

..Number

151474

..Version

PROPOSED SUBSTITUTE

..Reference

872263, 080218, 110086

..Sponsor

ALD. MURPHY

..Title

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

..Sections

309-38 rp

309-41 rp

320-30 cr

355 rp

365 rp

370 rc

..Analysis

In 1991, the Common Council passed an ordinance (File Number 872263) establishing the Residents Preference Program (RPP) to increase employment opportunities for unemployed or underemployed individuals living in portions of the city eligible for Community Development Block Grant (CDBG) funding.

In 2009, the Council passed an ordinance (File Number 080218) expanding the RPP to include individuals residing anywhere within the city and to include private development projects receiving at least \$1 million in direct financial assistance from the City. This ordinance also created the Local Business Enterprise (LBE) contracting program.

In 2011, the Council passed an ordinance (File Number 110086) establishing the Small Business Enterprise (SBE) program.

Currently, the Residents Preference, Small Business Enterprise and Local Business Enterprise Programs are located in various chapters of the Milwaukee code of ordinances and are separately administered by various City departments.

Current code also stipulates that:

1. A resident may qualify as unemployed or underemployed if he or she has not worked in the preceding 30 days and may remain qualified as unemployed or underemployed for 5 years.

2. To be designated as a local business enterprise, a business must own or lease real property within the geographical boundaries of the city of Milwaukee.
3. A responsive and responsible bidder that is a local business enterprise shall receive a 5% award standard in any formal competitive bid.
4. “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.
5. The Residents Preference Program is a city-wide program.

This ordinance organizes the Residents Preference, Small Business and Local Business Enterprise Programs into one chapter and consolidates various administrative functions of these programs, including coordination, enforcement, recordkeeping and reporting by reconstituting the Office of Small Business Development as the Office of Workforce Development in the Department of Administration.

This ordinance also makes the following changes:

1. The definition of “unemployed or underemployed” is amended by removing the 5 year qualification period and by shortening the amount of time a person has not worked from 30 days to 15 days.
2. The definition of “local business enterprise” is expanded to include businesses which operate in the city of Milwaukee.
3. A new incentive is created to allow a local business enterprise also meeting small business enterprise certification requirements to receive an award standard of 10% instead of 5%.
4. The definition of “at a disadvantage with respect to business location” is changed to reflect that a portion of the city has received the designation of “renewal community”.
5. The Residents Preference Program remains a city-wide program, but at least one-quarter of the unemployed or underemployed resident hours required under the program must be attributable to residents who maintain their permanent residence in the most impoverished census tracts of the city.

This ordinance also:

1. Requires a certain percentage of apprenticeship and on-the-job training hours to be attributable to unemployed or underemployed residents, and a certain percentage of these hours to be performed by persons residing in impoverished areas of the city.
2. Requires RPP reports to include information relating to worker hours by zip code, race, gender, trade and hourly wage.
3. Establishes credits for contractors or developers exceeding the apprenticeship or census tract residency requirements established by this ordinance.
4. Allows contractor or developers unable to meet the required 40% participation level of the RPP program to hire unemployed or underemployed residents to work on projects in Dane, Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington and Waukesha Counties to meet the requirements.
5. Creates a Residents Preference Program Review Commission to review Residents Preference Program compliance, performance and other program matters.

Finally, this ordinance makes various code revisions relating to errors, inconsistencies and outdated provisions.

The effective date of this ordinance is January 1, 2017.

..Body

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

Part 1. Section 309-38 of the code is repealed.

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

Part 3. Section 320-30 of the code is created to read:

320-30. Residents Preference Program Review Commission. 1. CREATION.

There is created a residents preference program review commission to review residents preference program compliance, performance and other program matters.

2. PURPOSE. The purpose of the commission is to review progress in implementing the goals of the residents preference program, advise the common council on residents preference program modification, and provide recommendations for the

development of additional educational, workforce development and local contracting programs.

3. COMPOSITION. a. The commission shall be composed of the following 9 members:

a-1. One member of the common council, to be appointed by the president of the common council and to serve as chair of the commission.

a-2. The commissioner of city development or the commissioner's designee.

a-3. The director of the department of administration, or the director's designee.

a-4. The commissioner of the department of public works, or the commissioner's designee.

a-5. Five other persons appointed by the common council president with skills and experience in areas related to the work of the commission, including at least one person representing private developers, one person representing local labor groups or trade unions, one person representing local contractors, one person representing workforce development agencies and one person representing local community organizations, all subject to confirmation by the common council.

3. TERMS OF OFFICE. a. Each member of the commission appointed by the common council president shall serve for a term of 3 years.

b. Any vacancy on the commission shall be filled for the unexpired term within 60 days in the same manner as the original appointment. Members of the commission may be reappointed.

4. ORGANIZATION. a. Five members shall constitute a quorum for the purpose of conducting business.

b. The commission may adopt rules and procedures governing its own internal organization and operation and to assist the commission in carrying out its responsibilities.

c. The commission shall meet quarterly or as needed to review the residents preference program requirements of each development agreement under s. 370-25, as well as the subsequent performance of the developer with respect to these requirements. The commission may meet at such additional times as the commission determines or its chair directs.

d. Commissioners shall receive no compensation for their services as commission members unless expressly provided for by ordinance or resolution.

5. DUTIES AND POWERS. At any time, the commission may initiate studies at the request of any council member or the mayor, or at the commission's own discretion, and may make specific recommendations to appropriate city agencies. In addition, the commission shall:

a. Evaluate the goals and outcomes of the residents preference program in relation to the current pace of development and labor market supply.

b. Review the policies, programs, acts, orders or determinations of city agencies relating to the residents preference program and make recommendations to improve the same.

c. Study and recommend any other policies or actions to ensure the city is effective in the use of unemployed and underemployed residents on local construction projects and city contracts.

6. STAFFING. a. The department of administration and the city clerk's office shall provide staff assistance to the commission.

b. The commission may retain any technical or professional consultants necessary for the proper conduct of the commission's duties, provided the compensation required for these services, along with supporting supplies, equipment and administrative costs, is provided by non-city funds.

c. All city agencies shall cooperate with studies by the commission; provide records, personnel and other materials necessary to the work of the commission; and provide any other assistance as the commission may reasonably request.

7. REPORTS. a. Not later than the 1st day of October each year, the commission shall submit a report to the steering and rules committee of the common council concerning its activities. The report shall contain:

a-1. A summary of the findings and recommendations of any program or policy reviews conducted during the previous year and any agency responses to the commission's findings and recommendations.

a-2. A summary of charter, code or other requirements relating to the residents preference program which, in the opinion of the commission, are not being implemented by the city agencies or officers subject to them, or which require additions or amendments.

8. OPEN MEETINGS. All meetings of the commission shall be publicly held and open to all citizens at all times in accordance with subch. V of ch. 19, Wis. Stats.

Part 4. Chapter 355 of the code is repealed.

Part 5. Chapter 365 of the code is repealed.

Part 6. Chapter 370 of the code is repealed and recreated to read:

CHAPTER 370
Workforce Development Programs

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SUBCHAPTER 1
GENERAL PROVISIONS

370-1. Definitions. In this chapter, unless otherwise provided:

1. APPRENTICE means any person, 16 years of age or over, who shall enter into a written contract of service where he or she is to receive from or through his or her employer, in consideration for his or her services, in whole or in part, instruction in any trade, craft or business. Apprenticeship agreements shall be governed by ch. 106, Wis. Stats.

2. AT A DISADVANTAGE WITH RESPECT TO BUSINESS LOCATION means located within an enterprise zone or a renewal community 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 obtaining employment, 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, roads, bridges, sewers, streets, alleys or buildings. This definition includes the provision of utility service, as well as 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 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 \$1,000,000 or more, as determined by the commissioner of the department of city development, 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 approved 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. Operates a business, or 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 operate another business, or 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, operated 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 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. RENEWAL COMMUNITY means an area within the city for which an application for designation as a renewal community has been submitted to, or has been approved by, the United States secretary of housing and urban development as a renewal community under 26 W.S.C., ss. 1400E, et seq., as amended, or similar area designated disadvantaged by the common council.

19. 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. 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.

21. 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.

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

23. WORKFORCE DEVELOPMENT PROGRAMS means the residents preference, small business enterprise and local business enterprise programs, and any other programs under this chapter which relate to the creation, support and retention of a viable labor force and business climate to preserve current and promote future businesses and industry.

370-3. Office of Workforce Development. The office of workforce development shall be responsible for the administration, coordination, review and reporting 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 available business opportunities.

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. Use of centralized labor and contract compliance software reporting and evaluation systems 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.

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 of 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. REPORTING. The office of workforce development, in consultation with the residents preference program review commission, shall prepare annually, on or before October 1, a report on the status of attaining the goals of the city's workforce development programs. The performance report shall include the following:

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 executed 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 or agreements 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 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.

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

a-6. The percentage of total hours worked by city, non-city and non-state residents for contracts 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 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. Information relating to worker hours by zip code, race, gender, trade and hourly wage.

a-10. Recommendations, if necessary, for adjusting the requirements of the program in an attempt to reduce the disparity among census tracts in the city in terms of unemployment, as well as the unemployment disparity between the city as a whole and the Milwaukee metropolitan area.

b. For the small business enterprise program:

b-1. The degree to which the goals set forth in subch. 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.

370-5. Contracting Agencies. Each contracting agency is directed to:

1. Cooperate with the office of workforce development in the implementation of the city's workforce development programs.
2. Develop lists of small business enterprises experienced in the various types of services, products or property typically contracted for.
3. Provide monthly reports to the office of workforce development not later than 30 calendar days after the end of the previous month specifying with respect to contracts and subcontracts the following:
 - a. For the previous month, 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.
 - b. For the previous month, 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. For the forthcoming month, 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.
 - d. Any other information requested by the common council or the office of workforce development.
4. Appoint a member of the contracting agency to serve as a liaison between the contracting agency and the office of workforce development.
5. Comply with the requirement that all prime contractors pay subcontractors within 7 business days of receipt of payment from the city.
6. 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 are 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.

370-7. 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 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 the developer 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.

370-9. 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 RESIDENTS PREFERENCE PROGRAM

370-21. Creation; Purpose. There is created a residents preference program to reduce unemployment in the city of Milwaukee and promote the economic growth of the city.

370-23. 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-b-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.
- d. A requirement that one quarter of the worker hours required in par. a be performed by unemployed or underemployed residents who maintain their permanent residence in census tracts with poverty rates in the highest one-quarter of all census tracts in the city, as determined by the city clerk on March 1 of each year using the most recent American community survey 5-year estimate.
- e. A requirement that all contractors and subcontractors utilize the first-source employment program, as provided in s. 370-53.

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 and worker hours 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.

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, race, gender, 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 or contract compliance software system, as provided in s. 370-3-1-f.

c-5. Maintain, and verify every 3 years in coordination with the workforce development coordinator, a list of residents qualified as unemployed or underemployed under this chapter, including information relating to skills and sector-specific work experience.

4. EXCEPTIONS. a. If a contractor cannot meet the participation requirements of s. 2-a, the appropriate level of participation may, at the discretion of the department, be met by utilizing unemployed or underemployed residents to work on concurrent projects in Dane, Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington and Waukesha Counties, provided those residents began their employment on projects in the city.

b. For every worker hour exceeding the requirements of s. 2-d, one-and-a-half hours shall be credited toward the requirements of s. 2-a.

c. Up to one-third of the worker hours required under s. 3-b-2 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.

370-25. 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. A recipient 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 subcontractors 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 development for inspection upon reasonable notice.

3. ADMINISTRATION. a. Department responsibilities. The department of city development and office of workforce 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 determines there is sufficient reason to impose a lesser requirement.

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

a-6. Prior to the release of funds, the office of workforce development shall confirm that each contractor and subcontractor, prior to commencement of their work, has submitted an affidavit in the form supplied by the office of workforce development 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 agreement 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 different requirements.

b. Monitoring and Enforcement. During the construction of any project to which this section is applicable, the office of workforce development shall:

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

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

b-3. Confirm that all developers, contractors and subcontractors utilize the first-source employment program, as provided in s. 370-53.

4. EXCEPTIONS. a. If a developer cannot meet the participation requirements of sub. 3-a-4, the appropriate level of participation may, at the discretion of the office of workforce development, be met by utilizing unemployed or underemployed residents to work on concurrent projects in Dane, Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington and Waukesha Counties.

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.

c. At least one quarter of the appropriate level of participation required in s. 3-a-4 shall be performed by unemployed or underemployed residents who maintain their permanent residence in census tracts with poverty rates in the highest one quarter of all census tracts in the city, as determined by the city clerk on March 1 of each year using the most recent American community survey 5-year estimate. Every worker hour exceeding this requirement shall count for one-and-a-half hours toward the requirements of s. 3-a-4.

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 or controlled by individuals or groups of individuals who own, operate or 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 or 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 certified by 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 Agencies. Each contracting agency shall:

1. Obtain affidavits from local business enterprises with their bids or proposals verifying their status as a local business enterprise, as defined in s. 370-1.

2. Cooperate with the purchasing director in the implementation of this subchapter.

3. Provide monthly reports to the purchasing director not later than 30 calendar days after the end of the previous month specifying with respect to contracts:

a. The dollar amount of those contracts awarded to local business enterprises.

b. Other information as may be requested by the purchasing director.

370-49. Contract Award. 1. 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.

2. 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.

3. 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.

4. 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.

5. If a local business enterprise is also certified as a small business enterprise under 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 \$30,000 for any one solicitation and award determination

SUBCHAPTER 5
OTHER WORKFORCE DEVELOPMENT REQUIREMENTS

370-51. Apprenticeship and On-The-Job Trainee Requirement. 1.

REQUIREMENTS, CONSTRUCTION CONTRACTS. Unless deemed inappropriate under sub. 4, the specifications for every construction contract in excess of \$100,000 entered into by the city shall contain:

a. A requirement that the contractor employ apprentices and on-the-job trainees in the performance of the contract and of all subcontracts entered into by the contractor in accordance with the maximum ratio of apprentices to journeymen established by the Wisconsin department of workforce development, and give fair consideration to all segments of the population, including women and minorities,

b. In the case of a contract greater than \$500,000, all of the following requirements:

b-1. One-quarter of the apprentices and on-the-job trainees required under par. a, as measured in worker hours, shall be unemployed or underemployed residents of the city, as defined in s. 370-1. For every worker hour exceeding the requirements of this paragraph, one-and-a-half hours shall be credited toward the requirements of s. 370-23-2-a.

b-2. Of the apprentice and on-the-job trainee worker hours required under par. b-1, at least 40 percent shall be attributable to unemployed or underemployed residents residing in census tracts with poverty rates in the highest one-quarter of all census tracts in the city, as determined by the city clerk on March 1 of each year using the most recent American community survey 5-year estimate.

2. REQUIREMENTS, DEVELOPMENT AGREEMENTS. Unless deemed inappropriate under sub. 4, 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, and in accordance with the following requirements:

a. One-quarter of the apprentices and on-the-job trainees required under par. a, as measured in worker hours, shall be unemployed or underemployed residents of the city, as defined in s. 370-1. For every worker hour exceeding the requirements of

this paragraph, one-and-a-half hours shall be credited toward the requirements of s. 370-25-3-a-4.

b. Of the apprentice and on-the-job trainee worker hours required under par. a-1, at least 40 percent shall be attributable to unemployed or underemployed residents residing in census tracts with poverty rates in the lowest 25 percentile of all census tracts in the city, as determined by the city clerk on March 1 of each year using the most recent American community survey 5-year estimate.

3. MONITORING AND ENFORCEMENT. The department of administration or, where applicable, the contracting agency, shall:

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

b. Monitor the performance of each contract or development agreement 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.

c. Require all developers, contractors and subcontractors to maintain records concerning their apprenticeship and on-the-job training programs, which shall be retained for 3 years after project completion. These records shall be made available to the department of administration for inspection upon reasonable notice.

c. Confirm that all developers, contractors and subcontractors 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.

4. EXCEPTIONS. In determining whether the requirements sub. 1 and 2 are appropriate for insertion in specifications for a particular project, the contracting department may consider the nature of the work, whether the contract is of short duration, and whether the work will involve trades which do not have apprentices or on-the-job trainees.

370-53. First-Source Employment Utilization. 1. DEFINITION. In this section, "first-source employment program" means an employment program operated by the office of workforce development 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. FIRST-SOURCE RECRUITMENT AGREEMENTS. 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. EXCEPTIONS. 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 of city development 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.

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.

Part 7. This ordinance shall be effective January 1, 2017.

..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

LRB161895-3

Andrew R. VanNatta

06/07/2016