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2/13/2009	0	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
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080218

SUBSTITUTE 4

ALD. HAMILTON, WADE, KOVAC, COGGS, DAVIS AND BAUMAN

A substitute ordinance relating to participation of city residents in public works contracts, requirements for developers receiving direct financial assistance from the city, and local business enterprise contracting standards.

309-38-0 am
 309-38-3-a rn
 309-38-3-a cr
 309-38-3-b rn
 309-41-1-a rp
 309-41-1-b rn
 309-41-1-c rn
 309-41-1-d rn
 309-41-1-e ra
 309-41-1-f rn
 309-41-1-f rc
 309-41-1-g rn
 309-41-1-g cr

309-41-2-a am
309-41-2-c am
309-41-2-d rp
309-41-3-a-2 am
309-41-3-b-2 am
309-41-4 am
309-41-5-c am
309-41-5-f am
309-41-5-g am
309-41-5-h am
355 cr
360-06-1 am
365 cr

This ordinance makes several changes relating to the requirements of the participation of city residents in public works contracts, requirements for developers receiving direct financial assistance from the city, local business enterprise contracting standards and sanction and penalty provisions for these matters.

Participation of City Residents in Public Works Contracts

This ordinance makes several changes to the requirements under participation of city residents in public works contracts. The changes include:

- 1.) The definition of resident is changed to include all persons who maintain their place of permanent abode within the entire city, not just the CDBG area.
- 2.) Worker hours is defined and excludes all hours performed by non-Wisconsin residents.
- 3.) The definition of unemployed or underemployed is changed to include low-income individuals regardless of employment status.
- 4.) It is required that 40% of the worker hours, unless the department of public works determines there is sufficient reason to impose a lesser requirement, shall be performed by unemployed or underemployed residents and that the contractor give fair consideration to all segments of the population including women and minorities. The number of hours subject to the 40% requirement is based on the total number of hours associated with a contract excluding all hours performed by out-of-state workers.
- 5.) The residents preference program established by this section shall be reviewed by the common council, in consultation with the mayor, on or before October 1 of each year.

Requirements of Contracting Departments

The following requirements are adopted by the city for the purpose of increasing the level of emerging business enterprise participation in city contracts. Each contracting department shall utilize emerging business enterprises for the following percentage of the total dollars, through prime contracts or subcontracts, annually expended on:

- a. Construction: 25%.
- b. Purchase of services: 18%.
- c. Purchase of professional services: 18%.
- d. Purchase of supplies: 18%.

Community Participation in Development Agreements

This ordinance applies to any developer of a project that receives \$1 million or more in direct financial assistance from the city. Pertinent provisions include:

1. The developer completes an application in the form provided by the department of city development.
2. Once the application has been completed, the department of city development and the city comptroller shall provide to the common council an analysis of the project's financial feasibility, market assumptions, rate of return, and jobs impact, including projected wage and benefit information. The department of city development shall further provide a separate report discussing the quality of proposed building and site design, the impact of the project on the city's historic building stock, and the project's sustainable features, including use of alternative energy sources and recycled and low-impact materials, creation of public open space, incorporation of transit- and pedestrian-oriented design features and amenities, and eligibility for certification under the Leadership in Energy and Environmental Design Green Building Rating System or other national certification.
3. A requirement that the 40% of worker hours required for construction of the project be performed by unemployed or underemployed residents unless the commissioner of city development determines there is reason to impose a lesser requirement. The number of hours subject to the 40% requirement is based on the total number of hours associated with construction contracts for the project excluding all hours performed by out-of-state workers. For the purpose of this ordinance, "worker hours" includes work performed by persons filling apprenticeships and participating in on-the-job training programs. The emerging business enterprise administration are responsible for the planning, implementation and enforcement of these provisions. The department of city development and the emerging business enterprise administration shall prepare annually a residents preference program report on the performance of developers receiving direct financial assistance in achieving the goals of the program in development agreements.
4. A requirement that construction contractors and subcontractors for the project be required to pay their employees the prevailing wage rate, as defined in s. 66.0903, Wis. Stats.
5. The employment of apprentices and on-the-job trainees in the performance of all construction contracts and subcontracts entered into by the developer and its contractors and subcontractors for construction of the project is in accordance with the maximum ratio of apprentices to journeymen established by the Wisconsin department of workforce development. In determining whether this requirement is appropriate for insertion in specifications for a particular construction contract, the department of administration may consider the nature of the work, whether the contract is of short duration and whether the work will involve trades which do not have apprentices or on-the-job trainees.
6. The utilization of the emerging business enterprise administration, or such entities as may be designated by the city from time to time, as the first-source employment program for the developer, its contractors and subcontractors on the project. Every construction contract governed by this ordinance, unless prohibited by federal or state law, shall require a first-source agreement which shall apply for the duration of the contract.
7. A requirement that the developer compile data required by ch. 355 and provide it to the emerging business enterprise administration, which shall submit an annual report to the common council on compliance with the requirements of this ordinance on or before October 1 of each year.
8. A requirement that annually, but no later than April 30th, the comptroller shall submit a report to the common council documenting the financial impact of the prevailing wage rate provisions on all development projects completed during the prior calendar year.

Local Business Enterprise Contracting Program

This ordinance also establishes a local business enterprise contracting program and standards for city award of contracts to local businesses when those businesses are not the lowest bidders.

A local business enterprise means a business which:

1. Is located within the geographical boundaries of the city. Post office box numbers and residential addresses alone shall not suffice to establish status as a local business enterprise.
2. Has been located and doing business in the city for at least 6 months.
3. Is subject to local real estate taxes and is not delinquent in the payment of any local taxes, or that the business enterprise has entered into an agreement to pay any delinquency and is abiding by the terms of the agreement.

A contracting department, shall, unless contrary to federal, state or local law or regulation, apply an award standard in all bids so that an otherwise responsive and responsible bidder which is a local business enterprise shall be awarded the

contract, provided that its bid does not exceed the lowest bid by more than 5%.

A contracting department shall, unless contrary to federal, state or local law or regulation, apply an award standard in the composition of scales used to evaluate proposals submitted in response to formal requests for proposals to procure goods or services. In instances where the maximum number of points used to evaluate a proposal is not equal to 100, an additional number of points, equal to 5% of the maximum number of points used in the evaluation, shall be applied to increase the total score attained by a local business enterprise.

If the bids of two or more local business enterprises do not exceed the lowest bid by more than 5%, the contract shall be awarded to the local business enterprise that submitted a bid that exceeded the lowest bid by the smallest amount.

A bid preference shall not exceed \$50,000 for any one solicitation and award determination.

If a bid submitted by a non-local business enterprise and a bid submitted by a local business enterprise are identical, the contract shall be awarded to the local business enterprise, even if the bids are only identical due to the 5% award standard provided for in this chapter. If 2 bids submitted by 2 local business enterprises are identical, the winner will be determined in accordance with the process for tie-breakers as established by the city purchasing director.

The local business enterprise contracting program shall be administered by the city purchasing director. The director shall develop appropriate rules, procedures and regulations for assuring compliance, and supervise, coordinate, monitor and enforce the implementation of the program. The director shall review the local business enterprise activities of the contracting program annually and submit a written report to the mayor and the common council.

Sanction and Penalty Provisions

Provisions include:

1. Any person, firm or corporation knowingly engaging in fraud, misrepresentation or in any attempt, direct or indirect, to evade the provisions of this ordinance relating to requirements for development agreements or the local business enterprise program by providing false, misleading or fraudulent information shall, upon conviction, forfeit not less than \$2,000 nor more than \$5,000.

2. If a contractor or subcontractor awarded a contract or subcontract under ch. 355 (development agreements) submits documents determined at a later date to contain false information, sanctions may be imposed, to deny participation in further contracts awarded by the city.

Whereas, The City of Milwaukee is central to Wisconsin's economy having 11% of the state's population, 12% of the state's employment, 9% of the state's business units and \$57 billion in gross metropolitan product; and

Whereas, Per capita income is lower in the City than in surrounding areas and 26% of City residents live in poverty; and

Whereas, The high rate of poverty has a severe negative effect on the City's property tax base, revenues and expenditures for city services; and

Whereas, The City has an unacceptably high rate of unemployment with the number of unemployed residents as of December 2008 being 20,845; and

Whereas, In December of 2008, the unemployment rate for the City was 7.9% and Milwaukee County was 6.5%, while the surrounding counties of Ozaukee, Washington and Waukesha had unemployment rates of 4.7%, 5.3% and 4.7%, respectively; and

Whereas, A high unemployment rate severely impacts the economic well-being of the city's population and results in serious social problems; and

Whereas, The high rate of unemployment in the city negatively affects the city's property tax base, revenues and expenditures for city services; and

Whereas, Unemployment and high poverty also leads to an increase in demand for city-funded services, such as increased needs for services provided by the city's health, neighborhood services and police departments; and

Whereas, To address the City's chronic problems of unemployment and slow wealth accumulation, particularly in central-city communities, it is essential that the city assist its residents in taking full advantage of employment opportunities that result from development occurring in the city; and

Whereas, The apprenticeship, pre-apprenticeship, on-the-job training, first-source recruitment, prevailing wage, residents

preference, emerging business enterprise and the local business enterprise programs ensure that City residents are given the necessary skills and opportunities to benefit from development; and

Whereas, The City and its residents have been harmed by the high unemployment rate, which is caused in part by the employment of nonresidents in city contracts while there is a critical need to spur more employment growth locally; and

Whereas, The City, through its contracting function, has a significant impact on economic activity; and

Whereas, In 2005, according to the "Study to Determine the Effectiveness of the City's Emerging Business Enterprise Program," the total number of all city contracts was 463, and 199, or 42.98%, were awarded to Milwaukee County businesses which amounted to only 26.31% of total dollars in contracts versus the Waukesha County businesses which received 92 contracts, or 19.87%, amounting to 47.11% of total dollars in contracts; furthermore, 127, or 27.43%, of contracts, representing 17.87% of total dollars went to providers outside the 4 county Milwaukee market area of Milwaukee, Waukesha, Ozaukee and Washington counties; and

Whereas, In 2005, as a subset to total city contracts, the total number of city construction contracts was 169, and 75, or 44.38%, were awarded to Milwaukee County businesses which amounted to only 22.97% (\$25.8 million) of total dollars in construction contracts versus the Waukesha County businesses which received 52 contracts, or 30.77%, amounting to 66.21% (\$74.4 million) of total dollars in construction contracts; and

Whereas, In 2005, as a subset of total city contracts, the total number of city professional service contracts was 86, and 39, or 45.35%, were awarded to Milwaukee County businesses which amounted to only 33.6% (\$5.0 million) of total dollars in professional service contracts versus business from the market areas outside of the Metro Milwaukee counties which received 38 contracts, or 44.19%, amounting to 42.68% (\$6.4 million) of total dollars in professional service contracts; and

Whereas, It serves a public purpose and is in the best interests of the City to remedy low local business participation in the award of city contracts and prevent the perpetuation of those effects as they relate to local business enterprises; and

Whereas, Encouragement of local businesses is likely to result in the creation of more jobs in the city, and the resulting tax benefits would be an advantage to the city and its economic development; and

Whereas, A requirement for local preference in award of city contracts will benefit all city residents by alleviating the impact of unemployment and diminish the harm suffered by the city and city residents without a substantial increase in cost to the city; and

Whereas, Pursuant to s. 4-10, city charter, the Common Council, having the management and control of the finances of the city with full power to enact ordinances for the good of the city, may institute an award standard which will afford local businesses a competitive "plus" when bidding on city contracts, without excluding any potential contractors or unduly hampering other contractors, and unless contrary to federal, state or local law or regulation; now, therefore,

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 309-38-0 of the code is amended to read:

309-38. Apprenticeship >>and On-The-Job Trainee<< Requirements for Construction Contracts.

Part 2. Section 309-38-3-a and b of the code is renumbered b and c.

Part 3. Section 309-38-3-a of the code is created to read:

3. MONITORING AND ENFORCEMENT.

a. Determine whether the work involves trades that have apprentices or on-the-job trainees and the appropriate level of participation of apprentices and on-the-job trainees per trade for inclusion in the contract specifications.

Part 4. Section 309-41-1-a of the code is repealed.

Part 5. Section 309-41-1-b to g of the code is renumbered a to f.

Part 6. Section 309-41-1-e of the code is amended to read:

309-41. Participation of City Residents In Public Works Contracts.

1. DEFINITIONS.

e. "Resident" means a person who maintains his or her place of permanent abode ~~[[in the CDBG area]]~~ within the city. Domiciliary intent is required to establish that a person is maintaining his or her place of permanent abode in the ~~[[CDBG area]]~~ >>city<<. Mere ownership of >>real<< property is not sufficient to establish domiciliary intent. Evidence of domiciliary intent includes, without limitation, the location where the person votes, pays personal income taxes or obtains a driver's license.

Part 7. Section 309-41-1-f of the code is repealed and recreated to read:

f. "Unemployed or underemployed" means that the resident has worked less than 1200 hours in the preceding 12 months or has not worked in the preceding 30 days or, regardless of employment status, has household income at or below the federal poverty guidelines as adjusted by the Wisconsin department of public instruction to define eligibility for reduced lunch in public schools. A resident shall continue to qualify as unemployed or underemployed for 5 years from the date he or she first participated in a construction contract. If a resident becomes an apprentice for a contractor or becomes a participant in an on-the-job training program as determined by the city immediately after or in the course of performing on a particular construction contract, he or she shall continue to qualify as unemployed or underemployed for a period not exceeding 5 years from the date the person became an apprentice or participant in such on-the-job training program.

Part 8. Section 309-41-1-g of the code is created to read:

g. "Worker hours" means the total hours worked on a construction contract by skilled and unskilled construction trade workers, whether those workers are employed by the contractor or any subcontractor. In determining the total worker hours to be furnished at a construction site, the number of hours devoted to all tasks customarily performed on a construction site shall be included, whether or not such tasks are performed on the construction site. "Worker hours" includes work performed by persons filling apprenticeships and participating in on-the-job training programs and excludes the number of hours of work performed by all non-Wisconsin residents.

Part 9. Section 309-41-2-a and c of the code is amended to read:

2. REQUIREMENTS.

a. A requirement that ~~[[25%]]~~ >>40%<< of the worker hours, subject to the provisions of sub. 3-a-2, shall be performed by unemployed >>or underemployed<< residents ~~[[of the CDBG area]]~~ >>, and that ~~[[furthermore the contractor]]~~ >> contractors and subcontractors<< shall give fair consideration to all segments of the population including women and minorities. ~~[[For the purpose of this section, "worker hours includes work performed by persons filling apprenticeship and on-the-job training programs.]]~~

c. A requirement that ~~[[the contractor]]~~ >>contractors and subcontractors<< maintain personnel records listing the ~~[[names]]~~ >>name,<< and ~~[[addresses]]~~ >>address,<< ~~[[and]]~~ race and gender of ~~[[its]]~~ >>all<< employees utilized for each contract, and any records demonstrating that the employees utilized by the contractor in meeting the requirements of this section are ~~[[actual]]~~ residents ~~[[of the CDBG area]]~~. These records shall be maintained for ~~[[3]]~~ >>7<< years after the contractor has received final payment under the contract, and shall be made available to the department for inspection upon reasonable notice.

Part 10. Section 309-41-2-d of the code is repealed.

Part 11. Section 309-41-3-a-2 of the code is amended to read:

3. ADMINISTRATION.

a-2. Determine the appropriate level of participation of unemployed >>or underemployed<< residents of the ~~[[CDBG area]]~~ >>city<< for inclusion in the contract specifications. The appropriate level of participation shall be presumed to be ~~[[25%]]~~ >>40%<<, unless the department determines there is sufficient reason to impose a lesser requirement. However, the commissioner of public works may require greater levels of participation if the commissioner finds that such levels may be warranted for certain contracts. >>Up to one-third of required worker hours may be achieved by documenting the use of unemployed or underemployed residents on projects undertaken by the contractor where such compliance is not required, or by hiring unemployed or underemployed residents on a full-time permanent basis for non-construction job categories connected to the project. Such adjustments must be proposed in an affidavit on a form provided by the

department setting forth the facts upon which the request for adjustment is based.<<

Part 12. Section 309-41-3-b-2 of the code is amended to read:

b-2. Require all contractors and subcontractors, prior to commencement of the work, to submit affidavits on forms supplied by the department from employees utilized to meet the requirements of this section, stating that the employee is both unemployed >>or underemployed<< and is a resident [~~of the CDBG area~~].

Part 13. Section 309-41-4 of the code is amended to read:

4. ANNUAL REVIEW. The residents preference program established by this section shall be reviewed by the common council, in consultation with the mayor, on or before October 1 of each year, to review the necessity for the continuation of the program and, if necessary, adjust the requirements of the program in an attempt to reduce the disparity between the unemployment statistics [~~for the CDBG area~~] >>among different census tracts<< [~~and the rest of the city and the Milwaukee metropolitan area and between the city~~] >>in the city and between the city as a whole<< and the Milwaukee metropolitan area.

Part 14. Section 309-41-5-c and f to h of the code is amended to read:

- c. If not all construction contracts included a residency requirement or if some contracts contained a requirement of less than [~~25%~~] >>40%<< of worker hours, the department shall state the reason for this difference.
- f. The percentage of total hours worked by [~~city/CDBG area, city/non-CDBG area and city, non-city~~] >>city, non-city and non-state<< residents [~~for~~] >>on construction<< contracts which included the residency requirement.
- g. Information to assist the common council in its annual reappraisal of the residents preference program, including the number of individual participants by job type [~~(e.g. laborer, carpenter, electrician, etc.)~~], the number of new [~~CDBG area~~] residents hired during the year under the program and the number of program participants who advanced to apprenticeships >>and on-the-job training programs<<.
- h. Unemployment rates in the [~~CDBG area~~] >>city<< and the Milwaukee metropolitan area and the sources of the statistics.

Part 15. Chapter 355 of the code is created to read:

CHAPTER 355 COMMUNITY PARTICIPATION IN DEVELOPMENT AGREEMENTS

355-1. Definitions. In this chapter:

- 1. **DEPARTMENT** means department of city development.
- 2. **DIRECT FINANCIAL ASSISTANCE** means the value of below-market land sales, any direct subsidies to developers and city expenditures for private improvements, with a combined value of \$1 million or more, as determined by the commissioner of the department, targeted specifically to a project. It includes the value of tax increment financing and below-market-rate loans provided by the city.
- 3. **UNEMPLOYED OR UNDEREMPLOYED** means that the resident has worked less than 1200 hours in the preceding 12 months or has not worked in the preceding 30 days or, regardless of employment status, has household income at or below the federal poverty guidelines as adjusted by the Wisconsin department of public instruction to define eligibility for reduced lunch in public schools. A resident shall continue to qualify as unemployed or underemployed for 5 years from the date he or she first participated in a construction contract. If a resident becomes an apprentice for a contractor or becomes a participant in an on-the-job training program as determined by the city immediately after or in the course of performing on a particular construction contract, he or she shall continue to qualify as unemployed or underemployed for a period not exceeding 5 years from the date the person became an apprentice or participant in such on-the-job training program.

355-3. Requirements for Projects Receiving Direct Financial Assistance. All persons or entities receiving direct financial assistance for projects approved after the effective date of this ordinance [city clerk to insert date] shall comply with this chapter in the implementation of such projects.

355-5. Application Process.

- 1. All developers seeking direct financial assistance for a project shall complete an application in the form provided by

the department.

2. Once the application has been completed, the department and the city comptroller shall provide to the common council an analysis of the project's financial feasibility, market assumptions, rate of return, and jobs impact, including wage and benefit information. The department shall further provide a separate report discussing the quality of proposed building and site design, the impact of the project on the city's historic building stock, and the project's sustainable features, including use of alternative energy sources and recycled and low-impact materials, creation of public open space, incorporation of transit- and pedestrian-oriented design features and amenities, and eligibility for certification under the Leadership in Energy and Environmental Design Green Building Rating System or other national certification.

3. Any resolution proposing direct financial assistance shall include a term sheet outlining the conditions under which such assistance is to be provided.

4. The department shall negotiate development agreements governing the implementation of projects for which direct financial assistance is approved. Such agreements shall incorporate the conditions contained in the term sheet approved by the common council. No city funds may be released for any project governed by this chapter without the approval of a term sheet and execution of a development agreement. Development agreements shall require compliance with all provisions of ss. 355-7 to 355-13, except that the common council may by resolution impose lesser or different requirements.

355-7. Participation of City Residents.

1. REQUIREMENTS. Recipients of direct financial assistance shall:

a. Ensure compliance with aspects of the development agreement regarding the use of unemployed and underemployed residents for construction of the project. For the purpose of this section, "worker hours" includes work performed by persons filling apprenticeship and on-the-job training programs and excludes the number of hours of work performed by all non-Wisconsin residents.

b. Ensure that all of the recipients' contracts with contractors and sub-contractors for the project include a provision in which such contractor or subcontractor certifies that it knows of the provisions of this section, intends to comply with them and authorizes the city to enforce its terms.

c. Require that contractors and subcontractors maintain personnel records listing the name, address, race, and gender of all employees utilized for each construction contract, and any records demonstrating that the employees utilized by the contractors and subcontractors in meeting the requirements of this section are residents of the city. These records shall be maintained for 7 years after the contractor or subcontractor has received final payment under its construction contract, and shall be made available to the emerging business enterprise administration for inspection upon reasonable notice.

2. ADMINISTRATION. The department of city development and emerging business enterprise administration shall be responsible for the planning, implementation and enforcement of this section.

a. Prior to submitting a proposed term sheet for a project, the commissioner of city development, in consultation with the emerging business enterprise administration or such other entity as may be designated by the city from time to time, shall determine the appropriate level of participation of unemployed and underemployed residents of the city for the project to reflect the job or trade categories required for the project and the pool of available certified and qualified workers within each job or trade category. The total appropriate level of participation shall be presumed to be 40%, unless the commissioner determines there is sufficient reason to impose a lesser requirement. The recipient of direct financial assistance shall submit a city resident utilization plan detailing how the level of required participation will be achieved. Up to one-third of required worker hours may be achieved by documenting the use of unemployed or underemployed residents on projects undertaken by the developer where such compliance is not required, or by hiring unemployed or underemployed residents on a full-time permanent basis for non-construction job categories connected to the project. Such adjustments must be proposed in an affidavit on a form provided by the department setting forth the facts upon which the request for adjustment is based.

b. Prior to the release of funds, the commissioner shall confirm that all contractors and subcontractors, prior to commencement of their work, have submitted an affidavit in the form supplied by the department from employees utilized to meet the requirements of this section, stating that the employee is unemployed or underemployed and is a resident of the city.

c. During the construction of any project covered by this section, the emerging business enterprise administration shall:

c-1. Monitor compliance with the provisions of this section.

c-2. Confirm that all contractors and subcontractors have submitted construction contract time reports listing workers by name, residential address, work classification and hours worked at least once every 3 months during the course of their work and within 10 days following completion of their work.

c-3. Arrange for an independent audit with respect to the residents preference program, to be performed every 3 years,

by a certified accounting firm licensed to perform audits in the state of Wisconsin, or by the city comptroller.

3. REPORTING. The emerging business enterprise administration shall prepare annually a residents preference program report on the efforts of recipients of direct financial assistance in achieving the goals of the program for development agreements. The performance report shall include the following:

- a. The number and dollar amount of all construction contracts let.
- b. The number and dollar amount of construction contracts which incorporated a residency requirement and the percentage of unemployed or underemployed resident worker hours required as well as the number of worker hours worked or performed.
- c. If not all construction contracts included a residency requirement or if some contracts contained a requirement of less than 40% of worker hours, the emerging business enterprise administration shall state the reason for this difference.
- d. The number and dollar amount of non-construction contracts relative to projects which incorporated a residency requirement.
- e. Full disclosure of the emerging business enterprise administration's reasons for adjusting the participation percentage goal for individual contracts or groups of construction contracts.
- f. The percentage of total hours worked by city, non-city and non-state residents for contracts which included the residency requirement.
- g. Information to assist the common council in its annual reappraisal of the residents preference program pursuant to s. 309-41-4, including the number of individual participants by job type, the number of new city residents hired during the year under the program and the number of program participants who advanced to apprenticeships or on-the-job training programs.

355-9. Apprenticeship and On-The-Job Trainee Requirements.

- 1. REQUIREMENT.** a. Recipients of direct financial assistance shall employ, and shall require their contractors and subcontractors to employ, apprentices and on-the-job trainees in the performance of all construction contracts and subcontracts for the project entered into by the recipient, contractor or subcontractor in accordance with the maximum ratio of apprentices to journeymen established by the Wisconsin department of workforce development. In determining whether this requirement is appropriate for insertion in specifications for a particular construction contract, the department of administration may consider the nature of the work, whether the construction contract is of short duration and whether their work will involve trades which do not have apprentices or on-the-job trainees.
- b. All recipients, contractors and subcontractors shall submit contract time reports showing compliance with any contract requirements imposed in accordance with this section at least once every 3 months during the course of their work and within 10 days following completion of their work.

2. MONITORING AND ENFORCEMENT. The department of administration shall:

- a. Monitor the performance of each contractor or subcontractor with respect to the ratio of apprentices to journeymen and on-the-job trainees to non-trainees employed on the construction contract during performance of the construction contract.
- b. Confirm that all contractors and subcontractors have been required to maintain records concerning their apprenticeship and on-the-job training programs, which shall be retained for 7 years after the contractor or subcontractor has received final payment under its construction contract. These records shall be made available to the department of administration for inspection upon reasonable notice.

355-11. First-Source Employment Utilization.

1. DEFINITIONS. In this section "first-source employment program" means an employment program operated by the city or its designee which is to be utilized as contractors' first source for recruiting applicants for both new and replacement employment

2. RECIPIENT OF DIRECT FINANCIAL ASSISTANCE. Recipients of direct financial assistance shall require all of their contractors and subcontractors on the project to utilize the first-source employment program, subject to the following:

- a. Prior to announcing or advertising a position for work which shall be performed as a result of a construction contract, construction subcontract or of a new employment position, a contractor or subcontractor shall notify the emerging business enterprise administration, or its designee, about the position, including a general description and the minimum requirements for qualified applicants.
- b. The contractor or subcontractor shall not make any public announcement or advertisement for a period of 10 business days after notification to the emerging business enterprise administration or its designee, of the availability of the position.
- c. The emerging business enterprise administration or its designee, shall maintain a database of job opportunities subject to this section and shall provide information on these job opportunities to all city residents.
- d. The advance notice period required by par. b shall be waived if there are no qualified candidates to refer to the

contractor or subcontractor. The emerging business enterprise administration or its designee, shall notify the contractor of this waiver within 5 business days of being informed of the job availability.

e. The emerging business enterprise administration or its designee, shall institute a tracking system and record which applicants were interviewed, which applicants were not interviewed and which applicants were hired for positions subject to this subsection.

3. The emerging business enterprise administration shall confirm that each construction contract for a project entered into by a recipient of direct financial assistance requires contractors and subcontractors to enter into a first-source agreement with the city or its designee which shall apply for the duration of the contract. A first source recruitment agreement shall require:

- a. Utilization of the city's first-source employment program as the first source for recruitment and referral of applicants for new and replacement employment.
- b. Allowing the city's first-source employment program a minimum of 10 business days to refer applicants to contractors. Contractors may apply for a waiver of the 10-day requirement in emergency situations. Waivers may only be granted by the emerging business enterprise administration or its designee.
- c. The contractor or subcontractor to interview and consider qualified applicants referred by the emerging business enterprise administration or its designee before interviewing others.

4. **HIRING DECISIONS.** Contractors and subcontractors shall retain the right to make all final hiring decisions.

5. **AGREEMENTS.** First source recruitment agreements shall not require contractors or subcontractors to comply with this section if job vacancies or newly-created positions are filled by transfer or promotion from existing staff or from a file of qualified applicants previously referred by the emerging business enterprise administration or its designee.

6. **DISTRIBUTION OF INFORMATION.** The department and the emerging business enterprise administration shall distribute information about the first-source employment program to all developers of commercial, industrial and mixed-use projects in the city, including all developers not receiving direct financial assistance.

7. **ENFORCEMENT.** The emerging business enterprise administration shall monitor compliance with this section.

355-13. Other Requirements.

1. **CASH FLOW AND COST-SAVINGS PARTICIPATION.** When determined feasible by the commissioner of the department, development agreements shall include provisions under which the city benefits financially from either lower-than-expected project costs or higher-than-expected project cash flow.

2. **PAYMENTS IN LIEU OF TAXES.** When direct financial assistance is provided to a project in the form of tax incremental financing, the development agreement shall require a payment in lieu of taxes with respect to any parcel or building within the project that is or becomes exempt from real property taxes. This provision shall be incorporated into a covenant running with the land.

3. **PREVAILING WAGE.** The developer of any project receiving direct financial assistance shall ensure that all contractors and subcontractors engaged on the project pay the prevailing wage rate, as defined in s. 66.0903, Wis. Stats. to their construction employees performing work on the project, allow city access to employment records and city enforcement of prevailing wage rate requirements. For purposes of this subsection, direct financial assistance shall not include money allocated for environmental remediation, money allocated for the purchase of public access easements, money allocated for the construction of riverwalks, dockwalls, walkways, plazas, parks, private roadways open to the public or similar improvements or money allocated for public infrastructure improvements. This requirement shall not apply to residential or mixed use projects with a residential component that primarily involves the construction and/or rehabilitation of structures that contain not more than 4 dwelling units, to projects that seek to increase the supply of affordable housing in the city of Milwaukee or to projects supported with funds from the Milwaukee housing trust fund. The department of administration shall monitor compliance with this subsection.

4. **EMERGING BUSINESS ENTERPRISES.** The developer of any project receiving direct financial assistance from the city shall utilize emerging business enterprises for project expenditures in a total aggregate dollar amount equal to 25% of construction costs plus 18% of amounts expended for the purchase of services, professional services and supplies. This requirement shall be included in the development agreement between the city and the developer and in any cooperation agreement under which the city is providing another governmental entity with financial assistance for development-related activities. A business that is certified with Milwaukee county's community business partners program as a disadvantaged business enterprise shall qualify as an emerging business enterprise under ch. 360, and be included when determining

compliance with this subsection.

355-15. Annual Reports.

1. The department shall compile data assembled by its own employees and the department of administration and provide an annual report to the common council on compliance with the requirements of this chapter on or before October 1 of each year.
2. Annually, but no later than April 30th, the comptroller shall submit a report to the common council documenting the financial impact of the prevailing wage rate provisions of s. 355-13-3 on all development projects subject to s. 355-13-3 and completed during the prior calendar year. This financial impact analysis will include both city of Milwaukee direct costs and indirect benefits as well as those costs incurred by private entities subject to s. 355-13-3.

355-17. Sanctions. Every development agreement subject to the requirements of this chapter shall contain language indicating that if any document submitted to the city by a developer receiving financial assistance, a contractor or subcontractor under this chapter contains false, misleading, fraudulent information or demonstrates non-compliance with the requirements of this chapter, the department of administration may seek prosecution under s. 355-19 or the imposition of any of the following sanctions:

- a. Collection of any prevailing wage shortfall, with interest, for distribution to employees performing work on the project.
- b. Imposition of a requirement that remedial efforts be undertaken by developers for the remaining portion of a project where initial reports demonstrate non-compliance with the resident preference hours required for the project.
- c. Specific performance or specified remedies under any emerging business enterprise agreement or first source recruitment agreement.
- d. Remedies available to the city under a development agreement for such non-compliance.

355-19. Penalty. Any person, firm or corporation knowingly engaging in fraud, misrepresentation or in any attempt, direct or indirect, to evade the provisions of this chapter by providing false, misleading or fraudulent information shall, upon conviction, forfeit not less than \$2,000 nor more than \$5,000 together with the costs of prosecution.

Part 16. Section 360-06-1 of the code is amended to read:

360-06. Requirements of Contracting Departments.

1. GOALS. The following requirements are adopted by the city for the purpose of increasing the level of emerging business enterprise participation in city contracts. It shall be the responsibility of each contracting department to attain such goals in accordance with the criteria herein specified. Each contracting department, and all other operating departments when contracting based upon authority therefrom, shall ~~[[consistent with law,]]~~ utilize emerging business enterprises for ~~[[18% of]]~~ >>the following percentage<< of the total dollars, through prime contracts or subcontracts, annually expended on:
 - a. Construction >>: 25%<<.
 - b. Purchase of services >>: 18%<<.
 - c. Purchase of professional services >>: 18%<<.
 - d. Purchase of supplies >>: 18%<<.

Part 17. Chapter 365 of the code is created to read:

CHAPTER 365

LOCAL BUSINESS ENTERPRISE CONTRACTING PROGRAM

365-1. Creation; Purpose. There is created a local business enterprise contracting program in order to offset unemployment in the city of Milwaukee and promote the economic growth of the city.

365-3. Definition. In this chapter:

1. CONTRACTING DEPARTMENT means any city department, agency, board or commission that has contracting responsibilities.
2. LOCAL BUSINESS ENTERPRISE means a business which:
 - a. Is located within the geographical boundaries of the city of Milwaukee. Post office box numbers and residential addresses shall not suffice to establish status as a local business enterprise.
 - b. Has been located and doing business in the city for at least 1 year.
 - c. It is subject to local real estate taxes and it is not delinquent in the payment of any local taxes or has entered into an

agreement to pay any delinquency and is abiding by the terms of the agreement.

365-5. Administration. The local business enterprise contracting program shall be administered by the city purchasing director. The director shall develop appropriate rules, procedures and regulations for assuring compliance with the purpose and intent of this chapter, and supervise, coordinate, monitor and enforce the implementation of the local business enterprise contracting program goals in accordance with those rules, procedures and regulations.

1. DOCUMENTATION. Rules and procedures shall be made available to the public and distributed to city agencies. In addition, the city purchasing director shall establish reporting requirements for all city departments to document the dollar amount of contracts that have been awarded to local business enterprises.

2. ANNUAL REPORT. The city purchasing director shall review the local business enterprise activities of the contracting program annually and submit an annual report to the mayor and the common council.

365-7. Obligations of Contracting Departments.

- 1. CONTRACT AWARD.**
- a. A contracting department, shall, unless contrary to federal, state or local law or regulation, apply an award standard in all bids so that an otherwise responsive and responsible bidder which is a local business enterprise shall be awarded the contract, provided that its bid does not exceed the lowest bid by more than 5%.
 - b. A contracting department shall, unless contrary to federal, state or local law or regulation, apply an award standard in the composition of scales used to evaluate proposals submitted in response to formal requests for proposals to procure goods or services. An additional number of points, equal to 5% of the maximum number of points used in the evaluation, shall be applied to increase the total score attained by a local business enterprise.
 - c. If the bids of two or more local business enterprises do not exceed the lowest bid by more than 5%, the contract shall be awarded to the local business enterprise that submitted a bid that exceeded the lowest bid by the smallest amount.
 - d. If a bid submitted by a non-local business enterprise and a bid submitted by a local business enterprise are identical, the contract shall be awarded to the local business enterprise, even if the bids are only identical due to the 5% award standard provided for in this chapter. If 2 bids submitted by 2 local business enterprises are identical, the winner will be determined in accordance with the process for tie-breakers as established by the city purchasing director.
 - e. The preference under par. a shall not exceed \$25,000 for any one solicitation and award determination.

2. DUTIES OF CONTRACTING DEPARTMENT. Each contracting department is directed to:

- a. Obtain affidavits from local business enterprises with their bids verifying their status.
- b. Cooperate with the city purchasing director in the implementation of this chapter.
- c. Provide quarterly reports to the city purchasing director not later than 30 calendar days after the end of the previous quarter specifying with respect to contracts:
 - c.-1. Provide the dollar amount of those contracts awarded to local business enterprises.
 - c.-2. Provide other information as may be requested by the director.

365-9. Duration. This chapter shall be in effect for a period of 7 years after the effective date of this ordinance [city clerk to insert date] provided, however, that the common council shall determine the necessity for the continuation of the program as well as the applicable percentage of bid award standards for local business enterprises at 2-year intervals from the effective date of this ordinance [city clerk to insert date].

365-11. Sanctions. Every city contract awarded under this chapter shall contain language indicating that if any document submitted to the city by a contractor under this chapter for the purpose of participating in any city contract contains false, misleading or fraudulent information, the contracting department or the city purchasing director, as the case may be, may direct the imposition of any of the following sanctions on the offending contractor:

- a. Withholding of payment.
- b. Termination, suspension or cancellation of the contract in whole or in part.
- c. Denial to participate in any further contracts awarded by the city.

365-13. Penalty. Any person, firm or corporation knowingly engaging in fraud, misrepresentation or in any attempt, direct or indirect, to evade the provisions of this chapter by providing false, misleading or fraudulent information shall, upon conviction, forfeit not less than \$2,000 nor more than \$5,000 together with the costs of prosecution.

Part 18. This ordinance takes effect 120 days following passage and publication, except for part 17 which takes effect 60 days following the effective date of charter ordinance file number 080685.

APPROVED AS TO FORM

Legislative Reference Bureau
Date:_____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney
Date:_____

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