 of the Detroit City Code to include a disclosure with respect to companies profiting from the prison industrial complex?**

*The short answer is yes, however, the focus of the code would be redirected as: The legal definition of slavery is "The condition of a slave; that civil relation in which one man has absolute power over the life, fortune, and liberty of another."<sup>9</sup> In the Detroit City Code, slavery is listed under ARTICLE I. - Declaration of Rights, Sec. 9. - Slavery and involuntary servitude. "Neither slavery, nor involuntary servitude unless for the punishment of crime, shall ever be tolerated in this state." However, the Council could develop an ordinance that specifically addresses prison industrial complex and its adverse effects on the city's population.*

Please contact us if we can be of any further assistance.

---

<sup>9</sup> <https://thelawdictionary.org/slavery/>