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PROPOSED SUBSTITUTE  
..Reference

..Sponsor  
ALD. HAMILTON, WADE, KOVAC AND COGGS

..Title  
A substitute ordinance incorporating code provisions - apprenticeship requirements for construction contracts, participation of city residents in public works contracts, the emerging business enterprise program - into a single chapter, and creating new provisions establishing requirements for developers receiving direct financial assistance from the city, and local business enterprise contracting standards.

..Sections  
309-38 rp  
309-41 rp  
360 rc

..Analysis  
This ordinance creates a chapter of the Milwaukee code to place current provisions relating to apprenticeship requirements for construction contracts, participation of city residents in public works contracts and the emerging business enterprise program in a single chapter, and establishes new provisions relating to developers receiving direct financial assistance and award of city contracts to local businesses.

This ordinance also increases the percentage of worker hours of city residents in public works contracts from 25% to 30% and the goal for utilization of emerging business enterprises for construction services from 18% of total dollars to 25% of total dollars, while retaining a goal of 18% for all other services.

#### Milwaukee Opportunities for Restoring Employment

This ordinance creates a Milwaukee opportunities for restoring employment program with requirements intended to increase the economic benefits, particularly job opportunities, accruing to Milwaukee residents as a result of development projects that receive financial support from the city. This ordinance requires the developer of any project that receives \$1 million or more in direct financial assistance from the city to:

1. Submit, at the time of application for financial assistance from the city, a financial analysis that demonstrates the need for tax increment financing or other city financial assistance. If the applicant is requesting tax increment financing, 2 analyses shall be submitted, one for the project with tax increment financing and the other for the project without tax increment financing.

2. Submit, at the time of application for financial assistance from the city, information on how the proposed project will incorporate green design and construction principles, create public open space, and provide transit-oriented and pedestrian-oriented design features and amenities. City staff and elected officials shall consider this information when determining whether to award the requested direct financial assistance.
3. The developer of any project receiving direct financial assistance from the city shall pay its employees the prevailing wage rate, as defined in s. 66.0903, Wis. Stats.
4. Comply with the same residents preference requirements for all construction contracts that the city uses for its public works contracts.
5. Comply with the same requirements for use of emerging business enterprises in hiring contractors and subcontractors that the city applies to its own contracting.
6. Hire, at minimum, 2 apprentices per construction trade represented on the project.
7. Ensure that at least 75% of persons employed on the development site after construction is completed receive a living wage of not less than \$8.46 per hour. The living wage shall be annually adjusted for inflation.
8. Establish, at a minimum, one mentor protégé arrangement between an emerging business enterprise and a business that is not an emerging business enterprise.

This ordinance also requires the mayor's workforce investment board to:

1. Administer a first-source recruitment program that will link employers with designated labor-training resources and agencies that work to provide job opportunities for city residents. The board shall work with existing labor-training organizations and other stakeholders to develop the program and to designate one or more first-source recruitment agencies as participants in the program. The developer of any project receiving direct financial assistance from the city shall be required to provide all non-residential tenants with information about the first-source recruitment program.
2. Monitor compliance with the labor compensation and utilization requirements of this ordinance and report annually to the common council on compliance and the activities of the apprenticeship and first-source recruitment programs.
3. Work with Milwaukee county, organized labor, the general contracting community and labor training organizations to fulfill the purposes of this ordinance.

## Local Business Enterprise Contracting Program

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

A local business enterprise means a business:

1. Located within the geographical boundaries of the city of Milwaukee. Post office box numbers and residential addresses shall not suffice to establish status as a local business enterprise.
2. Has been located and doing business in the city for at least 6 months.
3. Has the majority of its regular, full-time workforce employed within the city.
4. Is subject to local taxes and is not delinquent in the payment of any local taxes, charges, fees, rents or claims, or that the business enterprise has entered into an agreement to pay any delinquency and is abiding by the terms of the agreement.

A contracting city department, shall, unless contrary to federal, state or local law or regulation, apply an award standard in all bids so that an otherwise responsive and responsible bidder which is a local business enterprise shall be awarded the contract, provided that its bid does not exceed the lowest bid by more than 10% if the contract value is \$500,000 or less, or 5% if the contract value exceeds \$500,000.

A contracting city department shall, unless contrary to federal, state or local law or regulation, apply an award standard in the composition of scales used to evaluate proposals submitted in response to formal requests for proposals. An additional 10 points shall be applied to increase the total score attained by the local business enterprise if the contract value is \$500,000 or less, or 5 points if the contract value exceeds \$500,000.

In the event the bids of 2 or more responsive and responsible local business enterprises do not exceed the lowest bid by more than 5% or 10%, whichever is applicable, the contract shall be awarded to the local business enterprise whose bid exceeds the lowest bid by the least amount.

If a bid submitted by a nonlocal business enterprise and a bid submitted by a local business enterprise including the 5% or 10% award standard provided for are identical, the contract shall be awarded to the local business enterprise. If a bid submitted by 2 local business enterprises are identical, the winner will be determined in accordance with the current process for tie-breakers.

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

## Sanction and Penalty Provisions

1. 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.

2. If a firm awarded a contract under this chapter submits documents determined at a later date to contain false information, sanctions may be imposed, including termination of the contract, withholding payment, or denial to participate in further contracts awarded by the city.

..Body

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

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

Whereas, The city has an unacceptably high rate of unemployment with the number of unemployed residents as of December 2007 being 17,605; and

Whereas, In January of 2008, the unemployment rate for the City of Milwaukee was 7.3% and Milwaukee County was 6.0%, while surrounding counties of Ozaukee, Washington and Waukesha had unemployment rates of 3.9%, 4.8% and 4.2%, respectively; and

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

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

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

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

Whereas, The apprenticeship, pre-apprenticeship, first-source recruitment, prevailing wage, minority hiring, residents preference and emerging business enterprise programs ensure that Milwaukee residents are given the necessary skills and opportunities to benefit from development; and

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

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

Whereas, Local business enterprises have historically had disproportionately low participation in contracts let by the city; and

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

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

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

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

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

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

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

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. Chapter 360 of the code is repealed and created to read:

## SUBCHAPTER 1 INTRODUCTION

**360-1. Purpose.** The purpose of this chapter is to describe a variety of city initiatives designed to enhance economic development programs of the city of Milwaukee such as apprenticeship requirements for construction contracts, participation of city residents in public works contracts, requirements of developers receiving \$1 million or more in direct financial assistance from the city, the emerging business enterprise program and the local business enterprise program.

**360-3. Definitions.** In this chapter:

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 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 DISADVANTAGE WITH RESPECT TO RESIDENCE OR BUSINESS LOCATION means location in an enterprise zone within the city for a period of not less than one year of the applicant's residence or the principal office and business

of which the applicant is the sole owner or one of the owners and a principal operator.

**5. 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, lack of traditional family structure, being raised in a household receiving or personally receiving income consistently at or below the poverty line, being raised in a household requiring or personally requiring significant governmental assistance or support during the person's childhood, physical handicap or other causes beyond the individual's reasonable control.

**6. 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 growing 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.

**7. BID** means a quotation, proposal, solicitation or offer by a bidder or contractor to perform or provide labor, materials, equipment, supplies or services to the city of Milwaukee for a price.

**8. COMMUNITY DEVELOPMENT BLOCK GRANT AREA** or "CDBG AREA" means that portion of the city designated as such by the common council which is identified by census tracts on maps maintained at the offices of the city clerk and the commissioner of public works.

**9. CONSTRUCTION** means the erection, rehabilitation, alteration, conversion, extension, demolition or repair of improvements to real property, including facilities providing utility service and new construction work or repair work on any roads, bridges, sewers, streets, alleys, buildings or any other public work whatsoever. It also includes the supervision, inspection and other on-site functions incidental to construction.

**10. CONTRACT** means a binding agreement by which the city is committed to expend or does expend its funds or other resources for or 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.

**11. CONTRACTING DEPARTMENT** means any city department, agency, board or commission that has contracting responsibilities.

- 12. CONTRACTOR** means a separate and distinguishable business entity participating or seeking to participate in the performance of a contract.
- 13. DIRECT FINANCIAL ASSISTANCE** means the cash value of below-market sales, any direct subsidies to developers and city expenditures for improvements targeted specifically to the development with a combined value of \$1 million or more. It includes the value of tax increment financing and below-market-rate loans provided by the city. Money allocated for environmental remediation, money allocated for the purchase of easements for or the construction of the riverwalk, or money allocated for public infrastructure improvements shall not be included in any calculation made pursuant to this definition.
- 14. EMERGING BUSINESS ENTERPRISE** means a small business concern that is owned, operated and controlled by one or more individuals who are at a disadvantage. The individuals must have day-to-day operational and managerial control and interest in capital, financial risks and earnings commensurate with the percentage of their ownership.
- 15. ENTERPRISE ZONE** means an area within the city for which an application for designation as an enterprise zone has been submitted to or as designated by the United States secretary of housing and urban development as an enterprise zone pursuant to 42 U.S.C. § 11501 et seq., as amended, or similar area designated disadvantaged by the common council.
- 16. INDIVIDUAL AT A DISADVANTAGE** means a person who is a citizen or lawful permanent resident of the United States and who has experienced and who continues to experience substantial difficulty in achieving business-related success in the greater Milwaukee area as a result of at least 3 of the following and the economic criteria described in sub. 6.
- a. At a disadvantage with respect to education.
  - b. At a disadvantage with respect to employment.
  - c. At a social disadvantage.
  - d. At a disadvantage with respect to residence or business location.
  - e. Lack of business training in the operation of a business concern in the construction field or another field of economic endeavor which has been designated by the manager, and in which the applicant has experience.
- 17. JOINT VENTURE** means an association of 2 or more persons or businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.
- 18. LACK OF BUSINESS TRAINING** means an individual's lack of significant training and completion of an organized educational course of study in the financial and business aspects of owning and successfully operating a construction-related business enterprise, or such lack of training and education as to a business enterprise in another field of economic endeavor designated by the manager and in which the individual has experience.
- 19. LOCAL BUSINESS ENTERPRISE** means a business that meets all of the following:



- a. Is located within the geographical boundaries of the city of Milwaukee. Post office box numbers and residential addresses shall not suffice to establish status as a local business enterprise.
- b. Has been located and doing business in the city for at least 6 months.
- c. Has the majority of its regular, full-time workforce employed within the city.
- d. Is subject to local taxes and is not delinquent in the payment of any local taxes, charges, fees, rents or claims, or has entered into an agreement to pay any delinquency and is abiding by the terms of the agreement.

**20.** MANAGER means the emerging business enterprise manager.

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

- a. A sole proprietorship legitimately owned and operated and controlled by an individual as defined in sub. 16.
- 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.

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

**23.** SMALL BUSINESS CONCERN means a business which is independently owned, operated and controlled and which is not dominant in its local field of operation, and which has had annualized gross receipts consistent with the receipts based size standards set forth by the federal small business administration. A business which does not meet these requirements may nonetheless be deemed a small business concern if the business establishes by credible evidence that different standards should be applied in its field of endeavor.

**24.** UNEMPLOYED means that the resident has worked less than 1200 hours in the preceding 12 months or has not worked in the preceding 30 days. A resident shall continue to qualify as unemployed for 5 years from the date he or she first participated in a contract under this chapter. If a resident becomes an apprentice for a city contractor or becomes a member of any verifiable training program as determined by the department of public works immediately after or in the course of performing on a particular city contract, he or she shall continue to qualify as unemployed for a period not exceeding 5 years from the date the person became an apprentice or member of such training program.

## SUBCHAPTER 2

## APPRENTICESHIP REQUIREMENTS FOR CONSTRUCTION CONTRACTS

### **360-5. Apprenticeship Requirements for Construction Contracts.**

1. REQUIREMENTS. a. The specifications for every construction contract in excess of \$100,000 entered into by the city of Milwaukee must contain, where appropriate, a requirement that the contractor shall employ apprentices 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. In determining whether this requirement is appropriate for insertion in specifications for a particular contract, 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 are not apprenticeable.
- b. Require all contractors and subcontractors to submit within 10 days following completion of the work or every 3 months, whichever comes first, contract time reports showing compliance with any contract requirements imposed in accordance with this section.
2. MONITORING AND ENFORCEMENT. The contracting department shall:
  - a. Monitor the performance of each contract with respect to the ratio of apprentices to journeymen employed on the project during performance of the contract.
  - b. Require all contractors and subcontractors to maintain records concerning its apprenticeship program, which shall be retained for 3 years after the contractor has received final payment under the contract. These records shall be made available to the contracting department for inspection upon reasonable notice.

## SUBCHAPTER 3

## PARTICIPATION OF CITY RESIDENTS IN PUBLIC WORKS CONTRACTS

### **360-9. Participation of City Residents In Public Works Contracts.**

1. REQUIREMENTS. All construction contracts and other contracts as the commissioner of public works may determine, administered by the department which are funded in whole or in part by city, state or federal funds, where appropriate and consistent with law, shall contain:
  - a. A requirement that 30% of the worker hours, subject to the provisions of sub. 2-a-2, shall be performed by unemployed residents of the CDBG area, and that furthermore the contractor shall give fair consideration to all segments of the population including women and minorities. For the purpose of this section, "worker hours" includes work performed by persons filling apprenticeship and on-the-job training programs.
  - 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 maintain personnel records listing the names and addresses and race and gender of its employes utilized for each contract, and

any records demonstrating that the employees utilized by the contractor in meeting the requirements of this section are actual residents of the CDBG area. These records shall be maintained for 3 years after the contractor has received final payment under the contract, and shall be made available to the department of public works for inspection upon reasonable notice.

d. A map identifying by census tract the CDBG area of the city of Milwaukee as designated by the federal economic development administration.

**2. ADMINISTRATION.** The department of public works shall be responsible for the planning, implementation and enforcement of this section.

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

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

a-2. Determine the appropriate level of participation of unemployed residents of the CDBG area for inclusion in the contract specifications. The appropriate level of participation shall be presumed to be 30%, unless the department of public works 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.

b. Monitoring and Enforcement. The department of public works shall:

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

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

b-3. Require all contractors and 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.

b-4. Arrange for an independent annual 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.

b-5. Maintain racial demographics and residency information regarding job positions in all construction contracts administered by the department of public works.

**3. ANNUAL REVIEW.** The residents preference program established by this section shall be reviewed by the common council, in consultation with the mayor, on or before October 1 of each year, to review the necessity for the continuation of the program and, if necessary, adjust the requirements of the program in an attempt to reduce the disparity between the unemployment statistics for the CDBG area and the rest of the city and the Milwaukee metropolitan area.

**4. ANNUAL PROGRAM REPORT.** The department of public works shall prepare annually a residency preference program report on the city's success in achieving the goals of the program. The performance report shall include the following:

a. The number and dollar amount of all construction contracts let.

- b. The number and dollar amount of construction contracts which incorporated a residency requirement and the percentage of unemployed resident worker hours required.
- c. If not all construction contracts included a residency requirement or if some contracts contained a requirement of less than 30% of worker hours, the department of public works shall state the reason for this difference.
- d. 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.
- e. Full disclosure of the department of public work's reasons for adjusting the participation percentage goal for individual contracts or groups of contracts.
- f. The percentage of total hours worked by city/CDBG area, city/non-CDBG area and non-city residents for contracts which included the residency requirement.
- g. Information to assist the common council in its annual reappraisal of the residents preference program, including the number of individual participants by job type (e.g. laborer, carpenter, electrician, etc.), the number of new CDBG area residents hired during the year under the program and the number of program participants who advanced to apprenticeships.
- h. Unemployment rates in the CDBG area, the rest of the city and the Milwaukee metropolitan area and the sources of the statistics.
- i. Recommendations regarding the necessity for continuation of the program and methods of making the program more successful.

**5. ADOPTION OF RESOLUTION.** As soon as practicable after review of the residents preference program as provided in sub. 3, the common council shall adopt a resolution stating the results of its reappraisal of the necessity for continuance of the residents preference program and the required participation percentage goals. The department of public works shall prepare said resolution for common council consideration each year.

#### SUBCHAPTER 4

#### MILWAUKEE OPPORTUNITIES FOR EMPLOYMENT PROGRAM

##### **360-11. Milwaukee Opportunities for Employment Program.**

**1. FINANCIAL ANALYSIS.** Every application for direct financial assistance from the city shall include one or more financial analyses that demonstrate the need for tax increment financing or other city financial assistance. If the applicant is requesting tax increment financing, 2 analyses shall be submitted, one for the project with tax increment financing and the other for the project without tax increment financing. The applicant shall indicate the minimum profit or return on investment the applicant needs to proceed with the project, as well as the rationale for this minimum. The analysis shall also include information on tax increment financing as a percentage of total project costs, tax increment financing as a percentage of the tax increment generated by the project, and the dollar amount and ratio of public to private equity investment. For a project involving the rental of space by the developer to tenants, including offices, retail stores, industrial

occupants or households, an internal rate of return on equity shall be computed with and without tax incremental financing based on the pro forma of income and expenses, and shall be identified in the analysis.

**2. ENVIRONMENTAL SUSTAINABILITY.** Every application for direct financial assistance from the city shall include information on how the proposed project will incorporate green design and construction principles, create public open space, and provide transit-oriented and pedestrian-oriented design features and amenities. City staff and elected officials shall consider this information when determining whether to award the requested direct financial assistance.

**3. LABOR COMPENSATION AND UTILIZATION.** a. **Prevailing Wage.** The developer of any project receiving direct financial assistance from the city shall pay its employees the prevailing wage rate, as defined in s. 66.0903, Wis. Stats. b. **Residents Preference.** The developer of any project receiving direct financial assistance from the city shall comply with the city residents preference requirements of s. 360-9-1 for all construction contracts. The requirements of s. 360-9-1 shall be adjusted by the emerging business enterprise administration 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 requirement for compliance with the residents preference requirements shall be included in the development agreement between the city and the developer and in any cooperation agreement under which the city is providing another governmental entity with financial assistance for development-related activities.

c. **Emerging Business Enterprises.** The developer of any project receiving direct financial assistance from the city shall comply with the requirements of s. 360-19-1 for use of emerging business enterprises as contractors or subcontractors for the project. The requirement for compliance with the emerging business enterprise requirements shall be included in the development agreement between the city and the developer and in any cooperation agreement under which the city is providing another governmental entity with financial assistance for development-related activities. A business that is certified with Milwaukee county's community business partners program as a disadvantaged business enterprise and would qualify as an emerging business enterprise under ch. 360, as determined by the emerging business enterprise administration, shall be included when determining compliance with the requirements of s. 360-19-1.

d. **Apprenticeships.** To provide on-the-job training opportunities for apprentices, the developer of any project receiving direct financial assistance from the city shall hire, at minimum, 2 apprentices per construction trade represented on the project. This requirement shall be included in the development agreement between the city and the developer and in any cooperation agreement under which the city is providing another governmental entity with financial assistance for development-related activities. The developer is also strongly encouraged to meet the goal of having 50% of the total number of apprentices hired be targeted persons who reside in the community development block grant area, as defined in s. 360-3-8.

**4. FIRST-SOURCE RECRUITMENT PROGRAM.** a. **Creation.** There is created a first-source recruitment program intended to promote employment opportunities for

city residents by linking employers with designated labor-training resources and agencies that work to provide job opportunities for city residents. The mayor's workforce investment board shall administer the first-source recruitment program. The mayor's workforce investment board shall work with existing labor-training organizations and other stakeholders to develop the program and to designate one or more first-source recruitment agencies as participants in the program.

b. **Projects Receiving City Financial Assistance.** The developer of any project receiving direct financial assistance from the city shall be required to provide all non-residential tenants of that project with information about the first-source recruitment program. The developer shall also provide a contact name, address and telephone number for each non-residential tenant to the designated first-source recruitment agency or agencies. These requirements shall be included in the development agreement between the city and the developer and in any cooperation agreement under which the city is providing another governmental entity with financial assistance for development-related activities. Compliance with these requirements shall be monitored by the mayor's workforce investment board.

c. **Distribution of Information.** The department of city development and the mayor's workforce investment board shall distribute information about the first-source recruitment program to developers of new commercial, industrial and mixed-use projects in the city, including both projects receiving direct financial assistance from the city and projects not receiving such assistance.

**5. MENTOR PROTÉGÉ REQUIREMENT.** The developer of any project receiving direct financial assistance shall establish, at minimum, one mentor protégé arrangement between an emerging business enterprise and a business that is not an emerging business enterprise. This requirement shall be included in the development agreement between the city and the developer.

**6. LIVING WAGE FOR POST-CONSTRUCTION JOBS.** a. **Requirement.** The developer of any project receiving direct financial assistance from the city shall ensure that at least 75% of persons employed on the project premises after construction is completed receive a living wage of not less than \$8.46 per hour.

b. **Annual Adjustment.** On the date that is one year from the effective date of this ordinance; [city clerk to insert date] and each [same day and month] year thereafter, the hourly living wage shall be adjusted to the amount required to produce, for 2,080 hours worked, an annual income equal to the U.S. department of health and human services' most recent poverty guideline for a family of 3.

c. **Quarterly Reports.** At the end of each quarter of the calendar year, the developer shall submit to the mayor's workforce investment board a report documenting the hourly wages of all persons employed on the project premises.

**7. MONITORING.** The mayor's workforce investment board shall monitor compliance with the requirements of this section. It shall provide an annual report to the common council on compliance with these requirements, as well as on activities of the apprenticeship and first-source recruitment programs established under this section.

**8. CITY COOPERATION WITH OTHER ENTITIES.** The mayor's workforce investment board shall work with Milwaukee county, organized labor, the general

contracting community and labor training organizations to fulfill the purposes of this section.

## SUBCHAPTER 5 EMERGING BUSINESS ENTERPRISE PROGRAM

**360-13. Emerging Business Enterprise Program.** There is created an emerging business enterprise program to assist and protect the interests of individuals who are at a disadvantage and small business concerns in order to promote and encourage full and open competition in this city, and to enhance opportunities for individuals who are at a disadvantage to successfully compete in a free market as independent business owners in this city. The program shall apply to all contracts and shall include the taking of steps to increase the participation of emerging business enterprises, assisting in emerging business enterprise development programs and the identification and elimination of barriers that deny emerging business enterprises equal opportunity.

**360-15. Criteria for Emerging Business Enterprise Status.** Upon an appropriate finding by the emerging business enterprise administration that any group within the city, for example, the handicapped, is made up of members the predominant number of whom are individuals who qualify as individuals who are at a disadvantage, the administration may consider membership in such a group as prima facie evidence that the individual is at a disadvantage in the absence of a timely challenge filed with the emerging business enterprise administration or the administration's own finding of a lack of evidence that the individual is at a disadvantage. In the event of such a challenge or finding, the applicant has the burden of demonstrating that he or she is an individual at a disadvantage.

**360-17. Administration.** There is created an emerging business enterprise administration in the department of administration which shall be responsible for the administration, coordination and implementation of the city's emerging business enterprise program. Under the direction of the department of administration, the emerging business enterprise administration shall be administered by an emerging business enterprise 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 emerging business enterprises in city contracts, subject to approval by the common council, and supervise, coordinate, monitor and enforce the implementation of emerging business enterprise participation goals for all city procurements in accordance with those rules, procedures and regulations.
3. Develop procedures for certification.

4. Provide appropriate management assistance and direction to emerging business enterprises so as to maximize their participation in contracts let by the city, with such assistance to include:
  - a. Providing assistance and information in connection with the establishment, expansion and overall development of emerging business enterprises.
  - b. Assisting in the introduction of business associations between individuals who are at a disadvantage and business enterprises that are not at a disadvantage or between 2 or more emerging business enterprises.
  - c. Planning and participating in training seminars for the purpose of informing potential bidders of the emerging business enterprises program and of business opportunities available.
  - d. Serving as a clearinghouse for information about training and educational programs.
  - e. Developing various types of financial assistance for consideration by the common council to assist emerging business enterprises to obtain working capital to begin, continue and maintain a satisfactory level of business. These include, but are not limited to, a revolving loan program, guaranteed loan program, gap lending program and bond reduction and waivers where feasible.
5. Develop a reporting and evaluation system to reflect the city's emerging business enterprise program.
6. Review and monitor all city contracts with emerging 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 emerging business enterprises.
9. Review emerging business enterprise participation progress in the city's contract and procurement activities and submit a written report to the mayor and common council.
10. Establish reporting requirements for all city departments to document the percentage of contracts which have been awarded to emerging business enterprises.
11. Devise rules, regulations and procedures governing requests for waivers from the requirements of the emerging business enterprise program, subject to approval by the common council.
12. Conduct hearings on requests by contracting departments for waivers from the requirements of the program. Upon a denial of a request for a waiver, the affected department may apply for such 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.

#### **360-19. Requirements of Contracting Departments.**



**1. GOALS.** The following requirements are adopted by the city for the purpose of increasing the level of emerging business enterprise participation in city contracts. It shall be the responsibility of each contracting department to attain such goals in accordance with the criteria herein specified. Each contracting department, and all other operating departments when contracting based upon authority therefrom, shall, consistent with law, utilize emerging business enterprises for the following percentage of the total dollars, through prime contracts or subcontracts, annually expended on:

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

**2. REVIEW OF GOAL.** In order to assure the percentage goals for emerging 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 emerging business enterprises in joint ventures with other emerging 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 emerging partner venturer in the joint venture will be counted toward the applicable requirement.

**4. DUTIES OF DEPARTMENTS.** Each contracting department is directed to:

- a. Cooperate with the emerging business enterprise administration in the implementation of the emerging business enterprise program.
- b. Develop lists of emerging business enterprises experienced in the various types of services, products or property typically contracted for.
- c. Provide quarterly reports to the manager not later than 30 calendar days after the end of the previous quarterly period specifying with respect to contracts and subcontracts:

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 emerging business enterprises in the forthcoming quarter.

c-2. The dollar percentage and dollar amount of those contracts and subcontracts awarded to emerging 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 such goals and, if necessary, a detailed explanation of why the goals set forth in this section have not been met.

c-4. Such other information as may be requested by the manager.

d. Appoint a member of the contracting department or division to serve as a liaison between the contracting department and the emerging business enterprise administration.

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

**5. PERFORMANCE ASSURANCE PROCEDURE.** Each contracting department shall develop and implement procedures, unless inappropriate, to assure that suppliers, employes, agents or other persons providing goods or services to emerging business enterprises participating in city contracts shall be paid in full in a timely manner. Such 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.

**360-21. Certification Standards and Procedures.** All emerging business enterprise bidders, prime contractors, subcontractors and potential participants in a contract must be certified by the emerging business enterprise administration in order to participate in the emerging business program established pursuant to this chapter. Certification standards shall be specified by the emerging business enterprise administration.

## SUBCHAPTER 6 LOCAL BUSINESS ENTERPRISE PROGRAM

### **360-23. Local Business Enterprise Contracting Program.**

**1. CREATION; PURPOSE.** There is created a local business enterprise contracting program in order to offset unemployment in the city of Milwaukee and promote economic growth of the city.

**2. DURATION; REVIEW.** The local business enterprise contracting program shall be of a duration of 8 years from the effective date of this subchapter [city clerk to insert date] provided, however, that the common council, in consultation with the mayor, shall determine the necessity for the continuation of the program as well as the applicable percentage of bid award standard for local business enterprises at 2-year intervals from the effective date of this subchapter [city clerk to insert date].

**360-25. Administration.** The local business enterprise contracting program shall be administered by the city purchasing director. The director shall develop appropriate rules, procedures and regulations for assuring compliance with the purpose and intent of this subchapter, and supervise, coordinate, monitor and enforce the implementation of the local business enterprise contracting program goals in accordance with those rules, procedures and regulations.

**1. DOCUMENTATION.** Rules, procedures and regulations shall be set forth in a written document which shall be available to the public and distributed to city agencies. In addition the director shall establish reporting requirements for all city departments to document the dollar amount of contracts that have been awarded to local business enterprises.

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

### **360-27. Requirements of Contracting Department.**

**1. CONTRACT AWARD.**

- a. A contracting department, shall, unless contrary to federal, state or local law or regulation, apply an award standard in all bids so that an otherwise responsive and responsible bidder which is a local business enterprise shall be awarded the contract, provided that its bid does not exceed the lowest bid by more than 10% if the contract value is \$500,000 or less, or 5% if the contract value exceeds \$500,000.
- b. A contracting department shall, unless contrary to federal, state or local law or regulation, apply an award standard in the composition of scales used to evaluate proposals submitted in response to formal requests for proposals. An additional 10 points shall be applied to increase the total score attained by the local business enterprise if the contract value is \$500,000 or less, or 5 points if the contract value exceeds \$500,000.
- c. In the event the bids of 2 or more responsive and responsible local business enterprises do not exceed the lowest bid by more than 5% or 10%, whichever is applicable, the contract shall be awarded to the local business enterprise whose bid exceeds the lowest bid by the least amount.
- d. If a bid submitted by a nonlocal business enterprise and a bid submitted by a local business enterprise including the 5% or 10% award standard provided for in this subsection are identical, the contract shall be awarded to the local business enterprise. If a bid submitted by 2 local business enterprises are identical, the winner will be determined in accordance with the current process for tie-breakers.

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

- a. Obtain affidavits from local bidders with their bids verifying their status as bona fide local business enterprises.
- b. Cooperate with the city purchasing director in the implementation of the local business enterprise program.
- c. Provide quarterly reports to the city purchasing director not later than 30 calendar days after the end of the previous quarterly period 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 director.

### **360-29. Development Agreements.**

**1. DEPARTMENT OF CITY DEVELOPMENT.** All development agreements negotiated by the department of city development shall be executed in a manner that promotes local business enterprise participation. Local business enterprise participation may be achieved through a contribution by the developer to the emerging business enterprise program's revolving loan fund earmarked for use by city of Milwaukee emerging business enterprises.

**2. REPORTS.** The department of city development shall provide quarterly reports to the city purchasing director not later than 30 calendar days after the end of the previous quarterly period specifying:

- a. What development agreements have been negotiated.
- b. The dollar amounts of those contracts.
- c. The level of local business enterprise participation.
- d. Other information as requested by the director.

SUBCHAPTER 7  
SANCTIONS AND PENALTIES

**360-31. Sanctions.** Every city contract awarded under this chapter shall contain language indicating that if any document submitted to the city by a contractor pursuant to this chapter for the purpose of participating in any city contract contains false, misleading or fraudulent information, the contracting department or the city purchasing director, as the case may be, may direct the imposition of any of the following sanctions on the offending contractor:

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

**360-33. 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, or upon default of payment, shall be imprisoned in the house of correction or county jail not to exceed 90 days, or until such forfeiture costs are paid.

Part 2. This ordinance takes effect upon the effective date of charter ordinance file number xxxxxx.

..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  
LRB08185-2  
MET  
9/10/08