

..Number

151474

..Version

ORIGINAL

..Reference

872263

080218

110086

..Sponsor

ALD. STAMPER

..Title

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

..Sections

309-41-1-f am

309-41-2-d cr

309-41-2-e cr

309-41-2-f cr

309-41-3-a-1 am

309-41-3-b-3 am

309-41-3-b-4 am

309-41-3-b-6 am

309-41-3-b-7 cr

309-41-3.5 cr

309-41-4 am

309-41-5-0 am

309-41-5-j cr

309-41-8 am

320-30 cr

355-1-3 am

355-7-2-a am

355-7-2-a-1 cr

355-7-2-a-2 cr

355-7-2-a-3 cr

355-7-2-b am

355-7-2-c-2 am

355-7-2-c-4 cr

355-7-2.5 am

355-7-3-0 am

355-7-3-a am

355-7-3-b am

355-7-3-c	am
355-7-3-d	rc
355-7-3-e	am
355-9-1-a	am
355-9-2-b	am
355-15	rp
355-17-4	cr
355-17-5	cr
355-17-6	cr
365-3-2-a	am
365-3-2-b	am
365-7-1-e	am
365-7-1-f	cr
365-7-2-c	am
370-1-1	am
370-1-17	rn
370-1-17	cr
370-3-5	am
370-5-4-c	am
370-5-4-c-1	am

..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.

Current code 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 which 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 location 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 makes the following changes to the Residents Preference, Small Business Enterprise and Local Business Enterprise Programs:

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 RPP worker hours to be performed by apprentices.

2. Requires resident utilization plans for certain city contracts.
3. Requires RPP reports to include information relating to worker hours by zip code, race and ethnicity, gender, trade and hourly wage.
4. Establishes credits for contractors or developers exceeding the apprenticeship or CDBG residency requirements established by this ordinance.
5. Allows contractors or developers unable to meet the requirements of the RPP program to hire unemployed or underemployed residents to work on projects in Kenosha, Ozaukee, Racine, Walworth, Washington and Waukesha Counties to meet the requirements.
6. Creates a Residents Preference Program Review Commission to review RPP compliance, performance and other program matters.

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

..Body

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

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

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

1. DEFINITIONS.

f. "Unemployed or underemployed" means that the resident has worked less than 1200 hours in the preceding 12 months or has not worked in the preceding ~~[[30]]~~>>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 for 5 years from the date he or she first participated in a construction contract. If a resident becomes an apprentice for a contractor or becomes a participant in an on-the-job training program as determined by the city immediately after or in the course of performing on a particular construction contract, he or she shall continue to qualify as unemployed or underemployed for a period not exceeding 5 years from the date the person became an apprentice or participant in such on-the-job training program.]]~~

Part 2. Section 309-41-2-d to f of the code is created to read:

2. REQUIREMENTS.

d. A requirement that at least one quarter of the worker hours required in par. a be performed by unemployed or underemployed residents who are apprentices or on-the-job-trainees.

e. A requirement that at least 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 lowest 25 percentile of all census tracts in the city, as determined by the most recent American community survey 5-year estimate.

f. A requirement that all contractors and subcontractors utilize a local workforce development agency as a first-source option for recruiting applicants for both new and replacement employment, as provided in s. 355-11.

Part 3. Section 309-41-3-a-1 of the code is amended to read:

3. ADMINISTRATION.

a. Planning and Implementation.

a-1. Identify the approximate number of job positions >>and labor hours<< involved in the project.

Part 4. Section 309-41-3-b-3 and 4 of the code is amended to read:

3. ADMINISTRATION.

b. Monitoring and Enforcement.

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, >>race, gender,<< 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.

Part 5. Section 309-41-3-b-6 of the code is amended to read:

b-6. Ensure that all data required for reporting under this section are maintained in ~~[[a]] centralized labor >>and contract<< compliance software [[system]] >>systems<<, as provided in s. 370-3-5.~~

Part 6. Section 309-41-3-b-7 of the code is created to read:

b-7. Maintain, and verify every 3 years, a list of all unemployed or underemployed residents qualified under this section, including information relating to skills and sector-specific work experience.

Part 7. Section 309-41-3.5 of the code is created to read:

3.5. EXCEPTIONS. a. If a contractor cannot meet the participation requirements of sub. 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 related projects in Kenosha, 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 sub. 2-d and sub. 2-e, one-and-a-half hours shall be credited toward meeting the requirements of sub. 2-a.

Part 8. Section 309-41-4 of the code is amended to read:

4. ANNUAL REVIEW. The residents preference program established by this section shall be reviewed by the common council, in consultation with the mayor >>and the residents preference program review commission<<, 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 among different census tracts in the city and between the city as a whole and the Milwaukee metropolitan area.

Part 9. Section 309-41-5-0 of the code is amended to read:

5. ANNUAL PROGRAM REPORT. The department >>, in coordination with the office of small business development, the department of city development and the residents preference program review commission,<< shall prepare ~~[[annually]]~~ >>, on or before October 1 of each year,<< a residents preference program report on the city's success in achieving the goals of the program. The performance report shall include the following:

Part 10. Section 309-41-5-j of the code is created to read:

j. Information relating to worker hours by zip code, race and ethnicity, gender, trade and hourly wage.

Part 11. Section 309-41-8 of the code is amended to read:

8. PENALTY. Any person, firm or corporation knowingly engaging in fraud, misrepresentation or in any attempt, direct or indirect, to evade the provisions of this section by providing false, misleading or fraudulent information shall, upon conviction, forfeit not less than ~~[[\$1,000]]~~ >>\$2,000<< or more than \$5,000 together with the costs of prosecution, and upon default of payment, shall be imprisoned in the county jail or house of correction not to exceed 90 days, or until the forfeiture costs are paid.

Part 12. 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. 355-7-1, 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 first 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 13. Section 355-1-3 of the code is amended to read:

355-1. Definitions.

3. UNEMPLOYED OR UNDEREMPLOYED means that the resident has worked less than 1200 hours in the preceding 12 months or has not worked in the preceding ~~[[30]]~~>>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 for 5 years from the date he or she first participated in a construction contract. If a resident becomes an apprentice for a contractor or becomes a participant in an on-the-job training program as determined by the city immediately after or in the course of performing on a particular construction contract, he or she shall continue to qualify as unemployed or underemployed for a period not exceeding 5 years from the date the person became an apprentice or participant in such on-the-job training program.]]~~

Part 14. Section 355-7-2-a of the code is amended to read:

355-7. Participation of City Residents.

2. ADMINISTRATION.

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

Part 15. Section 355-7-2-a-1 to 3 of the code is created to read:

a-1. At least one quarter of the appropriate level of participation required in par. a shall be performed by unemployed or underemployed residents who are apprentices or on-the-job-trainees. Every worker hour exceeding this requirement shall count for one-and-a-half hours toward the requirement of par. a.

a-2. At least one quarter of the appropriate level of participation required in par. a shall be performed by unemployed or underemployed residents who maintain their permanent residence in census tracts with poverty rates in the lowest 25 percentile of all census tracts in the city, as determined by 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 requirement of par. a.

a-3. If a developer cannot meet the participation requirements of par. a, the appropriate level of participation may, at the discretion of the office of small business development, be met by utilizing unemployed or underemployed residents to work on related projects in Kenosha, Ozaukee, Racine, Walworth, Washington and Waukesha Counties, provided those residents began their employment on projects in the city.

Part 16. Section 355-7-2-b of the code is amended to read:

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

Part 17. Section 355-7-2-c-2 of the code is amended to read:

c-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.

Part 18. Section 355-7-2-c-4 of the code is created to read:

c-4. Confirm that developers, contractors and subcontractors are utilizing the first-source employment program, as provided in s. 355-11.

Part 19. Section 355-7-2.5 of the code is amended to read:

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

Part 20. Section 355-7-3-0 of the code is amended to read:

3. REPORTING. The office of small business development >>, in coordination with the department of city development, the department of public works and the residents preference program review commission,<< shall prepare ~~[[annually]]~~ >>, on or before October 1 of each year,<< a residents preference program report on the efforts of recipients of direct financial assistance in achieving the goals of the program for development agreements. The performance report shall include the following:

Part 21. Section 355-7-3-a to c is amended to read:

a. The number and dollar amount of all ~~[[construction contracts let]]~~ >>development agreements executed<<.

b. The number and dollar amount of ~~[[construction contracts]]~~ >>development agreements<< which incorporated a residency requirement and the percentage of unemployed or underemployed resident worker hours required as well as the number of worker hours worked or performed.

c. If not all ~~[[construction contracts]]~~ >>development agreements<< included a residency requirement or if some ~~[[contracts]]~~ >>agreements<< contained a requirement of less than 40% of worker hours, ~~[[the office of small business development shall state]]~~ the reason for this difference.

Part 22. Section 355-7-3-d of the code is repealed and recreated to read:

d. Information relating to worker hours by zip code, race and ethnicity, gender, trade and hourly wage.

Part 23. Section 355-7-3-e of the code is amended to read:

e. Full disclosure of the office of small business development's reasons for adjusting the participation percentage goal for individual ~~[[contracts or groups of construction contracts]]~~ >>categories of work<<.

Part 24. Section 355-9-1-a of the code is amended to read:

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

1. REQUIREMENT.

a. Recipients of direct financial assistance shall employ, and shall require their contractors and subcontractors to employ, apprentices and on-the-job trainees in the performance of all construction contracts and subcontracts for the project entered into by the recipient, contractor or subcontractor in accordance with the maximum ratio of apprentices to journeymen established by the Wisconsin department of workforce development. In determining whether this requirement is appropriate for insertion in specifications for a particular ~~[[construction contract]]~~ >>project<<, the department of administration may consider the nature of the work, whether the ~~[[construction contract]]~~ >>project<< is of short duration and whether their work will involve trades which do not have apprentices or on-the-job trainees.

Part 25. Section 355-9-2-b of the code is amended to read:

2. MONITORING AND ENFORCEMENT.

b. Confirm that all ~~[[contractors and subcontractors]]~~ >>developers<< have ~~[[been required to maintain]]~~ >>maintained<< records concerning their >contractors' and

subcontractors'<< apprenticeship and on-the-job training programs, which shall be retained for 7 years after the ~~[[contractor or subcontractor has received final payment under its construction contract]]~~ >>project has concluded<<. These records shall be made available to the department of administration for inspection upon reasonable notice.

Part 26. Section 355-15 of the code is repealed:
(Note: The provision being repealed reads as follows:

355-15. Annual Reports. The department shall compile data assembled by its own employes and the department of administration and provide an annual report to the common council on compliance with the requirements of this chapter on or before October 1 of each year.)

Part 27. Section 355-17-4 to 6 of the code is created to read:

355.17. Sanctions.

4. Withholding of payments.

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

6. After a due process hearing, denial of right to enter into agreements with the city for 2 years.

Part 28. Section 365-3-2-a and b of the code is amended to read:

365-3. Definition.

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

a. ~~[[Owns]]~~ >>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 ~~[[owned or leased real property and has]]~~ been doing business within the geographical boundaries of the city of Milwaukee for at least one year.

Part 29. Section 365-7-1-e of the code is amended to read:

e. The preference under par. a shall not exceed \$25,000 for any one solicitation and award determination. >>The preference under par. f shall not exceed \$30,000 for any one solicitation and award determination.<<

Part 30. Section 365-7-1-f of the code is created to read:

365-7. Obligations of Contracting Departments.

1. CONTRACT AWARD.

f. If a local business enterprise also meets the small business enterprise certification requirements of s. 370-25, the award standards set forth in pars. a to d shall be 10%.

Part 31. Section 365-7-2-c of the code is amended to read:

2. DUTIES OF CONTRACTING AGENCY.

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

Part 32. Section 370-1-1 of the code is amended to read:

370-1. Definitions.

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

Part 33. Section 370-1-17 of the code is renumbered 370-1-18.

Part 34. Section 370-1-17 of the code is created to read:

17. RENEWAL COMMUNITY means an area within the city for which an application for designation as a renewal community has been submitted to the United States secretary of housing and urban development, or which has been designated as a

renewal community by the United States secretary of housing and urban development, under 26 U.S.C., ss. 1400E, et seq., as amended, or similar area designated as disadvantaged by the common council.

Part 35. Section 370-3-5 of the code is amended to read:

370-3. Administration.

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

Part 36. Section 370-5-4-c of the code is amended to read:

370-5. Goals of Contracting Departments.

4. DUTIES OF CONTRACTING AGENCIES.

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

Part 37. Section 370-5-4-c-1 of the code is amended to read:

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

..LRB

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

..Attorney

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

..Requestor

..Drafter

LRB161895-2

Andrew R. VanNatta

05/25/2016