

	Recommendation and/or Comment	Program			Type of Change					Implementation	
		RPP	SBE	LBE	All	Ordinance	Policy	Practice	Procedure		Other (Specify)
1	Example - Eliminate 5 year certificaion period. WORC voted to adopt this recommendation at WORC 2/25/16 meeting (5-0)	x				x					immediate
2	Create a new ordinance specific to RPP that incorporates sections of other codes that clarifies reporting requirements, annual reporting and data collection responsibilities for all city departments that administer or encourage RPP participation.	x				x					immediate
3	Repeal the First Source Employment Program	x				x					immediate
4	Update the definition of unemployed and underemployed	x				x					immediate
5	Update the definition of worker hours	x				x					immediate
6	Codify language requiring a developer or its designee complete a gap or market analysis for projects receiving \$1M or more in city financial assistance.	x				x					immediate
7	Ensure all departments are collecting the same demographic information from contractors	x			x	x					immediate
8	"Credit" for previous work is only applicable to projects not meeting the required level of participation. Contractors must show every effort achieve goals.	x									immediate
9	Consider how to incorporate pre-training or skills-based training offered by external partners into the certification.	x									long term
10	Maintain separate ordinances for the SBE and LBE programs		x	x							immediate
11	Provide an online paperless application process for the SBE certification		x				x		x		immediate
12	Eliminate the SBE certification application processing fee		x				x		x		immediate




Department of Administration
Office of Small Business Development

Tom Barrett
Mayor

Sharon Robinson
Director of Administration

Nikki Purvis
Manager

MEMORANDUM

FROM: Nikki Purvis, Manager of the Office of Small Business Development 

TO: Members of the Workforce Organizational Reform Committee

DATE: March 17, 2016

RE: LRB161895 Proposed Discussion Draft Ordinance

This memorandum is in reference to the proposed discussion draft ordinance provided to this body Friday, March 4, 2016 regarding the consolidation of the Small Business Enterprise (SBE), Local Business Enterprise (LBE) and Residents Preference Programs (RPP) into one ordinance creating the Office of Workforce Development.

On November 24, 2015, members of the Common Council passed File # 151186, a resolution creating the Workforce Organizational Reform Committee to recommend and implement policies, procedures and practices for reform of the City's workforce development and economic participation initiatives. These recommendations include rationalizing, clarifying, correcting and removing outdated provisions of the Milwaukee Code of Ordinances relating to the SBE, LBE and RPP programs, ultimately establishing uniform policies and procedures across city departments responsible for administering the above-mentioned programs.

As a committee, we have engaged in passionate discussions with internal and external partners and community stakeholders with vested interests in ensuring city residents and small business owners have opportunities to thrive in our local economy. We have also had an opportunity to broaden our individual knowledge of the operational and administrative procedures within our respective departments as it relates to the SBE, LBE and RPP programs and, as a result, have recommended immediate and long term changes that will positively impact program outcomes.

After thoroughly reviewing the proposed discussion draft ordinance dated February 25, 2016, provided to this body via email Friday, March 4, 2016, I have serious concerns regarding the reorganization and administrative changes and ask that you reject this proposed legislation for the following reasons.

As written, the proposed discussion draft ordinance far exceeds the intent of the resolution of creating uniform policies, procedures and reporting standards. Creating a new department without adequately assessing the department's capacity to oversee the operation of the SBE, LBE and RPP programs is counterproductive. Additionally, suggesting such changes outside of the city's annual budget process without fully evaluating whether current resources adequately meet the demands of the Mayor and Common Council impedes on the City's ability to effectively operate such programs.

Secondly, injecting the Small Business Enterprise Program as a subchapter within an ordinance entitled “workforce development” deeply diminishes the value of the program and, equally, counters actions of the Mayor’s veto elevating the OSBD and SBE program’s profile.

Additionally, renaming of the Office of Small Business Development to the Office of Workforce Development (OWD) also further diminishes the importance of the SBE Program and was not a recommendation of this committee. Creating an Office of Workforce Development overshadows the efforts, actions and responsibilities of the city’s workforce investment board, Employ Milwaukee, as well as the programmatic efforts of Compete Milwaukee.

Finally, each program is unique and independent of one another and should not be categorized as workforce development programs. As previously discussed during the presentation at the January 14, 2016 committee meeting, the LBE program is specific to the bidding process, the SBE program is specific to small business contracting opportunities and the RPP program is specific to providing workforce opportunities to city residents. Therefore, these programs should remain separate. Centralizing all three programs under workforce development again overshadows the importance of each and creates operational challenges and barriers for our internal and external partners.

We are challenged with making decisions that will positively impact internal and external operations and, as a result, our recommendations should be reflective of such. Sharon Robinson, Director of the Department of Administration, and I strongly oppose the drastic changes in the proposed ordinance and we believe that a more streamlined, standardized and uniformed approach to collecting and analyzing data specific to the RPP program, will satisfy the objectives of the resolution. This uniformed approach can be accomplished by merging sections of existing codes specific to the RPP program into one ordinance and, as a result, reduces the fragmentation and inconsistencies in data collection and reporting requirements. Furthermore, it creates a shared responsibility and increases the city’s ability to better highlight its efforts to positively impact our local economy.

I appreciate your partnership and look forward to our continued collaborative efforts to strengthen our programs and outcomes, and opportunities for our local businesses and residents to thrive.

CHAPTER 355
COMMUNITY PARTICIPATION IN DEVELOPMENT AGREEMENTS

Table

355-1	Definitions
355-3	Requirements for Projects Receiving Direct Financial Assistance
355-5	Application Process
355-7	Participation of City Residents
355-9	Apprenticeship and On-The-Job Trainee Requirements
355-11	First-Source Employment Utilization
355-13	Other Requirements
355-15	Annual Reports
355-17	Sanctions
355-19	Penalty

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 August 8, 2009, 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

The amount should be decreased possibly to \$750 K?



355-7 Community Participation In Development Agreements

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 office of small business development for inspection upon reasonable notice.

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

This typically doesn't occur until after the GC has been selected. A Gap analysis, completed by the developer, should be incorporated into the process.

a. Prior to submitting a proposed term sheet for a project, the commissioner of city development, in consultation with the office of small business development 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 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 office of small business development shall:

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

~~e-2~~ ~~c-3~~. 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.

to OSBD

Since OSBD collects the affidavits, b. should be moved to c-2.

add "race and gender demographics" after residential address.

~~e-3. c-4.~~ 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.

2.5. RECORDKEEPING. The department of city development and office of small business development shall ensure that all data required for reporting under this section are maintained in a centralized labor compliance software system, as provided in s. 370-3-5.

3. REPORTING. The office of small business development 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.~~ ~~development agreements executed~~

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. ~~development agreements~~

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 office of small business development 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 office of small business development'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.

categories of work or groups of

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~~ ^{project} during performance of the ~~construction contract.~~ ^{project} ~~the developer has~~

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.~~ ^{contractor and subcontractor} These records shall be made available to the department of administration for inspection upon reasonable notice. ^{project has concluded}

355-11 Community Participation In Development Agreements

Repeal the First-Source Employment Program. Projects of this size typically have union requirements and WRTP-Big Step assumes the responsibility.

~~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 office of small business development, 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 office of small business development or its designee, of the availability of the position.

c. The office of small business development 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 office of small business development or its designee, shall notify the contractor of this waiver within 5 business days of being informed of the job availability.

e. The office of small business development 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 office of small business development 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 office of small business development or its designee.

c. The contractor or subcontractor to interview and consider qualified applicants referred by the office of small business development 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 office of small business development or its designee.

6. DISTRIBUTION OF INFORMATION. The department and the office of small business development 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 office of small business development shall monitor compliance with this section.

355-13. Other Requirements.

1. CASH FLOW AND COST-SAVINGS PARTICIPATION. When determined feasible by the commissioner,

**Community Participation In Development
Agreements 355-15**

Need to determine if OSBD or DCD should provide the report. The information presented is repetitive.

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. WAGE REQUIREMENTS. A development agreement shall include provisions requiring, unless precluded by s. 66.0903, Wis. Stats., that an employee who performs work that is funded by financial assistance from the city receive, at a minimum, a living wage as defined in s. 310-13-2-a. The department of administration shall monitor compliance with this subsection.

4. SMALL BUSINESS ENTERPRISES.
a. The developer of any project receiving direct financial assistance from the city shall use a small business enterprises as defined in s. 370-1-23 for project expenditures in a total aggregate dollar amount equal to the following.

- a-1. Construction: 25%.
- a-2. The purchase of goods and services: 25%.
- a-3. The purchase of professional services: 18%.

b. The requirement to use small business enterprises shall be included in a written agreement between the city and the entity receiving the direct financial assistance.

c. A business that is certified with Milwaukee County, the state of Wisconsin or the U.S. federal government as a disadvantaged, emerging or small business enterprise, or some other program that in the discretion of the manager of the office of small business development is comparable to the city's small business enterprise program, shall qualify as a small business enterprise for the purposes of this chapter, and shall be included when determining compliance with the subsection.

355-15. Annual Reports. 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.

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:

- 1.** 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.
- 2.** Specific performance or specified remedies under any written agreement pertaining to small business enterprise participation or first-source recruitment agreement.
- 3.** 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.

**355--(HISTORY) Community Participation In Development
Agreements**

**LEGISLATIVE HISTORY
CHAPTER 355**

Abbreviations:

am = amended

cr = created

ra = renumbered and amended

rc = repealed and recreated

rn = renumbered

rp = repealed

<u>Section</u>	<u>Action</u>	<u>File</u>	<u>Passed</u>	<u>Effective</u>
Ch. 355	cr	080218	3/25/2009	8/8/2009
355-7-1-c	am	110086	10/11/2011	1/1/2012
355-7-2-0	am	110086	10/11/2011	1/1/2012
355-7-2-a	am	110086	10/11/2011	1/1/2012
355-7-2-c	am	110086	10/11/2011	1/1/2012
355-7-2.5	cr	151055	12/15/2015	12/31/2015
355-7-3-0	am	110086	10/11/2011	1/1/2012
355-7-3-c	am	110086	10/11/2011	1/1/2012
355-7-3-e	am	110086	10/11/2011	1/1/2012
355-11-2-a	am	110086	10/11/2011	1/1/2012
355-11-2-b	am	110086	10/11/2011	1/1/2012
355-11-2-c	am	110086	10/11/2011	1/1/2012
355-11-2-d	am	110086	10/11/2011	1/1/2012
355-11-2-e	am	110086	10/11/2011	1/1/2012
355-11-3-0	am	110086	10/11/2011	1/1/2012
355-11-3-b	am	110086	10/11/2011	1/1/2012
355-11-3-c	am	110086	10/11/2011	1/1/2012
355-11-5	am	110086	10/11/2011	1/1/2012
355-11-6	am	110086	10/11/2011	1/1/2012
355-11-7	am	110086	10/11/2011	1/1/2012
355-13-3	rc	091048	12/22/2009	1/9/2010
355-13-3	rp	110735	12/20/2011	1/12/2012
355-13-3	cr	131627	7/22/2014	8/8/2014
355-13-4	rc	111326	5/22/2012	6/12/2012
355-13-4-d	rp	141261	12/16/2014	1/10/2014
355-15-1	rn to	110735	12/20/2011	1/12/2012
	355-15-0			
355-15-2	rp	110735	12/20/2011	1/12/2012
355-17-2	am	111326	5/22/2012	6/12/2012
355-17-a	rp	110735	12/20/2011	1/12/2012
355-17-b	rn to	110735	12/20/2011	1/12/2012
	355-17-1 (corr.)			
355-17-c	rn to	110735	12/20/2011	1/12/2012
	355-17-2 (corr.)			
355-17-d	rn to	110735	12/20/2011	1/12/2012
	355-17-3 (corr)			

[Pages 1097-1290 are blank]

CHAPTER 370
SMALL BUSINESS ENTERPRISE PROGRAM

TABLE
SUBCHAPTER 1
GENERAL PROVISIONS

370-1	Definitions
370-3	Administration
370-5	Goals of Contracting Departments
370-9	Sanctions
370-11	Penalties

SUBCHAPTER 4 2
SMALL BUSINESS
ENTERPRISE PROGRAM

370-23	Creation
370-25	Certification Requirements for a Small Business Enterprise
370-27	Requirements for the Participation of Small Business Enterprises

SUBCHAPTER 1
GENERAL PROVISIONS

370-1. Definitions. In this chapter:

1. AT A DISADVANTAGE WITH RESPECT TO BUSINESS LOCATION means location within an ~~enterprise~~ zone within the city for a period of not less than one year of the applicant's principal office and business of which the applicant is the sole owner or one of the owners and a principal operator.

2. AT A DISADVANTAGE WITH RESPECT TO EDUCATION means failure to attain a high school degree or its equivalent for good reason or attendance in schools ~~which have~~ repeatedly achieved ratings below national, state and community averages in educational standards, educational standardized test scores and student grade point averages.

3. AT A DISADVANTAGE WITH RESPECT TO EMPLOYMENT means a pattern of nonachievement in hiring, promotion and other aspects of employment advancement due to factors beyond the individual's reasonable control, a lack of current knowledge and skills necessary for employment, career advancement or consistent earning of average annual income below the median income level of adults of comparable age in this city.

4. AT A SOCIAL DISADVANTAGE means an applicant's experience of substantial difficulty in attaining employment or business success at least in part due to location of the individual's residence and lack of mobility, physical handicap or other causes beyond the individual's reasonable control.

5. AT AN ECONOMIC DISADVANTAGE means an inability to compete in the free enterprise system due to diminished capital, credit or bonding opportunities. Factors which will be considered as an indication that an individual has been economically disadvantaged include, but are not limited to, failure to accumulate adequate business capital or obtain sufficient credit to start or support a going business concern, failure to acquire business-related credit or bonding under terms or circumstances as favorable as those generally experienced by nondisadvantaged individuals, consistent failure to receive awards or bids of governmental contracts despite competitive pricing or other similar factors which have disadvantaged the applicant in the development of a business.

6. CONSTRUCTION means the erection, rehabilitation, alteration, conversion, extension, demolition or repair of improvements to real property, including facilities providing utility service and includes the supervision, inspection and other on-site functions incidental to construction.

7. CONTRACT means a binding agreement by which the city is committed to expend or does expend its funds or other resources for in connection with any of the following purposes:

- a. Construction of any public improvements.
- b. Purchase of any personal property.
- c. Purchase of any services, goods or supplies.
- d. Lease of any personal or real property.
- e. Concession agreements whereby the city grants a specific permission, privilege or license.

Renewal community

add "failure of the individual to attain average grades"

or districts

Small Business Enterprise Program 370-3

8. CONTRACTING AGENCY means any city department, agency, board, commission or officer that has contracting authority.

9. CONTRACTOR means a separate and distinguishable business entity participating or seeking to participate in the performance of a contract.

10. ~~ENTERPRISE~~ ^{Renewal Community} ZONE means an area within the city for which an application for designation as an enterprise zone has been submitted to, or has been designated by, the United States secretary of housing and urban development as an enterprise zone under 42 U.S.C., ss. 11501, et seq., as amended, or similar area designated disadvantaged by the common council.

11. INDIVIDUAL AT A DISADVANTAGE means a person who is at an economic disadvantage, who is a citizen or lawful permanent resident of the United States and who is experiencing substantial difficulty in achieving business-related success as a result of at least 3 of the following:

- a. At a disadvantage with respect to business location.
- b. At a disadvantage with respect to education.
- c. At a disadvantage with respect to employment.
- d. At a social disadvantage.

12. JOINT VENTURE means an association of 2 or more persons or businesses carrying out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.

13. MANAGER means the manager of the office of small business development.

15. OWNED, OPERATED AND CONTROLLED means a business which is one of the following:

- a. A sole proprietorship legitimately owned, operated and controlled by an individual at a disadvantage.
- b. A partnership or joint venture legitimately owned, operated and controlled by individuals who are at a disadvantage and who own at least 51% of the beneficial ownership interests in the enterprise and who hold at least 51% of the voting interests of the enterprise.

c. A corporation legitimately owned, operated and controlled by one or more individuals who are at a disadvantage and who own at least 51% of the outstanding shares and who hold at least 51% of the voting interests of the corporation.

17. SMALL BUSINESS ENTERPRISE means a business that has been certified by the office of small business development based on the requirements specified in s. 370-25.

370-3. Administration. There is created an office of small business development in the department of administration which shall be responsible for the administration, coordination and implementation of the city's small business enterprise program. Under the direction of the department of administration, the office of small business development shall be administered by the manager. The manager shall be appointed by the mayor and confirmed by the common council and shall serve concurrently with the term of the mayor. The manager shall:

1. Establish criteria and procedures for reviewing contract performance and compliance with the requirements of the program, subject to approval by the common council.

2. Develop appropriate rules, procedures and regulations for assuring participation of small business enterprises in city contracts, subject to approval by the common council, and supervise, coordinate, monitor and enforce the implementation of small business enterprise participation goals for all city procurements in accordance with those rules, procedures and regulations.

3. Develop procedures for certification of small business enterprises.

4. Provide appropriate management assistance and direction to small business enterprises so as to maximize their participation in contracts let by the city, with such assistance to include:

Small Business Enterprise Program 370-5

a. Providing assistance and information in connection with the establishment, expansion and overall development of small business enterprises.

b. Assisting in the introduction of business associations between individuals of small business enterprises and others or between 2 or more small business enterprises.

c. Planning and participating in training seminars for informing ~~potential bidders~~ ^{contractors} of the small business enterprise program and of business opportunities available.

d. Serving as a clearinghouse for information about training and educational programs. ^{for small business enterprises}

e. Developing various types of financial assistance for consideration by the common council to assist small business enterprises to obtain working capital to begin, continue and maintain a satisfactory level of business. These include a revolving loan program, ~~guaranteed loan program, gap lending program and~~ ^{There are external partners that are better equipped to operate financial programs such as gap lending and guaranteed loans. WWBIC, MEDC, SBA, Lincoln Opportunity Fund} **bond reduction and waivers when feasible.**

~~5. Use a centralized labor compliance software reporting and evaluation system for uniform data collection, maintenance, monitoring and reporting by all city departments and contractors with responsibilities under the city's small business enterprise, residents preference and local business enterprise programs.~~

6. Review and monitor all city contracts with small business enterprises for compliance and notify in written form the contractor on the findings of the review and decisions concerning satisfaction of contractual deficiencies.

7. Serve as liaison with economic development organizations and agencies working in support of economic development in the community.

8. Coordinate any city-sponsored economic development programs for small business enterprises.

9. Review small business enterprise participation progress in the city's contract and procurement activities and submit a written report to the mayor and common council. ^{on or before October 1 of each year.}

10. Establish reporting requirements for all contracting departments to document the percentage of contracts which have been awarded to small business enterprises.

11. Devise rules, regulations and procedures governing requests for waivers from the requirements of the small business enterprise program, subject to approval by the common council.

12. Conduct hearings on requests by contracting agencies for waivers from the requirements of the program. Upon a denial of a request for a waiver, the affected agency may apply for a waiver to the appropriate standing committee of the common council. The committee shall have the authority to waive any requirements of this chapter upon showing of good cause.

13. Develop and monitor affirmative action criteria for employment of minorities and women by contractors, subcontractors and suppliers consistent with law.

This is a federal law? Seems to be outside of our scope. I'd like an opinion from the OCA as to how this should be implemented.

370-5. Goals of Contracting Departments.

1. GOALS. The following requirements are adopted by the city for increasing the level of small business enterprise participation in city contracts. It shall be the responsibility of each contracting agency to attain such goals in accordance with the criteria specified in this section. Each contracting agency shall, unless contrary to federal, state or local law, utilize small business enterprises for the following percentage of the total dollars, through prime contracts or subcontracts, annually expended on:

a. Construction: 25%.

b. The purchase of goods and services: 25%.

c. The purchase of professional services: 18%.

2. REVIEW OF GOALS. To assure the appropriate percentage goals for small business enterprise participation, the manager shall annually review and adjust the percentage goal, with the approval of the common council.

3. JOINT VENTURES. Participation of small business enterprises in joint ventures with other such businesses and mainstream business entities is encouraged. In the case of a certified joint venture, only that portion of the total dollar value of the contract equal to the percentage of participation of the small business enterprise partner venture in the joint venture shall be counted toward the applicable requirement.

As a non-contracting agency, we do not have the authority to reduce or waive bonds. We can encourage agencies to consider based on the size and scope of the contract.

LCPTracker is used to track RPP which is not a program within this code. This provision should be in Ch. 355 as it is not used to monitor the SBE or LBE program.

Small Business Enterprise Program 370-9

4. DUTIES OF CONTRACTING AGENCIES. Each contracting agency is directed to:

a. Cooperate with the office of small business development in the implementation of the small business enterprise program.

b. Develop lists of small business enterprises experienced in the various types of services, products or property typically contracted for.

c. Provide ~~quarterly~~^{monthly} reports to the manager not later than 30 calendar days after the end of the previous ~~quarterly period~~^{month} specifying with respect to contracts and subcontracts for the following:

c-1. For the forthcoming quarterly period, the means by which it intends to meet the requirements established by this section and the projected opportunities for small business enterprises.

c-2. The total dollar percentage and dollar amount expended on all city contracts, including with and without small business enterprises.

c-3. The degree to which the goals set forth in this section have been met, any past and current activities undertaken and being undertaken in trying to meet the goals and, if necessary, a detailed explanation of why the goals have not been met.

c-4. Any other information requested by the manager.

d. Appoint a member of the contracting agency or division to serve as a liaison between the contracting agency and the office of small business development.

e. Identify appropriate categories of contracts, on an annual basis, for the inclusion of requirements specifying designated levels of participation of small business enterprises, and, where appropriate, include in each contract a requirement that the contractor achieve the stated percentages.

f. Comply with the monitoring requirement that all prime contractors pay subcontractors within 7 business days of receipt of payment from the city.

5. PERFORMANCE ASSURANCE PROCEDURE. Each contracting agency shall develop and implement procedures, unless inappropriate, to assure that suppliers, employees, agents or other persons providing goods or services to small business enterprises participating in city contracts shall be paid in full in a timely manner. The procedures shall include joint check payments, bonding requirements and other financial safeguards. Nothing contained in this subsection shall require the city to make payments in excess of the contract price.

370-9. Sanctions. Every contract awarded under this chapter shall contain language indicating that if any document submitted to the office of small business development by a contractor, subcontractor, bidder or individual to be certified as a small business enterprise for participating in any city contract contains false, misleading or fraudulent information, the office of small business development may direct the imposition of any of the following sanctions on the offending contractor, subcontractor, bidder or individual:

1. Withholding of payment.

2. Termination, suspension or cancellation of the contract in whole or in part.

3. Denial to participate in any further contracts awarded by the city for a period of one year after the first violation is found and for a period of 3 years after any subsequent violations are found.

370-11. Penalties. 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, or upon default of payment, shall be imprisoned in the house of correction or county jail not to exceed 90 days.

SUBCHAPTER 4 2
SMALL BUSINESS ENTERPRISE PROGRAM

370-23. Creation. There is created a small business enterprise program to assist and protect the interests of individuals at a disadvantage owning, operating and controlling small businesses to promote and encourage full and open competition in the city, and to enhance opportunities for individuals who are at an economic disadvantage to successfully compete in a free market as independent business owners. The program shall apply to all contracts and shall include the taking of steps to increase the participation of small business enterprises, assisting in small business enterprise development programs and the identification and elimination of barriers that deny small business enterprises equal opportunity.

370-25. Certification Requirements for a Small Business Enterprise. A business shall be certified by the office of small business development as a small business enterprise for participation in the program, and shall meet the following requirements:

1. The business shall be a U.S.-based business which is independently owned, operated and controlled and is not dominant in its field of operation, or an affiliate of subsidiary of a business dominant in its field of operation.
2. The business shall meet the size standards of the United States small business administration.
3. The business shall have demonstrated capacity to perform independently or as a subcontractor relative to its field of operation.

4. The business shall not be owned, operated and controlled by individuals or groups of individuals who own, operate and control a large business involved in the same category of work as the business for which small business enterprise status is sought.

5. The business shall be operational for at least one year prior to certification.

6. The owner shall control the day-to-day critical operations of the firm.

7. The owner or owners shall be citizens or permanent, legal residents of the United States.

8. The business shall be at least 51% owned, operated and controlled by one or more individuals at a disadvantage.

370-27. Requirements for the Participation of Small Business Enterprises. Annually, there shall be required levels of participation of small business enterprises for the following types of contracts:

1. Construction contracts: 25%.
2. Goods and services contracts: 25%.
3. Professional services contracts: 18%.

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Small Business Enterprise Program 370 - (HISTORY)

**LEGISLATIVE HISTORY
CHAPTER 370**

Abbreviations:

am = amended
cr = created

ra = renumbered and amended
rc = repealed and recreated

rn = renumbered
rp = repealed

<u>Section</u>	<u>Action</u>	<u>File</u>	<u>Passed</u>	<u>Effective</u>
Ch. 370	cr	110086	10/11/2011	1/1/2012
370 (title)	am	130303	11/5/2013	11/22/2013
370-1	rc	111226	2/7/2012	2/24/2012
370-1-1	rp	130303	11/5/2013	11/22/2013
370-1-2	rp	130303	11/5/2013	11/22/2013
370-1-3	ra	130303	11/5/2013	11/22/2013
	To 370-1-1			
370-1-4	rn to 370-1-2	130303	11/5/2013	11/22/2013
370-1-5	rn to 370-1-3	130303	11/5/2013	11/22/2013
370-1-6	rn to 370-1-4	130303	11/5/2013	11/22/2013
370-1-7	rn to 370-1-5	130303	11/5/2013	11/22/2013
370-1-8	rn to 370-1-6	130303	11/5/2013	11/22/2013
370-1-8	am	130100	5/13/2014	5/31/2014
370-1-9	rn to 370-1-7	130303	11/5/2013	11/22/2013
370-1-10	rn to 370-1-8	130303	11/5/2013	11/22/2013
370-1-10	am	141261	12/16/2014	1/10/2015
370-1-11	rn to 370-1-9	130303	11/5/2013	11/22/2013
370-1-11	am	141261	12/16/2014	1/10/2015
370-1-12	rn to 370-1-10	130303	11/5/2013	11/22/2013
370-1-13	rp	130303	11/5/2013	11/22/2013
370-1-14	rn to 370-1-11	130303	11/5/2013	11/22/2013
370-1-14	rp	141261	12/16/2014	1/10/2015
370-1-15	rn to 370-1-12	130303	11/5/2013	11/22/2013
370-1-16	rn to 370-1-13	130303	11/5/2013	11/22/2013
370-1-16	rp	141261	12/16/2014	1/10/2015
370-1-17	rn to 370-1-14	130303	11/5/2013	11/22/2013
370-1-18	rp	130303	11/5/2013	11/22/2013
370-1-19	rp	130303	11/5/2013	11/22/2013
370-1-20	rp	130303	11/5/2013	11/22/2013
370-1-21	ra to 370-1-15	130303	11/5/2013	11/22/2013
370-1-22	rn to 370-1-16	130303	11/5/2013	11/22/2013

370-(HISTORY) Small Business Enterprise Program

370-1-23	rn to 370-1-17	130303	11/5/2013	11/22/2013
370-1-24	rp	130303	11/5/2013	11/22/2013
370-3-0	am	130303	11/5/2013	11/22/2013
370-3-0	am	130100	5/13/2014	5/31/2014
370-3-1	am	130303	11/5/2013	11/22/2013
370-3-2	am	130303	11/5/2013	11/22/2013
370-3-3	am	130303	11/5/2013	11/22/2013
370-3-4-0	am	130303	11/5/2013	11/22/2013
370-3-4-a	am	130303	11/5/2013	11/22/2013
370-3-4-b	am	130303	11/5/2013	11/22/2013
370-3-4-c	am	130303	11/5/2013	11/22/2013
370-3-4-e	am	130303	11/5/2013	11/22/2013
370-3-5	am	130303	11/5/2013	11/22/2013
370-3-5	rc	151055	12/15/2015	12/31/2015
370-3-6	am	130303	11/5/2013	11/22/2013
370-3-8	am	130303	11/5/2013	11/22/2013
370-3-9	am	130303	11/5/2013	11/22/2013
370-3-10	am	130303	11/5/2013	11/22/2013
370-3-10	am	130100	5/13/2014	5/31/2014
370-3-11	am	130303	11/5/2013	11/22/2013
370-3-12	am	130303	11/5/2013	11/22/2013
370-3-12	am	130100	5/13/2014	5/31/2014
370-5-1-0	am	130303	11/5/2013	11/22/2013
370-5-1-0	am	130100	5/13/2014	5/31/2014
370-5-2	am	130303	11/5/2013	11/22/2013
370-5-3	am	130303	11/5/2013	11/22/2013
370-5-4-0	am	130100	5/13/2014	5/31/2014
370-5-4-a	am	130303	11/5/2013	11/22/2013
370-5-4-b	am	130303	11/5/2013	11/22/2013
370-5-4-c-1	am	130303	11/5/2013	11/22/2013
370-5-4-c-2	am	130303	11/5/2013	11/22/2013
370-5-4-d	am	130100	5/13/2014	5/31/2014
370-5-4-e	am	130303	11/5/2013	11/22/2013
370-5-5	am	130303	11/5/2013	11/22/2013
370-5-5	am	130100	5/13/2014	5/31/2014
370-7	am	130303	11/5/2013	11/22/2013
370-7	rp	141574	3/3/2015	3/19/2015
370-9	am	130303	11/5/2013	11/22/2013
370-9	am	130100	5/13/2014	5/31/2014
Subch. 2, ch. 370	rp	130303	11/5/2013	11/22/2013
Subch. 3, ch. 370	rp	130303	11/5/2013	11/22/2013
370-23	am	111226	2/7/2012	2/24/2012
370-25-6	rp	130303	11/5/2013	11/22/2013
370-25-7	rn to 370-25-6	130303	11/5/2013	11/22/2013
370-25-8	rn to 370-25-7	130303	11/5/2013	11/22/2013
370-25-9	cr	111226	2/7/2012	2/24/2012
370-25-9	rn to 370-25-8	130303	11/5/2013	11/22/2013
370-27-1	am	130303	11/5/2013	11/22/2013
370-27-2	am	130303	11/5/2013	11/22/2013

[Pages 1359 to 1500 are blank]

..Number

151474

..Version

ORIGINAL

..Reference

..Sponsor

ALD. STAMPER

..Title

A substitute ordinance relating to the residents preference program.

..Sections

..Analysis

Currently, the Residents Preference Programs separately administered by various City departments.

This ordinance consolidates various functions of these programs, including recordkeeping, reporting and enforcement.

This ordinance also makes various code revisions relating to errors, inconsistencies and outdated provisions.

..Body

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

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

Part 2. Chapter 355 of the code is repealed.

CHAPTER 375???

Residents Preference Program
TABLE

SUBCHAPTER 1
GENERAL PROVISIONS

- 370-1 Definitions
- 370-9 Sanctions
- 370-11 Penalties

SUBCHAPTER 2
Participation of City Residents in Public Works Contracts

- 370-21 City Contracts

SUBCHAPTER 3
Community Participation in Development Agreements

- 370-31 Development Agreements

SUBCHAPTER 4
OTHER WORKFORCE DEVELOPMENT REQUIREMENTS

- 370-51 Apprenticeship and On-the-job Trainee Requirements
- Reporting 370-55 Other Requirements

SUBCHAPTER 1
GENERAL PROVISIONS

370-3. Definitions. In this chapter, unless otherwise provided:

6. CONSTRUCTION means the erection, rehabilitation, alteration, conversion, extension, demolition or repair of improvements to real property, including facilities providing utility service and includes the supervision, inspection and other on-site functions incidental to construction.

7. CONTRACT means a binding agreement by which the city is committed to expend or does expend its funds or other resources for in connection with any of the following purposes:

a. Construction of any public improvements.

9. CONTRACTOR means a separate and distinguishable business entity participating or seeking to participate in the performance of a contract.

10. 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 \$1,000,000 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.

18. RESIDENT means a person who maintains his or her place of permanent abode within the city. Domiciliary intent is required to establish that a person is maintaining his or her place of permanent abode in the city. Mere ownership of real property is not sufficient to establish domiciliary intent. Evidence of domiciliary intent includes the location where the person votes, pays personal income taxes or obtains a driver's license.

20. UNEMPLOYED OR UNDEREMPLOYED means that the resident has worked less than 1,200 hours in the preceding 12 months, 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, unless otherwise determined by the department.

21. WORKER HOURS means the total hours worked on a construction contract or development project 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 or project site, the number of hours devoted to all tasks customarily performed on a construction or project site shall be included, whether or not such tasks are performed on the construction or project 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.

370-9. Sanctions. 1. AVAILABLE SANCTIONS. If any document submitted to the city by a developer, contractor, subcontractor, bidder or individual contains any false, misleading or fraudulent information, or if a developer, contractor, subcontractor, bidder or individual fails to comply with this chapter, the department or city agency?? may direct the imposition of any of the following sanctions:

- a. Withholding of payment.
- b. Termination, suspension or cancellation of the contract in whole or in part.
- c. After a due process hearing, denial of the right to participate in any further contracts awarded by the city for a period of one year after the first violation is found and for a period of 3 years after any subsequent violations are found.
- d. In the case of a development agreement:
 - d-1. 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.
 - d-2. Specific performance or specified remedies under any written agreement pertaining to small business enterprise participation
 - d-3. Remedies available to the city under a development agreement for such non-compliance.

2. CONTRACT LANGUAGE. Every contract awarded under and every development agreement subject to the requirements of this chapter shall contain language specifying the sanctions set forth in this section.

370-11. Penalties. 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, and, in default of payment, may be imprisoned as provided by law.

SUBCHAPTER 2

Participation of City Residents in Public Works Contracts

370-21. City Contracts. 1. DEFINITIONS. In this section:

- a. "Construction" means either new construction work or repair work on any roads, bridges, sewers, streets, alleys, buildings or any other public work whatsoever.
- b. "Department" means the department of public works.

2. GOALS. Every construction contract or other contract as the commissioner of public works may determine, which is funded in whole or in part by city, state or federal funds, where appropriate and consistent with law, shall contain:

a. A requirement that 40% of the worker hours, subject to the provisions of sub. 3-a-2, shall be performed by unemployed or underemployed residents, and that the contractor and any subcontractors shall give fair consideration to all segments of the population, including women and minorities.

b. A provision in which the contractor certifies that it knows of the provisions of this section and intends to comply with them.

c. A requirement that the contractor and any subcontractors maintain personnel records listing the name, address, race and gender of each employee utilized for the contract, and any records demonstrating that the employees utilized by the contractor in meeting the requirements of this section are residents. These records shall be maintained for 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.

3. ADMINISTRATION. a. Department Responsibilities. The department of public works shall be responsible for the planning, implementation, monitoring and enforcement of this section.

b. Planning and Implementation. Prior to the commencement of any construction or other project covered by this section, the department shall:

b-1. Identify the approximate number of job positions involved in the project.

b-2. Determine the appropriate level of participation of unemployed or underemployed residents of the city for inclusion in the contract specifications. The appropriate level of participation shall be 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.

c. Monitoring and Enforcement. The department shall:

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

c-2. For each contract subject to the requirements of this section:

c-2-a. Require the contractor and any subcontractors, prior to commencement of the work, to submit affidavits on forms supplied by the department from each employee utilized to meet the requirements of this section, stating that the employee is both unemployed or underemployed and is a resident.

c-2-b. Require the contractor and any subcontractors to submit within 10 days following completion of the work or every month, whichever comes first, contract time reports listing workers by name, residential address, work classification and hours worked.

c-3. Maintain racial, gender and residency information regarding job positions in all construction contracts administered by the department.

c-4. Ensure that all data required for reporting under this section are maintained in a centralized labor compliance software system, as provided in s. 370-5-1-f?.

370-23. Development Agreements. 1. DEFINITION. In this section, "department" means the department of city development.

2. GOALS. All persons or entities receiving direct financial assistance for projects approved after August 8, 2009, shall comply with this section in the implementation of such projects. 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 office of small business development for inspection upon reasonable notice.

3. ADMINISTRATION. a. Department responsibilities. The department of city development and office of small business development shall be responsible for the planning, implementation, monitoring and enforcement of this section.

a. Planning and Implementation. a-1. Every developer seeking direct financial assistance for a project shall complete an application in the form provided by the department.

a-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.

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

a-4. The total appropriate level of participation shall be presumed to be 40%, unless the commissioner of city development, in consultation with the office of small business development, determines there is sufficient reason to impose a lesser requirement. Sufficient reason to impose a lesser requirement can be addressed by the developer, or its designee, performing a gap or market analysis to determine the appropriate level of participation 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.

a-5. The recipient of direct financial assistance shall submit a city resident utilization plan detailing how the level of required participation will be achieved.

a-6. 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 to the office of small business development in the form supplied by the department from each employee utilized to meet the requirements of this section, stating that the employee is unemployed or underemployed and is a resident of the city.

a-7. The department shall negotiate a development agreement governing the implementation of a project 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 section without the approval of a term sheet and execution of a development agreement. Each development agreement shall require compliance with all provisions of this section, except that the common council may by resolution impose lesser or different requirements.

b. Monitoring and Enforcement. During the construction of any project covered by this section, the office of small business development shall:

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

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

4. EXCEPTIONS. a. If a developer exceeds the appropriate level of participation required under sub. 3-a-4, the extra worker hours performed by unemployed and underemployed residents on the project may, at the discretion of the office of small business development, be applied to current or future projects not meeting the level of participation required by the developer.

b. Up to one-third of the worker hours required under sub. 3-a-4 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.

SUBCHAPTER 5
OTHER WORKFORCE DEVELOPMENT REQUIREMENTS

370-51. Apprenticeship and On-The-Job Trainee Requirement.

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 project during performance of the project.

b. Confirm that the developer has been required to maintain records concerning its apprenticeship and on-the-job training programs, which shall be retained for 7 years after the developer has received final payment under its agreement. These records shall be made available to the department of administration for inspection upon reasonable notice.

REPORTING. The department of public works shall compile data assembled by its own employees and the department of administration, the department of neighborhood services, the department of city development and other city departments that encourage resident participation, prepare annually, on or before October 1, a report on the status of attaining the goals of the city's residents preference program. The performance report shall include the following:

a-1. The number and dollar amount of all construction contracts let and development agreements executed.

a-2. The number and dollar amount of construction contracts and development agreements 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.

a-3. If not all construction contracts or development agreements included a residency requirement or if some contracts contained a requirement of less than 40% of worker hours, the reason for this difference.

a-4. The number and dollar amount of non-construction contracts and development agreements which incorporated a residency requirement, along with a summary of the reasons for not incorporating a residency requirement in some or all of those contracts or agreements.

a-5. Full disclosure of individual city departments reasons for adjusting the participation percentage goal for individual contracts, groups of construction contracts or categories of work or groups of work for development agreements.

a-6. The percentage of total hours worked by city, non-city and non-state residents for contracts and development agreements which included the residency requirement, including information on the race and gender of program participants.

a-7. 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.

a-8. Unemployment rates in the city and the Milwaukee metropolitan area and the sources of the statistics.

a-9. Recommendations, if necessary, for adjusting the requirements of the program in an attempt to reduce the disparity between the unemployment statistics among different census tracts in the city and between the city as a whole and the Milwaukee metropolitan area.

370-55. Other Requirements. 1. CASH FLOW AND COST-SAVINGS

PARTICIPATION. When determined feasible by the commissioner of city development, a development agreement 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. WAGE REQUIREMENTS. A development agreement shall include provisions requiring, unless precluded by s. 66.0903, Wis. Stats., that an employee who performs work that is funded by financial assistance from the city receive, at a minimum, a living wage as defined in s. 310-13-2-a. The department of administration shall monitor compliance with this subsection.

..LRB

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

..Attorney

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

..Requestor

..Drafter

LRB161895-2

Andrew R. VanNatta

02/25/2016

DISCUSSION DRAFT

02.25.2016 Discussion Draft

..Number
151474
..Version
ORIGINAL
..Reference

..Sponsor
ALD. STAMPER
..Title

A substitute ordinance relating to the residents preference program, ~~small business enterprise and local business enterprise programs.~~

..Sections

~~309-41~~ _____ rp
~~355~~ _____ rp
~~365~~ _____ rp
~~370~~ _____ re

..Analysis

Currently, the Residents Preference, ~~Small Business Enterprise and Local Business Enterprise Programs are is~~ separately administered by various City departments.

This ordinance consolidates various ~~administrative~~ functions of these programs, including ~~coordination~~, recordkeeping, reporting and enforcement, ~~by re-forming the Office of Small Business Development as the Office of Workforce Development in the Department of Administration.~~

This ordinance also makes various code revisions relating to errors, inconsistencies and outdated provisions.

..Body

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

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

Part 2. Chapter 355 of the code is repealed.

~~Part 3. Chapter 365 of the code is repealed.~~

~~Part 4. Chapter 370 of the code is repealed and recreated to read:~~

CHAPTER ~~370~~ 375
~~Workforce Development Programs~~
Residents Preference Program
TABLE

SUBCHAPTER 1
GENERAL PROVISIONS

370-1	Creation; Purpose
370-3	Definitions
370-5	Office of Workforce Development
370-7	Contracting Agencies
370-9	Sanctions
370-11	Penalties

SUBCHAPTER 2

~~RESIDENTS PREFERENCE PROGRAM~~ Participation of City Residents in Public Works
Contracts

370-21	City Contracts
370-23	Development Agreements

SUBCHAPTER 3

~~SMALL BUSINESS ENTERPRISE PROGRAM~~ Community Participation in Development
Agreements

370-31	Creation; Purpose <u>Development Agreements</u>
370-33	Goals
370-35	Certification Requirements
370-37	Joint Ventures

SUBCHAPTER 4

~~LOCAL BUSINESS ENTERPRISE PROGRAM~~

370-41	Creation; Purpose
370-43	Application
370-45	Administration
370-47	Obligations of Contracting Departments

SUBCHAPTER 54

OTHER WORKFORCE DEVELOPMENT REQUIREMENTS

- 370-51 Apprenticeship and On-the-job Trainee Requirements
- ~~370-53 First Source Employment Utilization Reporting~~
- 370-55 Other Requirements

SUBCHAPTER 1
GENERAL PROVISIONS

~~**370-1. Creation; Purpose.** For the purpose of promoting workforce development in the city, of providing individuals with the opportunity for a sustainable livelihood and of meeting the needs of current and future businesses and industries, there is created an office of workforce development in the department of administration which shall be responsible for the coordination, implementation and review of the city's workforce development programs, including the residents preference, small business enterprise and local business enterprise programs.~~

370-3. Definitions. In this chapter, unless otherwise provided:

- ~~**1. AT A DISADVANTAGE WITH RESPECT TO BUSINESS LOCATION** means located within an enterprise zone within the city for a period of not less than one year, provided the location is the applicant's principal office and business, and provided the applicant is the sole owner or one of the owners and a principal operator.~~
- ~~**2. AT A DISADVANTAGE WITH RESPECT TO EDUCATION** means failure to attain a high school degree or its equivalent for good reason or attendance in schools which have repeatedly achieved ratings below national, state and community averages in educational standards, educational standardized test scores and student grade point averages.~~
- ~~**3. AT A DISADVANTAGE WITH RESPECT TO EMPLOYMENT** means a pattern of non-achievement in hiring, promotion and other aspects of employment advancement due to factors beyond the individual's reasonable control. This definition shall include a lack of current knowledge and skills necessary for employment, career advancement or consistent earning of an average annual income above the median income level of adults of comparable age in the city.~~
- ~~**4. AT A SOCIAL DISADVANTAGE** means an applicant's experience of substantial difficulty in attaining employment or business success at least in part due to the location of the individual's residence and lack of mobility, physical handicap or other causes beyond the individual's reasonable control.~~
- ~~**5. AT AN ECONOMIC DISADVANTAGE** means an inability to compete in the free enterprise system due to diminished capital, credit or bonding opportunities. Factors~~

~~which will be considered as an indication that an individual has been economically disadvantaged include:~~

~~a. Failure to accumulate adequate business capital or obtain sufficient credit to start or support an ongoing business concern.~~

~~b. Failure to acquire business-related credit or bonding under terms or circumstances as favorable as those generally experienced by non-disadvantaged individuals.~~

~~c. Consistent failure to receive awards or bids of governmental contracts despite competitive pricing.~~

~~d. Other similar factors which have disadvantaged the applicant in the development of a business, as determined by the office of workforce development.~~

6. CONSTRUCTION means the erection, rehabilitation, alteration, conversion, extension, demolition or repair of improvements to real property, including facilities providing utility service and includes the supervision, inspection and other on-site functions incidental to construction.

7. CONTRACT means a binding agreement by which the city is committed to expend or does expend its funds or other resources for in connection with any of the following purposes:

a. Construction of any public improvements.

~~b. Purchase of any personal property.~~

~~c. Purchase of any services, goods or supplies.~~

~~d. Lease of any personal or real property.~~

~~e. Concession agreements whereby the city grants a specific permission, privilege or license.~~

~~**8. CONTRACTING AGENCY** means any city department, agency, board, commission or officer that has contracting authority.~~

9. CONTRACTOR means a separate and distinguishable business entity participating or seeking to participate in the performance of a contract.

10. 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 ~~\$500,000-\$1,000,000~~ 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.

~~11. ENTERPRISE ZONE means an area within the city for which an application for designation as an enterprise zone has been submitted to, or has been designated by, the United States secretary of housing and urban development as an enterprise zone under 42 U.S.C., ss. 11501, et seq., as amended, or similar area designated disadvantaged by the common council.~~

~~12. INDIVIDUAL AT A DISADVANTAGE means a person who is at an economic disadvantage, who is a citizen or lawful permanent resident of the United States and who is experiencing substantial difficulty in achieving business-related success as a result of at least 3 of the following:~~

~~a. At a disadvantage with respect to business location.~~

~~b. At a disadvantage with respect to education.~~

~~c. At a disadvantage with respect to employment.~~

~~d. At a social disadvantage.~~

~~13. JOINT VENTURE means an association of 2 or more persons or businesses carrying out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.~~

~~14. LOCAL BUSINESS ENTERPRISE means a business which satisfies all of the following criteria:~~

~~a. Owns or leases real property within the geographical boundaries of the city of Milwaukee. Post office box numbers shall not suffice to establish compliance with this paragraph. A residential address may suffice to establish compliance with this paragraph, but only if the business does not own or lease other real property, either within or outside the geographical boundaries of the city of Milwaukee. Leased property shall not suffice to establish compliance with this paragraph unless at least half of the acreage of all of the real property owned or leased by the business is located within the geographical boundaries of the city of Milwaukee.~~

~~b. Has been doing business within the geographical boundaries of the city of Milwaukee for at least one year.~~

~~c. Is not delinquent in the payment of any local taxes, charges, or fees, or has entered into an agreement to pay any delinquency and is abiding by the terms of the agreement.~~

~~d. Will perform at least 10% of the monetary value of the work required under the contract.~~

~~15. MANAGER means the manager of the office of workforce development.~~

~~16. OWNED, OPERATED AND CONTROLLED means a business which is one of the following:~~

~~a. A sole proprietorship legitimately owned, operated and controlled by an individual at a disadvantage.~~

~~b. A partnership or joint venture legitimately owned, operated and controlled by individuals who are at a disadvantage and who own at least 51% of the beneficial ownership interests in the enterprise and who hold at least 51% of the voting interests of the enterprise.~~

~~c. A corporation legitimately owned, operated and controlled by one or more individuals who are at a disadvantage and who own at least 51% of the outstanding shares and who hold at least 51% of the voting interests of the corporation.~~

~~17. PURCHASING DIRECTOR means the city purchasing director granted the authority to purchase in s. 16-05-1 a of the charter.~~

18. RESIDENT means a person who maintains his or her place of permanent abode within the city. Domiciliary intent is required to establish that a person is maintaining his or her place of permanent abode in the city. Mere ownership of real property is not sufficient to establish domiciliary intent. Evidence of domiciliary intent includes the location where the person votes, pays personal income taxes or obtains a driver's license.

~~19. SMALL BUSINESS ENTERPRISE means a business that has been certified by the office of workforce development based on the requirements specified in s. 370-35.~~

20. UNEMPLOYED OR UNDEREMPLOYED means that the resident has worked less than 1,200 hours in the preceding 12 months, ~~has not worked in the preceding 15 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, unless otherwise determined by the manager department.

21. WORKER HOURS means the total hours worked on a construction contract or development project 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 or project site, the number of hours devoted to all tasks customarily performed on a construction or project site shall be included, whether or not such tasks are performed on the construction or project 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.

~~**22. WORKFORCE DEVELOPMENT** means the creation, support and retention of a viable labor force and business climate to preserve current and promote future businesses and industry.~~

~~**370-5. Office of Workforce Development.** The office of workforce development shall be responsible for the coordination, implementation and review of the city's workforce development programs, under the direction of the manager. The manager shall be appointed by the mayor and confirmed by the common council, and shall serve concurrently with the term of the mayor.~~

~~**1. DUTIES.** The responsibilities of the office of workforce development shall include:~~

~~a. Establishment of criteria and procedures for reviewing contract performance and compliance with the requirements of the city's workforce development programs, subject to approval by the common council.~~

~~b. Development of appropriate rules, procedures and regulations, subject to approval by the common council, for assuring fulfillment of the city's workforce development program goals.~~

~~c. Supervision, coordination, monitoring, enforcement and review of the city's workforce development programs for all city procurements in accordance with the rules, procedures and regulations established in par. b.~~

~~d. Development of procedures for certification of participants in the city's workforce development programs.~~

~~e. Provision of appropriate management assistance and direction to small business enterprises, local business enterprises and city residents so as to maximize their participation in contracts let by the city, with such assistance to include:~~

~~e-1. Providing assistance and information in connection with the city's workforce development programs.~~

- ~~e-2. Assisting in the introduction of business associations between individuals of small business enterprises, local business enterprises and others, or between 2 or more such enterprises.~~
- ~~e-3. Planning and participating in training seminars for informing potential bidders and workers of the city's workforce development programs, and of business opportunities available.~~
- ~~e-4. Serving as a clearinghouse for information about training and educational programs.~~
- ~~e-5. Developing various types of financial assistance, including revolving loan programs, guaranteed loan programs, gap lending programs and bond reductions and waivers, for consideration by the common council to assist small business enterprises, local business enterprises and others to obtain working capital to begin, continue and maintain a satisfactory level of business or employment.~~
- ~~f. Development of a centralized reporting and evaluation system to reflect the city's workforce development programs and assurance that all data required for reporting under this section are maintained in a centralized labor compliance software system.~~
- ~~g. Supervision and review of all city contracts with small business enterprises and local business enterprises for compliance, and the provision of written notification to the contractor on the findings of any review or decision concerning satisfaction of contractual deficiencies.~~
- ~~h. Serving as liaison with economic development organizations and other agencies working in support of economic development in the city.~~
- ~~i. Coordination of any city sponsored economic development programs for small business enterprises, local business enterprises and city residents.~~
- ~~j. Review of participation progress in the city's workforce development activities, including the submission and presentation of an annual written report to the mayor and common council.~~
- ~~k. Establishment of reporting requirements for all contracting departments to document the percentage of contracts which have been awarded to or have been worked on as part of the city's workforce development programs.~~
- ~~l. Development of rules, regulations and procedures governing requests for waivers from the requirements of the city's workforce development programs, subject to approval by the common council.~~

~~m. Administration of hearings on requests by contracting agencies for waivers from the requirements of the city's workforce development programs. Upon a denial of a request for a waiver, the affected agency may apply for a waiver to the appropriate standing committee of the common council. The committee shall have the authority to waive any requirements of this chapter upon showing of good cause.~~

~~n. Development and monitoring of affirmative action criteria for employment of minorities and women by contractors, subcontractors and suppliers consistent with law.~~

~~o. Arranging for an independent audit with respect to the city's workforce development programs, 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.~~

~~2.~~

~~b. For the small business enterprise program:~~

~~b-1. The degree to which the goals set forth in Subchapter 3 have been met.~~

~~b-2. Any activities undertaken or currently being undertaken in trying to meet these goals.~~

~~b-3. If necessary, a detailed explanation of why the goals have not been met.~~

~~b-4. Recommendations, if necessary, for adjusting the requirements of the program.~~

~~c. For the local business enterprise program:~~

~~c-1. The dollar amount of all contracts awarded to local business enterprises.~~

~~c-2. Recommendations, if necessary, for adjusting the requirements of the program.~~

~~370-7. Contracting Agencies.~~

~~1. DUTIES OF CONTRACTING AGENCIES. Each contracting agency is directed to:~~

~~a. Cooperate with the office of workforce development in the implementation of the city's workforce development programs.~~

~~b. Develop lists of small business enterprises experienced in the various types of services, products or property typically contracted for.~~

~~c. Provide quarterly reports to the office of workforce development not later than 30 calendar days after the end of the previous quarterly period specifying with respect to contracts and subcontracts the following:~~

~~c-1. For the previous quarterly period, the total dollar percentage and dollar amount expended on all city contracts, including with and without small business enterprises, local business enterprises and city residents.~~

~~c-2. For the previous quarterly period, the degree to which the goals set forth in this chapter have been met, any past and current activities undertaken and being undertaken in trying to meet these goals, and, if necessary, a detailed explanation of why the goals have not been met.~~

~~c-3. For the forthcoming quarterly period, the means by which the contracting agency intends to meet the requirements established by this chapter and the projected opportunities for small business enterprises, local business enterprises and city residents.~~

~~c-4. Any other information requested by the common council or the office of workforce development.~~

~~d. Appoint a member of the contracting agency to serve as a liaison between the contracting agency and the office of workforce development.~~

~~e. Comply with the monitoring requirement that all prime contractors pay subcontractors within 7 business days of receipt of payment from the city.~~

~~**2. PERFORMANCE ASSURANCE PROCEDURE.** Each contracting agency shall develop and implement procedures to assure that suppliers, employees, agents or other persons providing goods or services to small business enterprises or local business enterprises participating in city contracts shall be paid in full in a timely manner. The procedures shall include joint check payments, bonding requirements and other financial safeguards. Nothing contained in this subsection shall require the city to make payments in excess of the contract price.~~

370-9. Sanctions. 1. AVAILABLE SANCTIONS. If any document submitted to the city by a developer, contractor, subcontractor, bidder or individual contains any false, misleading or fraudulent information, or if a developer, contractor, subcontractor, bidder or individual fails to comply with this chapter, the ~~office of workforce development department or city agency??~~ may direct the imposition of any of the following sanctions:

a. Withholding of payment.

b. Termination, suspension or cancellation of the contract in whole or in part.

c. After a due process hearing, denial of the right to participate in any further contracts awarded by the city for a period of one year after the first violation is found and for a period of 3 years after any subsequent violations are found.

d. In the case of a development agreement:

d-1. 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.

d-2. Specific performance or specified remedies under any written agreement pertaining to small business enterprise participation ~~or first-source recruitment agreement.~~

d-3. Remedies available to the city under a development agreement for such non-compliance.

2. CONTRACT LANGUAGE. Every contract awarded under and every development agreement subject to the requirements of this chapter shall contain language specifying the sanctions set forth in this section.

370-11. Penalties. 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, and, in default of payment, may be imprisoned as provided by law.

SUBCHAPTER 2

Participation of City Residents in Public Works Contracts ~~RESIDENTS PREFERENCE PROGRAM~~

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370-21. City Contracts. 1. DEFINITIONS. In this section:

a. "Construction" means either new construction work or repair work on any roads, bridges, sewers, streets, alleys, buildings or any other public work whatsoever.

b. "Department" means the department of public works.

2. GOALS. Every construction contract or other contract as the commissioner of public works may determine, which is funded in whole or in part by city, state or federal funds, where appropriate and consistent with law, shall contain:

a. A requirement that 40% of the worker hours, subject to the provisions of sub. 3-a-2, shall be performed by unemployed or underemployed residents, and that the contractor and any subcontractors shall give fair consideration to all segments of the population, including women and minorities.

b. A provision in which the contractor certifies that it knows of the provisions of this section and intends to comply with them.

c. A requirement that the contractor and any subcontractors maintain personnel records listing the name, address, race and gender of each employee utilized for the contract, and any records demonstrating that the employees utilized by the contractor in meeting the requirements of this section are residents. These records shall be maintained for 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.

3. ADMINISTRATION. a. Department Responsibilities. The department of public works ~~and office of workforce development~~ shall be responsible for the planning, implementation, monitoring and enforcement of this section.

b. Planning and Implementation. Prior to the commencement of any construction or other project covered by this section, the department shall:

b-1. Identify the approximate number of job positions involved in the project.

b-2. Determine the appropriate level of participation of unemployed or underemployed residents of the city for inclusion in the contract specifications. The appropriate level of participation shall be 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.

c. Monitoring and Enforcement. The department shall:

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

c-2. For each contract subject to the requirements of this section:

c-2-a. Require the contractor and any subcontractors, prior to commencement of the work, to submit affidavits on forms supplied by the department from each employee utilized to meet the requirements of this section, stating that the employee is both unemployed or underemployed and is a resident.

c-2-b. Require the contractor and any subcontractors to submit within 10 days following completion of the work or every 3 months, whichever comes first, contract time reports listing workers by name, residential address, work classification and hours worked.

c-3. Maintain racial, gender and residency information regarding job positions in all construction contracts administered by the department.

c-4. Ensure that all data required for reporting under this section are maintained in a centralized labor compliance software system, as provided in s. 370-5-1-f?

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370-23. Development Agreements. 1. DEFINITION. In this section, "department" means the department of city development.

2. GOALS. All persons or entities receiving direct financial assistance for projects approved after August 8, 2009, shall comply with this section in the implementation of such projects. 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 office of workforce-small business development for inspection upon reasonable notice.

3. ADMINISTRATION. a. Department responsibilities. The department of city development and office of workforce small business development shall be responsible for the planning, implementation, monitoring and enforcement of this section.

a. Planning and Implementation. a-1. Every developer seeking direct financial assistance for a project shall complete an application in the form provided by the department.

a-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.

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

a-4. ~~Prior to submitting a proposed term sheet for a project, the commissioner of city development, in consultation with the office of workforce development, 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 of city development, in consultation with the office of small business development, determines there is sufficient reason to impose a lesser requirement. Sufficient reason to impose a lesser requirement can be addressed by the developer, or its designee, performing a gap or market analysis to determine the appropriate level of participation 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.

a-5. The recipient of direct financial assistance shall submit a city resident utilization plan detailing how the level of required participation will be achieved.

a-6. 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 to the office of small business development in the form supplied by the department from each employee utilized to meet the requirements of this section,

stating that the employee is unemployed or underemployed and is a resident of the city.

a-7. The department shall negotiate a development agreement governing the implementation of a project 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 section without the approval of a term sheet and execution of a development agreement. Each development agreement shall require compliance with all provisions of this section, except that the common council may by resolution impose lesser or different requirements.

b. Monitoring and Enforcement. During the construction of any project covered by this section, the office of ~~workforce-small business~~ development shall:

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

b-2. Confirm that all contractors and subcontractors have submitted construction contract time reports listing workers by name, residential address, ~~race and gender demographics~~, 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.

4. EXCEPTIONS. a. If a developer exceeds the appropriate level of participation required under sub. 3-a-4, the extra worker hours performed by unemployed and underemployed residents on the project may, at the discretion of the office of ~~workforce-small business~~ development, be applied to current or future projects ~~not meeting the level of participation required~~ by the developer.

b. Up to one-third of the worker hours required under sub. 3-a-4 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.

~~SUBCHAPTER 3 SMALL-BUSINESS ENTERPRISE PROGRAM~~

~~**370-31. Creation; Purpose.** There is created a small business enterprise program to assist and protect the interests of individuals at a disadvantage owning, operating and controlling small businesses, to promote and encourage full and open competition in the city, and to enhance opportunities for individuals who are at an~~

~~economic disadvantage to successfully compete in a free market as independent business owners. The program shall apply to all contracts and shall include the taking of steps to increase the participation of small business enterprises, assisting in small business enterprise development programs and the identification and elimination of barriers that deny small business enterprises equal opportunity.~~

~~**370-33. Goals. 1.** Any city contract and any developer of a project receiving direct financial assistance from the city shall use small business enterprises for project expenditures in a total aggregate dollar amount equal to the following:~~

~~a. Construction: 25%.~~

~~b. The purchase of goods and services: 25%.~~

~~c. The purchase of professional services: 18%.~~

~~**2.** For each project receiving direct financial assistance, the requirement to use small business enterprises shall be included in a written agreement between the city and the entity receiving the direct financial assistance.~~

~~**370-35. Certification Requirements. 1.** A business shall be certified by the office of workforce development as a small business enterprise for participation in the program, and shall meet the following requirements:~~

~~a. The business shall be a U.S. based business which is independently owned, operated and controlled and is not dominant in its field of operation, or an affiliate of subsidiary of a business dominant in its field of operation.~~

~~b. The business shall meet the size standards of the United States small business administration.~~

~~c. The business shall have demonstrated capacity to perform independently or as a subcontractor relative to its field of operation.~~

~~d. The business shall not be owned, operated and controlled by individuals or groups of individuals who own, operate and control a large business involved in the same category of work as the business for which small business enterprise status is sought.~~

~~e. The business shall be operational for at least one year prior to certification.~~

~~f. The owner shall control the day-to-day critical operations of the firm.~~

~~g. The owner or owners shall be citizens or permanent, legal residents of the United States.~~

~~h. The business shall be at least 51% owned, operated and controlled by one or more individuals at a disadvantage.~~

~~2. A business that is certified with Milwaukee County, the state of Wisconsin or the U.S. federal government as a disadvantaged, emerging or small business enterprise, or some other program that, in the discretion of the manager of the office of workforce development, is comparable to the city's small business enterprise program, shall qualify as a small business enterprise for the purposes of this subchapter, and shall be included when determining compliance with the subchapter.~~

~~**370-37. Joint Ventures.** Participation of small business enterprises in joint ventures with other such businesses and mainstream business entities is encouraged. In the case of a certified joint venture, only that portion of the total dollar value of the contract equal to the percentage of participation of the small business enterprise partner venture in the joint venture shall be counted toward the applicable requirement.~~

~~SUBCHAPTER 4 LOCAL BUSINESS ENTERPRISE PROGRAM~~

~~**370-41. Creation; Purpose.** There is created a local business enterprise contracting program to reduce unemployment in the city of Milwaukee and promote the economic growth of the city.~~

~~**370-43. Application.** This subchapter shall not apply to any competitive bid contract for the construction, execution, repair, remodeling or improvement of a public work or building, or for the furnishing of supplies or material of any kind for the construction, execution, repair, remodeling or improvement of a public work or building.~~

~~**370-45. Administration.** The local business enterprise contracting program shall be administered by the purchasing director. The director shall:~~

~~1. Develop appropriate rules, procedures and regulations for assuring compliance with the purpose and intent of this subchapter, and supervise, coordinate, monitor and enforce the implementation of the local business enterprise program goals in accordance with those rules, procedures and regulations.~~

~~2. Ensure that all rules and procedures are made available to the public and distributed to contracting agencies.~~

~~3. Establish reporting requirements for all contracting agencies to document the dollar amount of contracts that have been awarded to local business enterprises.~~

~~**370-47. Obligations of Contracting Departments. 1. CONTRACT AWARD.**~~

~~a. A contracting agency, shall, unless contrary to federal, state or local law or regulation, apply an award standard in all formal competitive bids so that an otherwise responsive and responsible bidder that is a local business enterprise shall be awarded the contract, provided that its bid does not exceed the lowest bid by more than 5% and provided that its bid does not exceed the lowest bid by more than \$25,000.~~

~~b. A contracting agency 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 2 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. If 2 bids submitted by 2 local business enterprises are identical, the contract shall be awarded in accordance with the process for tie-breakers as established by the city purchasing director.~~

~~e. If a local business enterprise also meets the small business enterprise certification requirements of s. 370-35, the award standards set forth in pars. a to c shall be 10%, provided that the preference under par. a shall not exceed \$50,000 for any one solicitation and award determination~~

~~**2. DUTIES OF CONTRACTING AGENCY.** Each contracting agency shall:~~

~~a. Obtain affidavits from local business enterprises with their bids or proposals verifying their status.~~

~~b. Cooperate with the purchasing director in the implementation of this subchapter.~~

~~c. Provide quarterly reports to the purchasing director not later than 30 calendar days after the end of the previous quarter specifying with respect to contracts:~~

~~c-1. The dollar amount of those contracts awarded to local business enterprises.~~

~~c-2. Other information as may be requested by the purchasing director.~~

SUBCHAPTER 5 OTHER WORKFORCE DEVELOPMENT REQUIREMENTS

370-51. Apprenticeship and On-The-Job Trainee Requirement. 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~~project during performance of the ~~construction contract~~project.

b. Confirm that ~~each contractor and subcontractor~~the developer has been required to maintain records concerning its apprenticeship and on-the-job training programs, which shall be retained for 7 years after the ~~contractor or subcontractor~~developer has received final payment under its ~~construction contract~~agreement. These records shall be made available to the department of administration for inspection upon reasonable notice.

~~**370-53. First-Source Employment Utilization. 1. DEFINITION.** 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. Each recipient of direct financial assistance shall require all of its 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 or subcontract, or of a new employment position, a contractor or subcontractor shall notify the office of workforce development, 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 office of workforce development or its designee, of the availability of the position.~~

~~c. The office of workforce development 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 office of workforce development or its designee shall notify the contractor of this waiver within 5 business days of being informed of the job availability.~~

~~e. The office of workforce development 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. DUTIES OF THE OFFICE OF WORKFORCE DEVELOPMENT. The office of workforce development 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 first source agreements 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. A contractor may apply for a waiver of the 10-day requirement in an emergency situation. Waivers may only be granted by the office of workforce development or its designee.~~

~~c. The contractor or subcontractor to interview and consider qualified applicants referred by the office of workforce development 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 office of workforce development or its designee.~~

~~6. DISTRIBUTION OF INFORMATION. The department and the office of workforce development 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 office of workforce development shall monitor compliance with this section.~~

REPORTING. The ~~office of workforce development~~ department of public works shall compile data assembled by its own employes and the department of administration, the department of neighborhood services, the department of city development and other city departments that encourage resident participation, prepare annually, on or before October 1, a report on the status of attaining the goals of the city's ~~workforce development~~ residents preference programs. The performance report shall include the following:

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~~a. For the residents preference program:~~

a-1. The number and dollar amount of all construction contracts let and development agreements executed.

a-2. The number and dollar amount of construction contracts and development agreements 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.

a-3. If not all construction contracts or development agreements included a residency requirement or if some contracts contained a requirement of less than 40% of worker hours, the reason for this difference.

a-4. The number and dollar amount of non-construction contracts and development agreements which incorporated a residency requirement, along with a summary of the reasons for not incorporating a residency requirement in some or all of those contracts or agreements.

a-5. Full disclosure of ~~the office of workforce development's individual city departments~~ reasons for adjusting the participation percentage goal for individual contracts ~~_or~~ groups of construction contracts or categories of work or groups of work for development agreements.

a-6. The percentage of total hours worked by city, non-city and non-state residents for contracts and development agreements which included the residency requirement, including information on the race and gender of program participants.

a-7. 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.

a-8. Unemployment rates in the city and the Milwaukee metropolitan area and the sources of the statistics.

a-9. Recommendations, if necessary, for adjusting the requirements of the program in an attempt to reduce the disparity between the unemployment statistics among different census tracts in the city and between the city as a whole and the Milwaukee metropolitan area.

370-55. Other Requirements. 1. CASH FLOW AND COST-SAVINGS

PARTICIPATION. When determined feasible by the commissioner of city development, a development agreement 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. WAGE REQUIREMENTS. A development agreement shall include provisions requiring, unless precluded by s. 66.0903, Wis. Stats., that an employee who performs work that is funded by financial assistance from the city receive, at a minimum, a living wage as defined in s. 310-13-2-a. The department of administration shall monitor compliance with this subsection.

..LRB

APPROVED AS TO FORM

02.25.2016 Discussion Draft

Legislative Reference Bureau

Date: _____

..Attorney

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

..Requestor

..Drafter

LRB161895-2

Andrew R. VanNatta

02/25/2016

DISCUSSION DRAFT