

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

Repealing various provisions of Chapters 2, Code of Ordinances; repealing and reenacting various provisions of Chapter 38, Code of Ordinances; enacting a new Chapter 3, Code of Ordinances, dedicated to city contracting processes and programs; and establishing an effective date.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 2, Article XI, Division 1, Code of Ordinances is hereby repealed in its entirety and such division reserved for future use.

Section 2. That the following provisions of Chapter 2, Article XI, Division 3, Code of Ordinances, are hereby repealed in their entirety: Section 2-1645, Execution and filing of contracts and leases; Section 2-1648, Leases of city-owned real estate; Section 2-1649, Debarment of bidders for public works contracts; and Section 2-1653, Prompt payment.

Section 3. That the following provisions of Chapter 2, Article XI, Division 6, Code of Ordinances, are hereby repealed in their entirety: Section 2-1753, Making purchases and term-supply and service contracts; Section 2-1754, Bonds and insurance; Section 2-1755, Requisitions; Section 2-1756, Reverse auction; Section 2-1757, Definitions of terms used in sections 2-1758 through 2-1763; Section 2-1758, Cooperative purchasing—Authorized; Section 2-1759, Same—Sale, acquisition or use of supplies; Section 2-1760, Same—Cooperative use of supplies or services; Section 2-1761, Same—Joint use of facilities; Section 2-1762, Same—Supply or personnel and services; Section 2-1763, Same—Cooperative purchasing not to adversely affect city employees; Section 2-1764, Employee conflict of interest; Section 2-1765, Gratuities and kickbacks; Section 2-1766, Contingent fees; Section 2-1767, Contemporaneous employment of city employee by person contracting with city; Section 2-1768, Waivers from conflict of interest and contemporaneous employment prohibitions; Section 2-1769, Use of confidential information; Section 2-1770, Sanctions for violation of ethical standards; and Section 2-1771, Recovery of value transferred or received in breach of ethical standards.

Section 4. That Chapter 2, Article XI, Division 7, Code of Ordinances is hereby repealed in its entirety and such division reserved for future use.

Section 5. That Chapter 38, Code of Ordinances, is hereby repealed in its entirety, and a new Chapter 38, Code of Ordinances, is enacted in lieu thereof, to read as follows:

**CHAPTER 38**

**HUMAN RELATIONS**

**ARTICLE I. IN GENERAL**

**DIVISION 1. DEFINITIONS**

**Sec. 38-1. Definitions.**

(a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning or an alternative definition has been provided:

- (1) *Age* means an age of 40 or more years, except that it shall not be an unlawful employment practice for an employer to require the compulsory retirement of any person who has attained the age of 85 and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer, which equals, in the aggregate, at least \$344,000.00.
- (2) *City* means the City of Kansas City, Missouri.
- (3) *Commission* means the city human rights commission.
- (4) *Complainant* means any person claiming injury by the alleged violation of Chapter 213, RSMo, or of this Chapter, including persons who believe they will be injured by an unlawful discriminatory practice that is about to occur.
- (5) *Complaint* means a verified written statement of facts and circumstances, including dates, times, places and names of persons involved in any alleged violation of any provision of Chapter 213, RSMo, or of this Chapter.
- (6) *Contract* means any contract to which the city shall be a contracting party, except the following:
  - a. Personal services contracts.
  - b. Emergency requisitions for goods, supplies or services.
  - c. Impressed accounts in the nature of petty cash funds.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- d. Contract or lease, the cost of which will not exceed \$300,000.00.
- (7) *Covered multifamily dwelling* means a building consisting of four or more units if the building has one or more elevators or a ground floor unit in a building consisting of four or more units.
- (8) *Department* means the department of human relations.
- (9) *Director* means the director of the human relations department or their delegate.
- (10) *Disability* means with respect to employment, a person who is otherwise qualified and who, with reasonable accommodation, can perform the essential functions of the job in question. Generally, a person with a disability is any person who:
  - a. Has a physical or mental impairment which substantially limits one or more major life activities;
  - b. Has a record of having such impairment; or
  - c. Is regarded as having such an impairment.
- (11) *Dwelling* means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.
- (12) *Employee* means any individual employed by an employer, but does not include an individual employed by his parents, spouse or child or any individual employed to render services as a domestic in the home of the employer.
- (13) *Employer* includes any person employing six or more employees.
- (14) *Employment agency* means any person, agency or organization, regularly undertaking, with or without compensation, to procure opportunities for employment or to procure, recruit, refer or place employees.
- (15) *Familial status* means one or more individuals, who have not attained the age of 18 years, being domiciled with:
  - a. A parent or another person having legal custody of such individual or individuals; or

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- b. The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. No provision in this chapter regarding familial status shall apply to housing for older persons, as defined in section 3607 of title 42 of the United States Code Annotated.
- (16) *Family* includes a single individual.
- (17) *Franchise holder* means any individual, partnership, corporation, association or other entity, or any combination of such entities, holding a franchise hereafter granted or renewed by the city.
- (18) *Gender identity* means the actual or perceived appearance, expression, identity or behavior of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth.
- (19) *Labor organization* means any organization which exists for the purpose in whole or in part of collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.
- (20) *Performance of work* means the furnishing of any personal service, labor, materials or equipment used in the fulfillment of a contractor's obligation under a city contract.
- (21) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other organizations; except the term "person" does not include any local, state or federal governmental entity.
- (22) *Prohibited dress code* means a set of rules governing, prohibiting or limiting access to a place or business, or portion thereof, defined herein as a "public accommodation" because of any of the following:
- a. The wearing of jewelry, the manner in which jewelry is worn or the combination of items of jewelry worn,
- b. The wearing of a garment or headdress which is generally associated with specific religions, national origins or ancestry,

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- c. The length of the sleeve of a shirt or the leg of a pair of pants or shorts is too long, except that nothing herein shall be construed to prohibit a dress code that requires the wearing of a shirt,
  - d. The style, cut or length of a hair style,
  - e. The colors of the garments,
  - f. In conjunction with a major Kansas City sporting event the wearing of athletic apparel which displays either a number, a professional or college team name or the name of a player;
  - g. The wearing of tee-shirts, except that nothing herein shall be construed to prohibit a dress code that requires such tee-shirts to have sleeves, or to prohibit a dress code that does not allow undershirts, undergarments, or tee-shirts of an inappropriate length. Designer tee-shirts, which are fitted and neat, cannot be banned.
- (23) *Public accommodation* means any place or business offering or holding out to the general public goods, services, privileges, facilities, advantages or accommodations for the peace, comfort, health, welfare and safety of the general public, or providing food, drink, shelter, recreation or amusement, including but not limited to:
- a. Any inn, hotel, motel or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence.
  - b. Any restaurant, tavern, cafeteria, lunchroom, lunch counter, soda fountain or other facility principally engaged in selling food for consumption on the premises, including but not limited to any such facility located on the premises of any retail establishment.
  - c. Any gasoline station, including all facilities located on the premises of such gasoline station and made available to the patrons thereof.
  - d. Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment.
  - e. Any public facility owned, operated or managed by or on behalf of this city or any agency or subdivision thereof, or any public

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

corporation; and any such facility supported in whole or in part by public funds.

- f. Any establishment which is physically located within the premises of any establishment otherwise covered by this definition or within the premises in which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.
  - g. Any institution, association, club or other entity that has over 250 members, provides regular meal service, and regularly receives payment for meals, beverages, dues, fees, the use of its facilities or services directly or indirectly from or on behalf of nonmembers in furtherance of trade or business.
- (24) *Redevelopment area* means a tax increment redevelopment area as defined in section 99.805(11); RSMo, a planned industrial expansion project area as defined in section 100.300, et seq., RSMo; an urban renewal project area or land clearance project area as defined in section 99.300, et seq., RSMo; any area under the control of the port authority of Kansas City, Missouri, or subject to a contract, lease or other instrument to which the port authority is a party; or an area determined by the city to be blighted pursuant to chapter 353, RSMo.
- (25) *Rent* means to lease, sublease, let or otherwise grant for a consideration the right to occupy premises not owned by the occupant.
- (26) *Respondent* means any person against whom it shall be alleged by complaint or identified during the course of an investigation that such person has violated, is violating or is about to violate any provision of Chapter 213, RSMo, or this Chapter.
- (27) *Sex* shall include sexual harassment.
- (28) *Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.
- (29) *Subcontractor* means any individual, partnership, corporation, association or other entity, or other combination of such entities, which shall undertake, by virtue of a separate contract with a contractor, to fulfill all or any part of any contractor's obligation under a contract with the city, or who shall exercise any right granted to a franchise holder, and who has 50 or more employees exclusive of the parents, spouse or children or such subcontractor.

- (30) *Unlawful discriminatory practice* means any discriminatory practice as defined and prohibited by sections 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113.

**Section 38-2---38-20. Reserved.**

**ARTICLE II. ADMINISTRATION**

**DIVISION 1. ENFORCEMENT**

**Sec. 38-21. Powers and duties of director.**

(a) The director is hereby charged with administration and enforcement of all sections of this chapter and is hereby authorized and empowered to do the following:

- (1) *Rules and regulations.* To adopt, amend and enforce rules and regulations relating to any matter or thing pertaining to the administration of this chapter.
- (2) *Complaint investigation.* To receive, investigate and, upon finding probable cause on any complaint of violation of Chapter 213, RSMo, to bring such complaint before the human rights commission. If the director finds probable cause to believe that a violation of this chapter has occurred, he may refer the matter to the city counselor's office for prosecution in municipal court. Any staff assigned to assist the commission shall be supervised by the director of human relations. The director shall not have the power to process complaints of discrimination brought against the city and shall defer any such complaints to the state commission on human rights or any appropriate federal agency for processing.
- (3) *Authority regarding discrimination within city administration.* To investigate and recommend to the city manager any policy changes or specific actions that the director determines are necessary to ensure that the city administration is in compliance with the provisions of this chapter or with state and federal discrimination laws.
- (4) *Initiation of complaints.* Whenever the director has reasonable cause to believe that an unlawful discriminatory practice has occurred, he may initiate a complaint alleging violation of any section Chapter 213, RSMo, or of this chapter.
- (5) *Compliance investigation.* To investigate, survey and review any and all affirmative action programs, city contracts and franchises which are subject to this chapter and to take such action with respect thereto as shall ensure compliance with this chapter.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (6) *Conciliation.* To attempt to eliminate any unlawful discriminatory practice or any other violation of the terms of this chapter by means of conference, conciliation, persuasion and negotiation and to enter into conciliation agreements.
- (7) *Authority to dismiss complaints.* To dismiss any complaint upon finding such complaint to be frivolous or without merit on its face or upon a finding that the allegedly unlawful discriminatory practice has been eliminated through conciliation.

**Sec. 38-23. Complaint procedure.**

(a) *Filing of complaint.*

- (1) Any person claiming injury by an allegedly unlawful discriminatory practice may, by himself or by his attorney, make, sign and file a verified written complaint with the director on forms provided by the director, which shall state the name and address of the person alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the director for the investigation of the complaint.
- (2) Any complaint filed pursuant to Chapter 213, RSMo, or this chapter must be filed within 180 days after the alleged unlawful discriminatory practice was committed.

(b) *Investigation.* After the filing of any complaint, the director shall:

- (1) During the period beginning with the filing of such complaint and ending with the notice of public hearing before the commission, to the extent possible, engage in conciliation with respect to such complaint. Any agreement reached during these conciliation efforts shall conform to the requirements of subsection (d) of this section.
- (2) Promptly serve notice upon the complainant acknowledging and advising the complainant of the time limits and choice of forums provided under Chapter 213, RSMo, and this chapter.
- (3) Promptly serve notice on the respondent or the person charged with a discriminatory practice advising of his or her procedural rights and obligations under this chapter, together with a copy of the complaint.
- (4) Commence investigation of the complaint within 30 days of the receipt of the complaint.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (5) For housing and public accommodation complaints, complete the investigation of the complaint within 100 days unless it is impracticable. If the director is unable to complete the investigation within 100 days, the director shall notify the complainant and the respondent in writing of the reasons for not doing so.
- (6) Make final administrative disposition of a housing or public accommodations complaint within one year of the date of receipt of a complaint unless it is impracticable to do so, in which case the director shall notify the complainant and respondent in writing of the reasons for not doing so.

(c) *No probable cause finding.* If it shall be determined after such investigation that no probable cause exists for crediting the allegations of the complaint, the director shall cause to be issued and served upon all parties written notice of such determination.

(d) *Probable cause finding; conciliation.*

- (1) If it shall be determined after such investigation that probable cause exists for crediting the allegations of the complaint, the director shall immediately endeavor to eliminate the unlawful discriminatory practice complained of by conference, conciliation and persuasion. Each conciliation agreement shall include provisions requiring the respondent to refrain from the commission of such allegedly unlawful discriminatory practice in the future and may contain such further provisions as may be agreed upon by the complainant and the respondent subject to the approval of the director. The director shall not disclose what has transpired in the course of such endeavors and shall not make or maintain a public record of such endeavors as the term "public record" is defined in Chapter 610, RSMo.
- (2) If the respondent, the complainant and the director agree upon conciliation terms, the director shall compile the terms of the conciliation agreement for the signature of the complainant, respondent and director. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the director determines that disclosure is not legally required and is not required to further the purposes of this chapter.

(e) *Failure to conciliate; hearing or prosecution.* If the director believes that he has failed to eliminate an allegedly unlawful discriminatory practice through conciliation, he shall cause to be issued and served a written notice thereof. If the complaint alleges a discriminatory practice prohibited by this chapter, the director may refer the matter to the city counselor for possible prosecution in municipal court. If the complaint alleges a discriminatory practice prohibited by Chapter 213, RSMo, the director shall refer the matter to the commission for hearing.

**Sec. 38-25. Hearing or civil action.**

(a) *Hearing notice.* Upon referral from the director of a matter to be set for hearing, the commission shall set a date upon which a hearing shall be held by a hearing examiner appointed by the city and shall notify all parties of the date thereof. The notice shall be served upon the parties at least 20 days prior to the date of the hearing. A copy of the complaint shall be attached to each such notice.

(b) *Election to file civil action in housing cases.*

(1) When a written notice of hearing on a complaint of housing discrimination is issued, a complainant or respondent may elect to have the claims asserted in that complaint decided in a civil action, in accordance with Section 213.076, RSMo. Written notice of an election made under this subsection shall be filed with the commission with notice to all parties within 20 days of the date on which the notice of hearing was mailed.

(2) If such an election is made, the director shall request that the city counselor file suit on behalf of the city and the complainant unless the complainant chooses to bring an action through his or her own private counsel. Within 30 days of the election, the city counselor shall commence, maintain and pay the costs of a civil action in the name of the city and any complainant not represented by private counsel seeking relief as authorized by Chapter 213, RSMo; however, before such suit is filed by the city on behalf of any complainant, the complainant will agree in writing that any costs or attorneys' fees recovered in such an action will be remitted to the city. The complainant shall have no liability to the city for costs and attorneys' fees except to the extent that such costs and attorneys' fees are awarded by the court to the complainant and paid by a respondent (defendant). Should the city counselor prevail in such suit, he is hereby authorized and directed to seek and recover costs and attorneys' fees. Any attorneys' fees or costs recovered by the city or by a complainant and remitted to the city shall be paid into the general fund of the city.

(c) *Record of proceedings.* The hearing examiner shall cause all proceedings before it to be either tape recorded or held before a certified court reporter.

(d) *Hearing procedure.* The hearing shall be conducted in accordance with Chapter 536, RSMo and with rules adopted by the commission. The commission or the hearing examiner appointed to hear a matter may subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and require the production for examination of any books, papers or other materials relating to any matter under investigation or in question before the commission.

**Sec. 38-27. Discovery.**

In any case which is before the commission, any party may obtain discovery in the same manner, upon and under the same conditions and upon the same notice and other requirements as is or may hereafter be provided for with respect to discovery in civil actions by rule of the supreme court of the state for use in circuit court. The designated hearing examiner for the human rights commission shall have the same responsibilities and authority with respect to discovery as is vested in circuit judges by supreme court rule. Enforcement of discovery shall be by the same methods, terms and conditions as provided by supreme court rule in civil actions in the circuit court; except that no order issued pursuant to such rule which requires a physical or mental examination, permits entrance upon land or inspection of property without permission of the owner, or purports to hold any person in contempt shall be enforceable except upon order of the circuit court after notice and hearing. The hearing examiner may limit discovery as is appropriate in each case.

**Sec. 38-29. Penalty for refusal or failure to obey subpoena.**

If any person fails, neglects or refuses to obey all the terms of any subpoena or subpoena duces tecum issued by the human rights commission or its designated hearing examiner, such failure shall be dealt with as provided by the applicable section of Chapter 536, RSMo.

**Sec. 38-31. Decision and order by commission.**

(a) The hearing examiner shall make findings of fact and conclusions of law and shall recommend to the commission an order granting any relief that is necessary to remedy any discrimination found and which is consistent with Section 213.075, RSMo, or dismissing the complainant as to the respondent, in accordance with such findings. The commission or a panel of at least three members of the commission shall review the record, findings and recommended order of the hearing examiner. The commission or panel shall thereafter accept or amend the recommended order, which shall become the order of the commission. All orders shall be served on the complainant and respondent and such other public officers as the commission deems proper.

(b) The order of the commission shall not become final for appeal purposes until it is filed with and approved by the state commission on human rights, in accordance with the procedures set forth in Section 213.135, RSMo.

(c) After rendition of the commission's decision on a contract compliance or affirmative action matter, the contracting officer shall serve upon the respondent a copy of such order and decision. The respondent shall have 30 days after delivery of the order and decision to demonstrate to the director willingness to comply with the terms and conditions of such order, failing which the contracting officer shall proceed to cancel, terminate or suspend the contract, or declare the contractor ineligible to receive any city contract or franchise for a period of one year, as such order may require. Willingness of

the contractor to comply with such order may be evidenced by his or her written agreement to comply with the terms and conditions set forth in the order.

**Sec. 38-33. Confidentiality of statements and documents.**

No documents which have been submitted nor anything which has been said or done during the course of a conciliation endeavor or as a result of an affirmative action program submission shall be made public or used as evidence in any subsequent proceedings without the written consent of the parties concerned, except as such statements or documents are public records as defined by state law or except when such statements or documents are used as evidence before a hearing examiner for the human rights commission.

**Sec. 38-35. Suspension or revocation of business license.**

Upon the final determination of any violation of this chapter, the license of such violator to do business in this city may be suspended for up to 30 days; and, upon a third final determination of any violation of this chapter within five years, the license of such person to do business in this city shall be revoked.

**Secs. 38-36—38-40. Reserved.**

DIVISION 2. HUMAN RIGHTS COMMISSION

**Sec. 38-41. Establishment; membership.**

(a) There shall be a human rights commission, formerly known as the civil rights board, which shall be an agency as such term is defined in Section 536.010, RSMo. Such commission shall comprise seven members, including a chairperson, to be appointed by the mayor. The commission shall be a local commission as authorized by Sections 213.020 and 213.135, RSMo, and as such shall have the power and authority to hear complaints of violations of Chapter 213, RSMo, in accordance with procedures set forth in Chapter 213, RSMo, and in this chapter.

(b) All members shall serve without compensation and shall serve initial staggered terms at the discretion of the council and mayor of three years for three members, two years for three members, and one year for one member; provided that all members shall continue in office until their respective successors shall have been appointed and qualified. In the event of death or resignation of any appointee, a successor shall be appointed by the original appointing authority to serve during the unexpired portion of his or her term.

**Sec. 38-43. Powers and duties.**

(a) The commission may adopt rules of procedure consistent with Chapters 213 and 536, RSMo, and this chapter.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(b) The commission shall prepare an annual report to be presented to the mayor and council concerning the conditions of minority groups in the city, with special reference to discrimination, civil rights, human relations, hate group activity, bias crimes and bias practices and attitudes among institutions and individuals in the community. The report may also include other social and economic factors that influence conditions of minority groups, as well as the causes of these conditions and the effects and implications to minority groups and the entire city. In preparation for the report the commission may conduct hearings and conduct whatever other research is necessary. The report shall include appropriate recommendations to the mayor and the council.

(c) The commission shall form task forces as follows:

- (1) The commission shall form task forces including: youth, business, media, education, law enforcement, religion, labor, gay and lesbian issues, metropolitan area cooperation, and others as may be deemed appropriate.
- (2) One member of each task force may be appointed from each councilmanic district, that member to be agreed upon jointly by the councilmembers from that district. Councilmembers may recommend additional members as appropriate.
- (3) Except as provided in subsection (c)(2) of this section, the chairperson of the commission shall appoint the chairs and members of the task forces.
- (4) The task forces shall consist of no more than 15 members except where the commission chairperson specifically approves additional members.
- (5) The task forces will assist the commission in the preparation of the commission's annual report to the mayor and council.

(d) The commission is empowered to investigate hate group activity and incidents of bias crimes and work with law enforcement agencies and others to implement programs and activities to combat hate group activity and bias crimes.

(e) The commission may seek information from any and all persons, agencies and businesses, in both the public and private sectors, to identify and investigate problems of discrimination and bias as they affect the citizens of the city either directly or indirectly.

(f) The commission may cooperate with public and private educational institutions at primary, secondary and post-secondary levels to foster better human relations among the citizens of the city and within the metropolitan Kansas City area.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(g) The commission may work with civil rights organizations, community organizations, law enforcement agencies, school districts and others to collect and review data relating to patterns of discrimination, bias crimes, hate group activity, and general issues of civil and human rights.

(h) The commission may conduct studies, assemble pertinent data, implement educational programs and organize training materials for use by the commission to assist civil and human rights agencies, neighborhood organizations, educational institutions, law enforcement agencies, labor unions and businesses and others to prevent discrimination.

(i) The commission may serve as an advocate to prevent discrimination and bias crimes.

(j) The commission chairperson may appoint such committees from its membership or other citizens to fully effectuate the purpose of this chapter.

(k) The commission is empowered to hold hearings regarding issues of general or specific civil and human rights affecting the citizens of the city, to review decisions of hearing examiners appointed by the city to hear charges of violations of Chapter 213, RSMo, to administer oaths, and to take the testimony of any person under oath.

(l) Based upon its hearings or those held by its hearing examiners, the commission shall issue such findings as it deems appropriate under the circumstances. If the commission finds that a respondent has engaged in an unlawful discriminatory practice as defined in Chapter 213, RSMo, the commission shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful discriminatory practice. The order shall require the respondent to take such affirmative action or award such relief as in the commission's judgment will implement the purposes of this chapter and of Chapter 213, RSMo, including but not limited to the assessment of civil penalties, reinstatement, back pay, making available the dwelling or public accommodation, actual damages, or any other relief that is deemed appropriate and which is consistent with Chapter 213, RSMo.

(m) Should the respondent also be a city contractor, upon complaint by the human relations department and after hearing duly held, the commission shall make findings of fact and conclusions of law; and when it finds a breach of conditions of any contract or franchise wherein compliance with this chapter is assured, it shall make an order specifying the terms and conditions under which any contract or franchise will be continued in force, or in the alternative shall order the cancellation, termination or suspension of such contract or franchise, or order that such contractor or franchise holder be ineligible to receive any city contract or franchise for a period of one year.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(n) The chairperson may appoint hearing review panels composed of not less than three persons to review hearings conducted by a hearing examiner regarding violations of Chapter 213, RSMo. Panels shall be appointed on a rotating basis to ensure that all commission members have an opportunity to review recommended findings of the hearing examiner. Any member of the commission who has a conflict of interest or the appearance of a conflict of interest regarding an issue to be heard by the commission will not participate in the proceedings regarding that issue.

(o) The commission is empowered to hold hearings, upon complaint of an aggrieved party or upon an investigation by the director to determine whether the owner, operator, agent or an employee of a business or facility within a redevelopment area is using a prohibited dress code. Based upon its hearings, or those held by its hearing examiners, the commission shall issue such findings as it deems appropriate under the circumstances. If the commission finds that the owner, operator or employee of such a business or facility has used, or is using, a prohibited dress code, and, therefore, has engaged in an unlawful discriminatory practice as defined in Chapter 213, RSMo, or in Section 38-113, the commission shall issue and cause to be served on the owner, operator, agent or employee an order requiring the owner, operator or employee to cease and desist from the use of the prohibited dress code. The order may also require the owner, operator, agent or employee to take further affirmative action or award such relief as in the commission's judgment will implement the purposes of this chapter and of Chapter 213, RSMo, including but not limited to the assessment of civil penalties, making access available to those individuals denied access to the public accommodation because of the use of a prohibited dress code, actual damages, or any other relief that is deemed appropriate and which is consistent with Chapter 213, RSMo, and Chapter 38, Code of Ordinances.

(p) The commission shall study, advise and make other recommendations for legislation, policies, procedures and practices of the city, other businesses entities, and other public entities as are consistent with the purposes of this chapter.

**Secs. 38-44—38-60. Reserved.**

DIVISION 3. BIAS OFFENSE REPORTING

**Sec. 38-61. Reporting responsibility.**

(a) The police department of the city shall collect and maintain information relating to alleged crimes and ordinance violations occurring within the city in which the evidence of the offense indicates it was motivated by bigotry or bias related to the race, religion, sexual orientation or ethnicity of individuals or groups. For purposes of this section the following crimes and ordinance violations contained in the Code of Ordinances are included:

- (1) Section 1-17(d) General penalty; continuing violations

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (2) Section 50-9, Stalking
- (3) Section 50-102, Trespass generally
- (4) Section 50-124, Institutional vandalism
- (5) Section 50-125, Defacing property with aerosol paint and like materials
- (6) Section 50-159, Harassment
- (7) Section 50-164, Disorderly conduct
- (8) Section 50-167, Disturbing the peace
- (9) Section 50-168, Bodily injury—Attempting
- (10) Section 50-169, Same—Inflicting
- (11) Section 50-170, Assault on persons or on route to or from school premises; disturbing school activities
- (12) Section 50-171, Aggravated trespass
- (13) Section 50-261, Unlawful use of weapons—generally
- (14) Section 64-11, Throwing missiles
- (15) Section 64-12, Throwing objects from buildings

**Sec. 38-63. Reporting system.**

The police department of the city shall develop a system by which the required reporting shall be accomplished. The reporting system shall include monthly distribution of the information collected to the human relations department of the city, and to the United States Department of Justice, Community Relations Service, Central Region.

**Sec. 38-65. Incident reports.**

(a) Whenever any police officer has identified a victim of an alleged bias crime or city ordinance violation, the police department of the city shall, to the extent known, supply the name, address and telephone number of the victim to the director of the human relations department, acting for the human rights commission, together with other relevant information concerning the victim. Whenever any police officer has identified an incident that does not constitute a crime or city ordinance violation the officer will refer the victim to the human relations department. The director of human relations shall

establish a telephone line for citizens to call to report incidents of possible bias incidents that are not crimes or city ordinance violations.

(b) The purposes of this reporting are to permit the director of human relations, or other designated party appointed by the director, acting for the human rights commission, to:

- (1) Contact the victim for the purpose of offering to help the victim deal with the police department, prosecutors and other interested agencies, and to help secure any other support which may be available to the victim; and
- (2) Determine whether the incident is related to a pattern of discrimination, or if, due to bias-related tensions in the area where the incident occurred, further incidents are likely to occur if remedial action is not taken.

**Secs. 38-66—38-100. Reserved.**

### **ARTICLE III. DISCRIMINATORY PRACTICES**

#### **DIVISION 1. IN GENERAL**

**Sec. 38-101. Prohibited.**

(a) Discriminatory practices, as defined in sections 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113, are prohibited. Any person who engages in a prohibited discriminatory practice shall be guilty of an ordinance violation, punishable by a fine of not more than \$500.00, by imprisonment of not more than 180 days, or by such fine and imprisonment.

(b) Nothing in sections 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113 shall be read or interpreted to require the imposition of quotas or any form of affirmative action to remedy any past practices.

**Sec. 38-103. Employment.**

(a) It shall be unlawful for any employer, employment agency or labor organization to commit any of the following discriminatory employment practices:

- (1) For any employer to fail or refuse to hire or promote, or to discharge, any individual or otherwise to rule or act against any individual with respect to compensation, tenure, conditions or privileges because of such individual's race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age.
- (2) For any employer to limit, segregate or classify his employees in any way which would deprive or tend to deprive any individual of employment

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age.

- (3) For any employer, labor organization or employment agency or any joint labor-management committee controlling apprenticeship training programs to deny or withhold from any person the right to be admitted to or participate in a guidance program or an apprenticeship training program because of race, color, sex, religion, national origin or ancestry, disability sexual orientation or gender identity.
- (4) For any employer or employment agency to fail or refuse to refer any individual for an employment interview or to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or preference, because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age.
- (5) For any employer to substantially confine or limit recruitment or hiring of employees to any employment agency, employment services, labor organization, training school, training center or any other employee-referring source which excludes persons because of their race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age.
- (6) For any labor organization to in any way deprive or limit any person in his or her employment opportunities or otherwise adversely affect his status as an applicant for employment or as an employee, with regard to tenure, compensation, promotion, discharge or any other terms, conditions or privileges directly or indirectly related to employment, because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age.
- (7) For any employer, employment agency or labor organization to discharge, expel, demote, fail to promote or otherwise rule against any person because he or she has filed a complaint, testified or assisted in any manner in any investigation or proceedings under this chapter.
- (8) For any person, whether or not an employer, employment agency or labor organization, to aid, abet, incite, compel, coerce or participate in the doing of any act declared to be a discriminatory practice under this chapter, or to obstruct or prevent any person from enforcing or complying with the

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

provisions of this chapter, or to attempt to commit any act declared by this chapter to be a discriminatory practice.

(b) Notwithstanding any other provision of this section, it shall not be an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system.

(c) Notwithstanding any other provision of this section, it shall not be an unlawful employment practice for a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, to discriminate in its employment decisions on the basis of religion, sexual orientation or gender identity.

**Sec. 38-105. Housing.**

(a) It is the policy of the city to provide, within constitutional limitations, for fair housing throughout the corporate limits of the city. The following discriminatory housing practices shall be unlawful:

- (1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of property offered for sale or rental, or otherwise make unavailable or deny a dwelling to any person, because of race, color, religion, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity.
- (2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity.
- (3) To make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference or limitation based on race, color, religion, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity, or an intention to make any such preference, limitation or discrimination.
- (4) To represent to any person, because of race, color, religion, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity, that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (5) To induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of persons of a particular race, color, religion, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity.
  - (6) For a person in the business of insuring against hazards to refuse to enter into or discriminate in the terms, conditions or privileges of a contract of insurance against hazards to a dwelling because of the race, color, religion, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity of persons owning or residing in or near the dwelling.
  - (7) To discriminate in the sale or rental or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a disability of:
    - a. That buyer or renter;
    - b. A person residing in or intending to reside in that dwelling after it is sold, rented or made available; or
    - c. Any person associated with that buyer or renter.
  - (8) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:
    - a. That person;
    - b. A person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or
    - c. Any person associated with that person.
- (b) For purposes of this section, the term "discrimination" includes:
- (1) A refusal to permit at the expense of the disabled person reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (2) A refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
- (3) In connection with the design and construction of covered multifamily dwellings for first occupancy, a failure to design and construct those dwellings in a manner that:
  - a. The public and common use portions of such dwellings are readily accessible to and usable by disabled persons. This shall include at least one building entrance on an accessible route unless it is impracticable to do so because of the terrain or unusual characteristics of the site;
  - b. All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and
  - c. All premises within such dwellings contain the following features of adaptive design:
    - 1. An accessible route into and through the dwelling;
    - 2. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;
    - 3. Reinforcements in bathroom walls to allow later installation of grab bars; and
    - 4. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically disabled persons, commonly cited as ANSI A117.1, suffices to satisfy that the requirements of subsection (b)(3)a. of this section are met.

- (4) For purposes of subsections (a)(7) and (8) of this section, discrimination includes any act that would be discrimination under 42 USC 3604(f)(3) through (9).

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(c) Nothing in this section shall apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner actually maintains or occupies one of such living quarters as his residence, and if the dwelling contains any rooms, except hallways, which are shared by the families or the owner.

(d) Nothing in this section shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from discriminating in the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose on the basis of religion, sexual orientation or gender identity, or from giving preference to persons on those bases.

**Sec. 38-107. Discrimination in commercial real estate loans.**

It shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance because of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, handicap or familial status to a person applying therefor for the purpose of purchasing, construction, improving, repairing or maintaining a dwelling, or to discriminate against him in fixing of the amount, interest rate, duration or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, handicap or familial status of such person or of any person associated with him in connection with such loan or other financial assistance, or of the present or prospective owners, lessees, tenants or occupants, of the dwellings in relation to which such loan or other financial assistance is to be made or given.

**Sec. 38-109. Discrimination in the provision of brokerage services.**

It shall be unlawful for any person to deny any other person right to membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against any person in terms or conditions of such access, membership or participation, on account of race, color, religion, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity.

**Sec. 38-111. Additional unlawful practices.**

- (a) It shall be an unlawful discriminatory practice to:
  - (1) Aid, abet, incite, compel or coerce the commission of acts prohibited under this chapter or to attempt to do so.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (2) Retaliate or discriminate in any manner against any other person because such person has opposed any practice prohibited by this chapter or because such person has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing conducted pursuant to this chapter.
- (3) Discriminate in any manner against any other person because of such person's association with any person protected by this chapter.

**Sec. 38-113. Discriminatory accommodation practices.**

(a) It shall be a discriminatory accommodation practice for any owner, agent or employee of any place of public accommodation, directly or indirectly, to refuse, withhold from or deny to any person any of the accommodations mentioned in this chapter or to discriminate against any person in the furnishing thereof on account of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity of such person, or directly or indirectly to publish, circulate or display any written or printed communication, notice or advertisement to the effect that any of the accommodations or the facilities of such place of public accommodation will be refused, withheld from or denied to any person on account of race, religion, color, ancestry, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity, or that, for such reasons, the patronage or custom of any person described in this section is unwelcome or objectionable or not acceptable to such place.

(b) It shall be a discriminatory accommodation practice for any owner, agent, operator or employee of a business or facility within a redevelopment area to use a prohibited dress code as defined in Section 38-1, directly or indirectly, to refuse, withhold from or deny to any person any of the accommodations mentioned in this chapter or to discriminate against any person in the furnishing thereof on account of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity of such person. Any dress code enforced in a redevelopment area or in any establishment with such area must be posted in accordance with the requirements of Section 10-331(d), and must contain the phone number of the city's Human Relations Department and a phone number of a representative of the establishment who is available to respond to complaints regarding the enforcement of the dress code during all hours when the establishment is open or such dress code is in effect. Any such dress code shall list all prohibited items of dress. Notwithstanding the foregoing, nothing herein shall be construed as prohibiting:

- (1) Any owner or operator of a business or facility within a redevelopment area from establishing an employee dress code or requiring that an employee abide by the employee dress code while at work.
- (2) Any owner, agent, operator or employee of a business or facility within a redevelopment area from affirmatively requiring the wearing of specified

articles of clothing, which may include collared shirts and ties, sports jackets, business suits, business casual, formal clothing or smart casual clothing in keeping with the ambiance and quality of the particular business or facility and formal footwear, so long as the requirements are enforced with regard to each and every patron, regardless of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity.

**Secs. 38-114---38-199. Reserved.**

Section 6. That a new Chapter 3, Code of Ordinances, is hereby enacted, to read as follows:

CHAPTER 3  
CONTRACTS AND LEASES

ARTICLE I. CITY CONTRACTING PROCESSES

DIVISION 1. CONTRACT PROCUREMENT

**Sec. 3-1. Definitions.**

(a) The following definitions apply to Article I except where an alternate definition has been provided or the context indicates otherwise:

- (1) *Alternative construction delivery method* shall mean any project delivery method, other than a design-bid-build process, utilized to construct, reconstruct, improve, enlarge, alter, paint and decorate or make major repairs to any fixed work, the performance of which requires the payment of prevailing wage pursuant to state or federal law, including design-build, competitive sealed proposals, cooperative agreements with a private or public entity, construction-manager at risk services, or any other alternative procurement method authorized by law or specified in rules and regulations adopted by the city manager.
- (2) *Code* shall mean the City of Kansas City, Missouri Code of Ordinances.
- (3) *Concession contract* shall mean a contract for concessions or similar transactions involving the sale of products or rendition of services, or a combination thereof, in which funds are collected by the contractor from third parties for the sale of products, services, or a combination thereof, and from which the city may receive money in the form of a royalty or other financial return.
- (4) *Construction contract* shall mean a contract for the construction, reconstruction, improvement, enlargement, alteration, painting and

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

decorating or major repair of any fixed work, the performance of which requires the payment of prevailing wage pursuant to state or federal law.

- (5) *Cooperative agreement* shall mean any agreement with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or with any person, firm, association or corporation for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service.
- (6) *Cooperative procurement* shall mean entering into an agreement or working with another unit of federal, state, local government , or a political subdivision of any of the foregoing, for the purpose of procuring goods, supplies, materials, equipment, services, or any combination thereof, needed by the parties thereto and expected to result in cost and time savings.
- (7) *Design-build contract* shall mean a contract in which the design professional and construction services are contracted by a single entity known as the design–builder, design–build contractor or a variant thereof, and which single entity is responsible for all of the work on the project.
- (8) *Design Professional contract* shall mean a contract for architectural, engineering or land surveying services relating to the design or construction of buildings, bridges, streets, sewers, viaducts, water mains, subways or any structure or public improvement of any nature whatsoever to be erected upon lands belonging to the city, excluding those contracts in which the design professional services are provided pursuant to a design-build contract.
- (9) *Invitation for bids* shall mean a request or invitation for submission of an offer to enter into a contract pursuant to a competitive bidding process.
- (10) *Manager of procurement services* shall mean the person appointed by the director of the general services department to manage the procurement services division of such department.
- (11) *Non-municipal agency contract* means a contract with a governmental entity or not-for-profit entity granted tax-exempt status under any provision of Section 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c)) in which the city grants funds pursuant to an approved budget for the operation of administration of a program or services which furthers the public good.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (12) *Piggybacking* shall mean entering into a contract for goods, supplies, materials, equipment, services, or any combination thereof, with an entity that has been awarded a contract for such goods, supplies, materials, equipment, services, or any combination thereof, through a competitive solicitation process undertaken by the federal government, any state or local government other than the city, any other tax supported public entity, or any cooperative or pooling arrangement, under equivalent contractual terms and conditions and subject to acceptance of the city's contractual terms and conditions.
- (13) *Procurement card* shall mean a credit card issued by the city for the purpose of purchasing goods, supplies, materials, equipment, or services, or to make payments under a contract.
- (14) *Purchasing pool or cooperative* is any arrangement whereby entities aggregate purchasing needs for the purpose of obtaining discounted pricing or better terms or conditions.
- (15) *Qualification based selection process* is a solicitation process that includes consideration of the qualifications of anyone responding to a solicitation as the determinative criteria for selection.
- (16) *Reverse auction* shall mean an electronic reverse auction purchasing process in which vendors bid to provide any services needed by more than one department, or for goods, supplies, materials, or equipment utilized by one or more departments, at the lowest selling price, and in an open and interactive environment and which results in a contract being awarded to the lowest and best bidder.
- (17) *Request for proposals* shall mean a written invitation by the city for persons to submit an offer subject to subsequent negotiations with the city and subject to subsequent additions, deletions, modifications to the request for proposal specifications or any subsequent contract.
- (18) *Request for qualifications* shall mean a written invitation by the city for a person to submit a statement of qualifications to the city.
- (19) *Sole brand purchase* shall mean a process for purchasing which includes specifications restricting the purchase to a specific manufacturer or brand.
- (20) *Statement of qualifications* shall mean a statement submitted by a prospective contractor detailing a prospective contractor's experience, financial capacity, key personnel, and other information pertinent to a particular project.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (21) *Term-supply contract* shall mean a contract for the purchase of any services needed by more than one department, or for goods, supplies, materials, equipment, or any combination thereof, utilized by one or more departments, of such a nature as may be needed by the city over the course of a fiscal year, including but not limited to catalog or standard production items, the price of which is determined by published price lists.

**Sec. 3-3. Contract solicitation.**

(a) *General standard.* Except as otherwise provided in subsections (b) through (g) herein or the provisions of Section 3-5, all city contracts shall be procured as follows:

- (1) *Contracts exceeding \$150,000.00.* If the contract's estimated consideration exceeds \$150,000.00, the city shall issue public notice within a reasonable time as determined by the city manager, director of the contracting department, or the manager of procurement services when soliciting such contract, prior to the closing date of the solicitation. Such notice may be made by publication on the world wide web, appropriate print media, or any other means of publicly making the solicitation known to potential bidders or proposers. Sealed bids or proposals are required.
- (2) *Contracts between \$2,000.01 and \$150,000.00.* If the contract's estimated consideration is between \$2,000.01 and \$150,000.00, unsealed bids or proposals shall be solicited by any reasonable method from at least three qualified sources, or fewer if less than three qualified sources shall exist. Sealed bids or proposals and public notice may be used in the city's discretion, but their use is not mandatory.
- (3) *Contracts \$2,000.00 or less.* If the contract's estimated consideration is \$2,000.00 or less, or if the expense is to be incurred through the use of a procurement card pursuant to regulations implemented by the manager of procurement services or the director of finance, such regulations being hereby authorized, sealed or unsealed bids or proposals may be required in the city's discretion, but their use is not mandatory and the city is authorized to execute a contract without any solicitation.

(b) *Design professional contracts.* The city shall utilize a qualification based solicitation process and shall issue public notice within a reasonable time prior to the closing date of the solicitation requesting that a statement of qualifications be submitted by any firm seeking to provide architectural, engineering or land surveying services.

(c) *Design-build contracts.* The city shall utilize a request for proposals, request for qualifications, invitation for bids, or some combination thereof, and shall issue public notice within a reasonable time as determined by the director of the contracting department prior to the closing date of the solicitation.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(d) *Alternative construction delivery methods.* Except with regard to design-build contracts as provided in subsection (c) herein, the city shall utilize such solicitation methods as the contracting department shall determine to be in the city's best interest with regard to the particular project to be constructed. The use of alternative construction delivery methods shall be subject to any rules and regulations that may be adopted by the city manager from time-to-time.

(e) *Specialized procurements.* The following procurement methodologies may be utilized subject to rules and regulations that may be adopted by the city manager or manager of procurement services from time-to-time, such methods being deemed likely to produce cost and times savings to the city and therefore deemed to be in the public's best interest:

- (1) Reverse auction;
- (2) Cooperative procurement, in which solicitation will be performed by the city or another entity;
- (3) Piggybacking;
- (4) Purchasing pool or cooperative;
- (5) Sole brand purchase.

Notwithstanding the foregoing, the methods authorized in this subsection shall not be utilized to procure any construction contract, except for those providing for the maintenance or repair of any facility.

(f) *Solicitation-exempted contracts.* Solicitation shall not be required for the following contract types, provided however that solicitation shall not be precluded if the city manager, director of the contracting department, or the manager of procurement services when soliciting such contract on behalf of such department, determines that solicitation is in the city's best interests:

- (1) Concession contracts, except for those solicited by the manager of procurement services;
- (2) Cooperative agreements, to the extent such agreements are with any other municipality or political subdivision, or with an elective or appointive official thereof; or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions; or with any not-for-profit entity granted tax-exempt status under any provision of Section 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c));
- (3) Non-municipal agency contracts.

(g) If an alternate or additional method of solicitation is required by city charter, federal or state law, ordinance, contract or grant terms, the alternate or additional method shall be utilized.

**Sec. 3-5. Contract solicitation; authority.**

(a) *General rule.* The city manager, director of every department established by City Charter or by ordinance, and the manager of procurement services shall be empowered to solicit and award contracts on behalf of the city subject to the provisions of this Article.

(b) *Exceptions to general rule.* Notwithstanding subsection (a), the following additional provisions shall apply to the exercise of such authority:

- (1) *Specialized procurements.* The city manager and the manager of procurement services shall be empowered to solicit and award any contract using the methods authorized in subsection (e) of Section 3-3. The director of any other department is prohibited from utilizing any such procurement method except upon the written authorization of the city manager or the manager of procurement services.
- (2) *Department-specific procurements – services only.* The solicitation and award of any contract for any services needed by a single department only, shall be done by the director of the single department or by the manager of procurement services if the director of the single department shall have requested assistance and the manager of procurement services shall have agreed to provide such assistance, or if the city manager shall have otherwise authorized or directed the manager of procurement services to act in such capacity with regard to the contract being solicited and awarded.
- (3) *City-wide procurements.* The solicitation and award of any contract for any services needed by more than one department, or for goods, supplies, materials, or equipment utilized by one or more departments, shall be done by the manager of procurement services only unless the city manager directs otherwise or the manager of procurement services shall have delegated that authority to the director of another city department and the director of such department shall have accepted such delegation.
- (4) *Information technology procurements.* The solicitation and award of any contract relating to information technology shall be procured by the manager of procurement services only unless the city manager directs otherwise or the manager of procurement services shall have delegated that authority to the director of another city department and the director of such department shall have accepted such delegation.

**Sec. 3-7. Contract solicitation waivers; ordinances.**

(a) Unless otherwise prohibited by federal or state law, contract or grant terms, the following exceptions to the contract solicitation requirements in Section 3-3 may be utilized:

- (1) *Departmental Waivers.* Unless otherwise prohibited by the city manager, the director of the contracting department and the manager of procurement services are authorized to waive the solicitation requirements for any contract with an estimated cost of \$150,000.00 or less, exclusive of a design professional contract, if the director of the contracting department or the manager of procurement services determines, in writing, that:
  - a. There is only one source or no competition exists; or
  - b. There exists an imminent threat to public health, welfare, safety or essential operations of the city; or
  - c. Public solicitation would result in increased cost for the city or would otherwise not be in the best interest of the city; or
  - d. The contractor to be utilized has unique or specialized experience suited to a specific project such that it is in the city's best interests to utilize such contractor; or
  - e. The service to be performed is one which must, for warranty purposes, be performed by a particular manufacturer's authorized representative.

No contract awarded pursuant to this subsection (a)(1) shall be amended or changed in a manner that would increase the city's maximum financial obligation by more than ten percent (10%) except upon the written approval of the city manager, nor shall a new contract be awarded to the same person or firm for the same project for which the original contract was awarded pursuant to such a waiver except upon public solicitation in compliance with Section 3-3 or a waiver granted pursuant to Section 3-35.

- (2) *City Manager Waivers.* The city manager may waive the solicitation requirements for any contract, regardless of estimated cost, if the city manager determines, in writing, that:
  - a. There is only one source or no competition exists; or
  - b. There exists an imminent threat to public health, welfare, safety or essential operations of the city; or

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- c. Public solicitation would result in increased cost for the city or would otherwise not be in the best interest of the city; or
  - d. The contractor to be utilized has unique or specialized experience suited to a specific project such that it is in the city's best interests to utilize such contractor; or
  - e. The service to be performed is one which must, for warranty purposes, be performed by a particular manufacturer's authorized representative.
- (3) *Specialized waivers – design professional contract.* Regardless of the initial dollar amount of any design professional contract, the city may elect to utilize the same design professional or a subcontractor thereto on a subsequent design phase or for additional design work without a new qualification based selection process provided that the subsequent phase or additional work is to be performed on the same project for which the design professional was originally selected. If the city and the design professional or subcontractor thereto cannot agree on reasonable compensation for the subsequent design phase or additional design work, the city shall solicit and award a design professional contract in the manner otherwise prescribed in this Article.

(b) Any ordinance required by section 3-41 and that authorizes a contract for which the city manager shall have granted a waiver shall include recitals setting forth the rationale supporting such waiver, provided however that the failure to include such recitals shall not invalidate any public improvement procurement or any contract.

**Sec. 3-9. Rejection of bids, proposals, qualifications.**

- (a) The city may reject any and all bids or proposals for any or no reason. If all bids or proposals have been rejected, the city may do one or more of the following:
- (1) Resolicit bids or proposals only from those bidders or proposers that submitted a bid or proposal pursuant to the original solicitation; or
  - (2) Use an expedited bid or proposal submission schedule with or without re-advertising or issuing any other public notice when the city determines that the delay from the normal solicitation procedure would not be in the city's best interests; or
  - (3) Elect not to execute a contract.

(b) Nothing in this Article shall be construed as obligating the city to negotiate or execute any contract if the city shall have determined, at any point in time, that any project or solicitation should be terminated for any or no reason.

**Secs. 3-10—3.30. Reserved.**

DIVISION 2. CONTRACT AWARD

**Sec. 3-31. Contract award.**

(a) *General standard.* Except as otherwise provided in this Division 2, all contracts in which bids or proposals were required shall be awarded to the lowest and best bidder or best proposer as determined by the city in the city's sole discretion, after due opportunity for competition.

(b) *Design Professional Contracts.* A qualification based selection shall be made based upon the statement of qualifications that was required to be submitted and any supplement thereto as requested by the city. The process for making the qualification based selection shall be determined by the estimated dollar value of the design professional contract as follows, provided however that the failure to utilize the applicable process shall not invalidate any public improvement procurement or any contract:

- (1) *Contracts exceeding \$600,000.00.* The city shall convene an architect and engineering selection committee, which committee shall rank the firms from most to least qualified. The committee shall be comprised of one member designated by the city manager and four members designated by the director of the contracting department. The chairperson of the city council committee cognizant of public improvements may elect to be a member of the committee or may designate a council member to serve on the committee.
- (2) *Contracts less than \$600,000.00.* The director of the contracting department shall rank the firms from most to least qualified.

The city shall thereafter negotiate a contract for the project with the firm selected as most qualified. If the city is unable to negotiate a satisfactory contract with the firm selected, negotiations with that firm shall be terminated. The city shall then undertake negotiations with another of the qualified firms selected. If there is no agreement with the second firm, negotiations with such firm shall be terminated. The city shall then undertake negotiations with the third qualified firm. If the city is unable to negotiate a contract with any of the selected firms, the city shall reevaluate the necessary architectural, engineering or land surveying services, including the scope and reasonable fee requirements, and again conduct a qualification based selection process. Notwithstanding the foregoing, nothing herein shall obligate the city to undertake any negotiations if the city shall have determined to terminate the solicitation for any or no reason.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(c) *Design-Build Contracts.* Contracts shall be awarded as is appropriate to the manner in which the contract was solicited, as follows:

- (1) Best value. To the responsible design-build firm whose proposal is evaluated as providing the best value to the city based on any factors and method and formula included in the request for proposals. The city may elect to establish a fixed dollar budget for the project such that all proposers are operating under the same monetary limitations.
- (2) Qualification-based. A qualification based selection shall be made based upon the statement of qualifications that was required to be submitted. The process for making the qualification based selection shall be determined by the estimated dollar value of the design-build contract as follows, provided however that the failure to utilize the applicable process shall not invalidate any public improvement procurement or any contract:
  - i. *Contracts exceeding \$6,000,000.00.* The city shall convene an architect and engineering selection committee, which committee shall rank the design-builder from most to least qualified. The committee shall be comprised of one member designated by the city manager and four members designated by the director of the contracting department. The chairperson of the city council committee cognizant of public improvements may elect to be a member of the committee or may designate a council member to serve on the committee.
  - ii. *Contracts \$6,000,000.00 or less.* The director of the contracting department shall rank the design-builder from most to least qualified.

The city shall thereafter negotiate a contract for the project with the firm selected as most qualified. If the city is unable to negotiate a satisfactory contract with the firm selected, negotiations with that firm shall be terminated. The city shall then undertake negotiations with another of the qualified firms selected. If there is no agreement with the second firm, negotiations with such firm shall be terminated. The city shall then undertake negotiations with the third qualified firm. If the city is unable to negotiate a contract with any of the selected firms, the city shall reevaluate the scope of the project and again conduct a qualification based selection process. Notwithstanding the foregoing, nothing herein shall obligate the city to undertake any negotiations if the city shall have determined to terminate the solicitation for any or no reason.

- (3) Two-phase. The design-builders shall be ranked from most to least qualified in such manner as provided in subsection (c)(2) and a value shall

be assigned based upon the rankings. The city shall thereafter evaluate and score any proposal or bid required to be submitted and shall identify the best proposal or the lowest and best bid, as applicable. The city shall thereafter negotiate a contract for the project with the firm selected as having the best proposal or execute a contract for the project with the firm having the lowest and best bid. If the city is unable to negotiate a satisfactory contract or execute a contract, the city shall then proceed to the next best proposal or next lowest and best bid, and such process shall continue in similar fashion unless the city shall have determined to terminate the solicitation.

**Sec. 3-33. Secondary source awards; goods, supplies, materials and equipment.**

In addition to awarding a contract to the lowest and best bidder or proposer, the manager of procurement services may award contracts to multiple bidders or proposers in the event the manager of procurement services determines that it is in the city's best interests to do so.

**Sec. 3-35. General waivers.**

(a) *City Manager waivers.* The city manager at any time may waive any requirements imposed by the solicitation or by any city regulation with regard to the solicitation or award of any city contract if the city manager determines, in writing, that:

- (1) The failure to grant the waiver would result in an increased cost to the city; and
- (2) The requirement is one that would be waived for any bidder or proposer responding to the solicitation; and
- (3) It is in the best interest of the city to grant the waiver.

(b) *City Council waivers.* The city council at any time may waive any provision of the Code with regard to the solicitation or award of any city contract if it finds that:

- (1) The failure to grant the waiver would be detrimental to preserving the public health, welfare, safety or essential operations of the city; or
- (2) The waiver is necessary in order to participate in a purchasing pool or cooperative or a contract derived from a purchasing pool or cooperative; or
- (3) The good, supply, material, equipment or service is from a sole source; or
- (4) The failure to grant the waiver would result in an increased cost to the city, the requirement is one that would be waived for any bidder or

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

proposer responding to the solicitation, and it is in the best interest of the city to grant the waiver; or

- (5) It is otherwise in the best interests of the city for any other reason as determined by the city council.

**Sec. 3-37. Prohibited awards.**

No contract shall be awarded to any bidder or proposer which is itself debarred from the award of city contract or which is managed, controlled, or more than 50 percent owned by a person or entity so debarred.

**Sec. 3-39. Bid revisions.**

(a) *Construction contracts.* If all bids exceed the price estimated by the city prior to bid opening, the city may offer the lowest and best bidder the option of doing the work for such estimate, with no changes to scope of the project, provided that the bid submitted by the lowest and best bidder is not more than five percent higher than such estimate.

(b) *All other city contracts.* The city may negotiate a revised bid with the apparent lowest and best bidder, including changes in bid requirements, price, scope, specifications or quantity, if the bid exceeds the appropriation or relevant budget for that project and the director determines that resoliciting bids is not in the city's best interests.

**Sec 3-41. Contract authorization.**

(a) Unless approval by the city council or the board of parks and recreation commissioners is specifically required by city charter, ordinance, federal or state law, contract or grant terms, the following provisions shall control:

- (1) The city manager and department directors are authorized to enter into any and all contracts and cooperative agreements on behalf of the city without city council authorization in which the term does not exceed five (5) years and the consideration does not exceed \$1,200,000.00 for a construction contract and \$300,000.00 for all other contracts.
- (2) The city manager and manager of procurement services are authorized to enter into all contracts and cooperative agreements on behalf of the city without city council authorization in which the term does not exceed five (5) years and the estimated consideration does not exceed \$1,200,000.00 for goods, supplies, materials, or equipment and \$300,000.00 for services, provided however that the higher threshold shall apply to any contract or cooperative agreement in which services are to be provided in conjunction with the goods, supplies, materials of equipment being procured.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(b) If city council authorization is required and obtained, the contract may subsequently be amended by change order, contract amendment or otherwise in such a manner as to increase the consideration due by up to and including ten percent (10%) without further city council authorization. This cap may be exceeded, subject to the sufficiency of appropriated funds, if authorization to such effect is included within the body of the ordinance authorizing the contract or an amendment to the contract.

**Sec. 3-43. Contract term.**

(a) *Maximum Term.* No contract shall be let or amended in such a manner as to exceed five (5) years in maximum duration except upon authorization of the city council, provided however that this provision shall not prohibit the city from entering into one or more successive contracts with the same contractor and for the same or similar goods, supplies, materials, equipment, or services so long as such contracts are procured in accordance with Section 3-3 or an exception thereto. Nothing herein shall be deemed to invalidate or otherwise impair the term of any contract executed by the city prior to the effective date of this section.

(b) *Transitional term.* Notwithstanding the foregoing, the city manager may extend the maximum term of any contract by up to two (2) additional years provided the city is soliciting bids or proposals for the goods, supplies, materials, equipment, or services being provided and the goods, supplies, materials, equipment, or services are of such a nature that the city manager determines it is in the best interests of the city to extend the contract.

**Sec. 3-45. Contract provisions required in city contracts.**

No section of this Code is required to be recited in any city contract to impose the Code's requirements on the contractor.

**Secs. 3-46---3-60. Reserved.**

DIVISION 3. MISCELLANEOUS

**Sec. 3-61. Tax clearance.**

Notwithstanding any other Code section to the contrary, each contractor shall provide proof of compliance with the tax ordinances administered by the commissioner of revenue as a precondition to the city making the first payment under any contract or contract renewal if the consideration exceeds \$150,000.00. All proof of compliance letters issued by the commissioner of revenue shall be valid for one year from the date of issuance.

**Sec. 3-63. Insurance and bonds.**

Bonds and insurance shall be required as a term of any contract unless the bond or insurance requirement is exempted by the City Charter, ordinance or regulation, federal or state statute, or the terms of an applicable grant, or has otherwise been waived or been determined to be unnecessary by the city.

**Sec. 3-65. Execution and filing of contracts.**

All contracts shall be executed in the name of the city and originals thereof shall be filed with the finance department and the department awarding the contract.

**Sec. 3-67. Financial obligation.**

Except as otherwise provided by city charter, no contract or purchase order purporting to impose any financial obligation on the city shall be binding upon the city unless it be in writing and unless there is a balance, otherwise unencumbered, to the credit of the appropriation to which the same is to be charged sufficient to meet the obligation thereby incurred, and unless such contract or purchase order bears the certificate of the director of finance so stating or other acceptable means determined by the director of finance.

**Sec. 3-69. Preference for American products.**

(a) Any manufactured goods or commodities used or supplied in the performance of any city contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible.

(b) Each contract for the purchase or lease of manufactured goods or commodities by the city and each contract made by the city for construction, alteration, repair, or maintenance of any public work shall contain a provision that any manufactured goods or commodities used or supplied in the performance of that contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible

(c) When bids offer quality, price, conformity with specifications, terms of delivery and other conditions imposed in the specifications that are equal, the city shall select the bid that uses manufactured goods or commodities that are manufactured or produced in the United States.

(d) Nothing in this section is intended to contravene any existing treaty, law, agreement, or regulation of the United States. All contracts under this section shall be entered into in accordance with existing treaty, law, agreement, or regulation of the United States including all treaties entered into between foreign countries and the United States regarding export-import restrictions and international trade.

**Sec. 3-71. LEED gold standard.**

(a) *Policy.* It is the policy of the city that the design, construction, and operation of new facilities of any size and renovations in which the facility affected has at least 5,000 square feet of space shall conform to the gold rating or higher of the most recent version of the USGBC (U.S. Green Building Council) LEED (Leadership in Energy and Environmental Design) Green Building Rating System.

(b) *Establishment of LEED standards committee.* Except for the representative from the city council, who shall be appointed by the mayor, the city manager shall appoint the members of a LEED standards committee. The LEED Standards Committee shall be chaired by the city architect and shall be composed of one representative from each of the following:

- (1) Aviation department;
- (2) Public works department;
- (3) City manager's office of environmental quality;
- (4) Environmental management commission;
- (5) General services department;
- (6) Parks and recreation department;
- (7) Water services department;
- (8) City council.

(c) Notwithstanding subsection (b), the city manager has the authority to make departmental or organizational additions or deletions to the membership of the LEED standards committee as needed for the effective administration of this section, with the exception of the city council position.

(d) *Contracts.* Each contract for projects identified in subsection (a) above shall contain provisions sufficient to require the design professional, construction contractor and design-build team, as applicable, to comply with the LEED gold standard at a minimum and submit documentation to USGBC for their independent third-party review process and certification.

(e) *Exemptions.* For a given project, if the LEED standards committee determines that there are compelling reasons that a project may not be able to achieve a LEED gold rating, the LEED standards committee may require compliance with select LEED credits or exempt a project from any LEED compliance requirement found in subsection (a) of this section.

(f) *Rules and regulations.* The LEED standards committee shall draft and adopt any rules and regulations necessary to administer this section and to facilitate the committee's review and determination process.

**Sec. 3-73. Cooperative agreements; certain terms required.**

(a) Unless otherwise authorized by ordinance, cooperative agreements and all contracts to be awarded thereunder shall be subject to the provisions of Article IV, Contracting Program Requirements, provided the monetary and funding thresholds established therein render such programs applicable to the cooperative agreement at issue. Nothing herein shall preclude the utilization of any equivalent programs, if applicable, provided such programs have been authorized by the provisions of sections 3-425, 3-505(b) or 3-603(b).

(b) Unless otherwise authorized by ordinance, a party to a cooperative agreement utilizing one or more contractors or subcontractors to further the objectives of such cooperative agreement shall solicit and award all contracts subject to the same requirements as would be applicable to the city as provided in sections 3-3, 3-31 and 3-37.

**Secs. 3-74—3-90. Reserved.**

DIVISION 4. MONETARY ADJUSTMENTS

**Sec. 3-91. Escalation of dollar limits.**

(a) Effective May 1, 2015 and at the beginning of every fourth city fiscal year thereafter, the monetary amounts specified in sections 3-3, 3-7, 3-41 and 3-61 shall automatically be adjusted to reflect an increase equal to the increase in the consumer price index (all items/all urban consumers/Kansas City, Missouri-Kansas) having occurred since the last preceding adjustment, as published by the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for all urban consumers. Such monetary amount, as adjusted, shall be rounded upwards as follows:

- (1) Amounts less than \$20,000 shall be rounded upwards to the nearest \$1,000.00; and
- (2) Amounts between \$20,000 and \$200,000 shall be rounded upwards to the nearest \$10,000.00; and
- (3) Amounts equal to or greater than \$200,000 shall be rounded upwards to the nearest \$100,000.00.

**Secs. 3-92—3-200. Reserved.**

**ARTICLE II. LEASES**

**DIVISION 1. GENERALLY**

**Sec. 3-201. Leases of city-owned real estate.**

(a) Unless otherwise authorized by the city charter or ordinance, no lease, license or other contract or agreement purporting to grant any right to enter on or use any city-owned real estate for a term of more than one year or for consideration in excess of \$50,000.00 shall be entered into on behalf of the city without approval of the city council.

(b) Unless otherwise authorized by the charter or ordinance, no lease, license or other contract or agreement purporting to grant any right to enter on or use any city-owned real estate for a term of one year or less for consideration in excess of \$20,000.00 shall be entered into on behalf of the city without first providing written notice of the intent to execute such an agreement and estimate of the fair market sale and lease values to the city council. Such notice shall include the names of the parties to the proposed agreement, a description of the property and the basic purpose and terms of the agreement. No such contract or agreement shall be executed on behalf of the city without the approval of the council if four or more council members file written objections to such contract or agreement within five working days of the notice date. The city manager shall establish procedures to ensure compliance with this provision.

(c) The department of convention and entertainment centers and the aviation department may enter into leases, licenses or other contracts or agreements granting the right to enter on or use facilities under its control without the specific approval of the city council under the following circumstances:

- (1) When the lease, license or other contract or agreement is for a term of three years or less, and the total number of days of use does not exceed 60 days; or
- (2) When the lease, license or other contract, or agreement is for a term of two years or less, and the nature of the lease, license or other contract or agreement is for the installation and display of signage or other permanently installed equipment for advertisements, communications or other similar uses; or
- (3) When the lease, license or other contract or agreement is for the use of a suite in a facility under the control of the director of convention and entertainment centers.

(d) Nothing set forth herein shall be deemed to be a limitation on the authority of the board of parks and recreation commissioners as provided in the city charter or this Code.

DIVISION 2. MONETARY ADJUSTMENTS

**Sec. 3-203. Escalation of dollar limits.**

(a) Effective May 1, 2015 and at the beginning of every fourth city fiscal year thereafter, the monetary amounts specified in section 3-201 shall automatically be adjusted to reflect an increase equal to the increase in the consumer price index (all items/all urban consumers/Kansas City, Missouri-Kansas) having occurred since the last preceding adjustment, as published by the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for all urban consumers. Such monetary amount, as adjusted, shall be rounded upwards to the nearest \$10,000.00.

**Secs. 3-204—3-300. Reserved.**

**ARTICLE III. ETHICS IN CONTRACTING**

DIVISION 1. GENERALLY

**Sec. 3-301. Employee conflict of interest; limited waiver.**

(a) It shall be unethical for any city employee to:

- (1) Participate directly or indirectly in the solicitation or award of any contract when the employee knows that the employee or any member of the employee's immediate family has a financial interest or other personal interest which is incompatible with the proper discharge of the employee's official duties in the public interest or would tend to impair the employee's independence, judgment or action in the performance of official duties;
- (2) Participate directly or indirectly in the award of any contract if the employee or any member of an employee's immediate family is negotiating or has an arrangement concerning employment with any person having submitted a bid or proposal;
- (3) Become or remain the employee of any person contracting with the city if the city employee participated directly or indirectly in the solicitation or award of the contract; or
- (4) Use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

(b) The director of finance may grant a waiver from the employee conflict of interest provisions contained in subsection (a)(1), (a)(2) or (a)(3) upon making a written determination that:

- (1) The interest or contemporaneous employment has been publicly disclosed;

- (2) The employee will be able to perform his or her job functions without actual or apparent bias or favoritism; and
- (3) The waiver is in the best interests of the city.

**Sec. 3-303. Gratuities and kickbacks prohibited; recoverable.**

(a) No person shall offer, give or agree to give any city employee, nor shall any such city employee solicit, demand, accept or agree to accept from another person, any payment, gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefor.

(b) No payment, gratuity or offer of employment shall be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. Upon a showing that a subcontractor, or someone acting on behalf of a subcontractor, made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the city and shall be recoverable under this section from the recipient or party making such kickback.

**Sec. 3-305. Contingent fees prohibited.**

No person shall retain another person, to solicit or secure a contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. This section shall not prevent an attorney from representing a client in any dispute respecting a contract, nor shall it prevent an attorney or an accountant from negotiating with the city on behalf of a client.

**Sec. 3-307. Sanctions for violations.**

(a) The city may impose any one or more of the following sanctions for violations of any provision in this Article:

- (1) Written warnings;
- (2) Termination of contracts; or

- (3) Debarment or suspension as provided in Section 3-321.

(b) The value of anything transferred or received in breach of any provision of this Article may be recovered from either or both the person granting or receiving the thing of value, and such recovery shall not be precluded or offset by any sanction that may be imposed by the city.

**Sec. 3-309. Penalties authorized.**

(a) Any person convicted of a violation of any provision of this Division shall be punished by a fine of not more than \$500.00, or by imprisonment for not more than six months, or by both such fine and imprisonment. Each violation shall constitute a separate offense.

(b) The provisions of this section shall not serve to limit any civil remedies that may be available to the city in law or equity, nor shall the city's pursuit or receipt of any civil remedy serve to limit any penalty authorized herein.

**Secs. 3-310—3-320. Reserved.**

DIVISION 2. DEBARMENT

**Sec. 3-321. Debarment of contractors and subcontractors.**

(a) In the event that any contractor or subcontractor on a city contract is determined, as hereinafter set out, to be willfully and without good cause violating the requirements of the contract in any of the ways listed below, then such contractor and its chief operating officer, and any owner or part owner who participated in the management of the company at the time of the violation, shall be debarred from participating, either as a contractor or subcontractor, in other such city contracts for a period of time as provided herein:

- (1) Incorporating materials into the work which are not in accordance with the specifications.
- (2) Performing work on the contract without the insurance required by the contract being in force.
- (3) Failing to complete the contract work.
- (4) Failing to show good faith in attempting to meet the city's MBE/WBE and construction workforce requirements for the contract.
- (5) Failing to enter into a contract with the city after having been notified of the city's intent to contract.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (6) Performing work on the contract without having obtained the required licenses or permits.
- (7) Failing to comply with the city's requirements relating to equal opportunity in employment.
- (8) Disposing of waste from the work in a location which has not been approved as provided in the contract.
- (9) Failing to obtain all permits and observe all required safety precautions in connection with the handling, storage and use of explosives on the contract.
- (10) Concealing work on the contract from the city's inspectors.
- (11) Falsifying test results concerning work on the contract.
- (12) Failing to repair property which was damaged in the course of doing the work.
- (13) Failing to pay any city tax.
- (14) Failing to pay the wage rates prescribed in the contract.
- (15) Failing to include provisions in subcontracts which are required to be included under the contract terms.
- (16) Permitting a subcontractor to do any of the things listed in this subsection, or failing to take reasonable measures to prevent a subcontractor from doing the things listed herein.
- (17) Failing to make payment to any subcontractor or material supplier as set forth in Section 34.057, RSMo.
- (18) Failing to comply with the contract requirements in any other manner which is deemed to be so serious and compelling as to justify debarment.

(b) Any contractor or subcontractor on a city contract shall also be debarred from participating, either as a contractor or subcontractor, in other such city contracts for a period of time as provided herein for the following additional causes:

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a city contractor or subcontractor.
- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.

(c) *Procedure.* Except as otherwise provided for herein, action to debar a contractor may be initiated by any department director and shall proceed as follows:

- (1) *Initiation of proceeding.* The proceeding may be initiated by any department director who shall issue a written notice of the proposed debarment to the contractor and to the city manager. The notice shall include a statement of the reasons for the proposed debarment, the date of mailing, and the date, time and place of a hearing on the matter. If the contractor cannot be located for purposes of delivery of the notice, the proceeding shall be held in abeyance until notice can be given.
- (2) *Notice.* Any notice required by the proceeding and any other notice to the contractor may be sent postage prepaid by certified U.S. mail to the contractor at its last known address or at its registered office, if it is a corporation, or by delivering a copy of the notice to the contractor personally or to an officer, partner, or managing or general agent or to any other agent authorized by appointment or required by law to receive service of process.
- (3) *Hearing panel membership.* The hearing panel shall consist of three (3) persons appointed by the city manager, one of whom shall be designated by the hearing panel as chairperson. The panel shall not include the department director or any member of the department that initiated the proceeding. A person that has served on a debarment hearing panel against a contractor may not serve on a subsequent debarment hearing panel involving the same contractor.
- (4) *Conduct of hearing.* Unless a delay is requested by the contractor, the hearing shall be held no more than thirty (30) days after notice is received by the contractor. The contractor shall have full right to have counsel, to produce witnesses and to cross examine all witnesses who may appear against it. All proceedings in such hearings shall be taken down stenographically, or recorded mechanically or electronically, or by a combination thereof, and shall be transcribed whenever required by law. Subpoenas shall be issued by the hearing panel for any witness whose presence is desired at any hearing or proceeding before the hearing panel. Such subpoenas shall be served and return thereon shall be made in the

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

same manner as is provided by law in civil suits in the circuit court of this state. Witnesses may also appear voluntarily at such hearings and testify. Before any witness shall testify in any such hearing or proceeding, he shall swear or affirm to tell the truth.

- (5) *Decision.* Decisions shall be concurred in by a majority of the hearing panel. Within sixty (60) days after the hearing, the panel shall issue its decision in writing stating whether the contractor is debarred from contracting with the city and, if so, for what period of time.
- (6) *Notice of decision.* The contractor shall be given prompt notice of the decision of the hearing panel, and a copy of such decision shall be promptly mailed or otherwise furnished to the contractor.
- (7) *Finality of decision.* The decision of the hearing panel shall be final and conclusive unless the contractor, within thirty (30) days after issuance of the decision, commences a timely action for review in a court of competent jurisdiction in accordance with applicable law.

(d) *Period of debarment; tolling.* The period of debarment shall be two (2) years for the first offense, five (5) years for the second offense and ten (10) years for any subsequent offense. Any prevailing wage violations resulting in payment of restitution and penalties within the prior five years may be counted as a prior offense.

**Secs. 3-322—3-400. Reserved.**

**ARTICLE IV. CONTRACTING PROGRAM REQUIREMENTS**

**DIVISION 1. AFFIRMATIVE ACTION**

**Section 3-401. Definitions.**

(a) The following words, terms and phrases, when used in this Division 1 shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning or an alternative definition has been provided:

- (1) *Affirmative action program* means a positive program designed to ensure that a good-faith effort will be made to employ applicants and to treat employees equally without regard to their race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age. Such program shall apply, where applicable, to the following: recruitment and recruitment advertising, employment, employment upgrading, promotion, demotion or compensation, other terms or conditions of employment and selection for training, including apprenticeship; and shall include goals, methodology and timetables for implementation of the program.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (2) *Age* means an age of 40 or more years, except that it shall not be an unlawful employment practice for an employer to require the compulsory retirement of any person who has attained the age of 85 and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer, which equals, in the aggregate, at least \$344,000.00.
- (3) *Certificate of compliance* means a written certificate issued by an agency or body, other than City, charged with the administration of a governmentally recognized affirmative action program and which indicates that the person named therein is in compliance with the terms of an affirmative action program.
- (4) *City* means the City of Kansas City, Missouri.
- (5) *Commission* means the city human rights commission.
- (6) *Complaint* means a verified written statement of facts and circumstances, including dates, times, places and names of persons involved in any alleged violation of any provision of Chapter 213, RSMo or this Division.
- (7) *Contract* means any contract to which the city shall be a contracting party, except the following:
  - a. Personal services contracts.
  - b. Emergency requisitions for goods, supplies or services.
  - c. Impressed accounts in the nature of petty cash funds.
  - d. Contract or lease, the cost of which will not exceed \$300,000.00.
- (8) *Contractor* means any individual, partnership, corporation, association or other entity, or any combination of such entities, who or which enters into a contract with the city and who has 50 or more employees exclusive of parents, spouse or children of such contractor.
- (9) *Department* means the department of human relations.
- (10) *Director* means the director of the human relations department or such director's delegate.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (11) *Disability.* With respect to employment, a person with a disability is a person who is otherwise qualified and who, with reasonable accommodation, can perform the essential functions of the job in question. Generally, a person with a disability is any person who:
- a. Has a physical or mental impairment which substantially limits one or more major life activities;
  - b. Has a record of having such impairment; or
  - c. Is regarded as having such an impairment.
- (12) *Employee* means any individual employed by an employer, but does not include an individual employed by his parents, spouse or child or any individual employed to render services as a domestic in the home of the employer.
- (13) *Gender identity* means the actual or perceived appearance, expression, identity or behavior of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth.
- (14) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other organizations; except the term "person" does not include any local, state or federal governmental entity.
- (15) *Respondent* means any person against whom it shall be alleged by complaint or identified during the course of an investigation that such person has violated, is violating or is about to violate any provision of Chapter 213, RSMo or this Division.
- (16) *Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.
- (17) *Subcontractor* means any individual, partnership, corporation, association or other entity, or other combination of such entities, which shall undertake, by virtue of a separate contract with a contractor, to fulfill all or any part of any contractor's obligation under a contract with the city, or who shall exercise any right granted to a franchise holder, and who has 50 or more employees exclusive of the parents, spouse or children or such subcontractor.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (18) *Unlawful discriminatory practice* means any discriminatory practice as defined and prohibited by sections 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113, Code of Ordinances.

**Section 3-403. Affirmative action.**

(a) Any contract exceeding \$300,000.00 shall include the following requirements as material terms thereof:

- (1) That contractor execute and submit an affidavit, in a form prescribed by the city, warranting that contractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the contract.
- (2) That contractor submit, in print or electronic format, a copy of its current certificate of compliance to the Human Relations Department prior to receiving its first payment under the contract, unless a copy thereof shall have already been submitted to the Human Relations Department at any point within the previous two calendar years. If contractor does not possess a current certificate of compliance, contractor shall submit, in print or electronic format, a copy of its affirmative action program to the Human Relations Department prior to receiving its first payment under the contract, unless a copy thereof shall have already been submitted to the Human Relations Department at any point within the previous two calendar years.
- (3) That contractor require any subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
- (4) That contractor obtain from any subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to the Human Relations Department within thirty (30) days from the date the subcontract is executed. If the subcontractor does not possess a current certificate of compliance, the contractor shall obtain a copy of the subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to the Human Relations Department within thirty (30) days from the date the subcontract is executed.

**Section 3-405. Contract conditions.**

(a) All contracts hereafter executed by the city shall contain language requiring as a condition thereof that all persons contracting with the city or contracting with any public or private entity that receives 66 percent of its funding from the city or receiving a

franchise from the city or subcontractors of such contractors or franchisees agree to refrain from any unlawful discriminatory practice, that such persons agree to implement an affirmative action program in connection with such contract or franchise when applicable, and that if a contractor shall fail, refuse or neglect to comply with these contract conditions such failure shall be deemed a total breach of the contract and such contract may be terminated, canceled or suspended, in whole or in part, and such contractor may be declared ineligible for any further city contracts for a period of one year.

(b) All contracts shall contain language to the effect that all contractors and subcontractors agree to permit the director access, at all reasonable times, to all books, papers, records, reports or accounts in possession of or under the control of such person, as may be necessary to ascertain compliance with this Division, and to furnish such further information as may be required of such person within ten working days of the date it is so requested in writing. The director shall be authorized to conduct on-site audits of any contractor and subcontractor.

**Section 3-407. Enforcement of contract conditions.**

If the director shall find after investigation that a contractor or subcontractor has violated contract provisions relating to unlawful discriminatory practice or affirmative action, the director shall bring a complaint before the human rights commission. The commission shall hold a hearing in accordance with Chapter 38 of the city's Code of Ordinances. After rendition of the commission's decision, the contracting officer involved shall serve upon the respondent a copy of such order and decision. The respondent shall have 30 days after delivery of the order and decision to demonstrate to the director willingness to comply with the terms and conditions of such order, failing which the contracting officer shall proceed to cancel, terminate or suspend the contract, or declare the contractor ineligible to receive any city contract or franchise for a period of one year, as such order may require. Willingness of the contractor to comply with such order shall be evidenced by his or her written agreement to comply with the terms and conditions set forth in the order.

**Section 3-409. Severability.**

The provisions of this Division are severable. If any provision or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remaining provisions, including the application of such provisions to other persons or circumstances, shall continue in full force and effect.

**Sections 3-410—3-420. Reserved**

DIVISION 2. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (M/WBE)

**Section 3-421. Definitions.**

(a) The following definitions apply to this Division 2, except where an alternate definition has specifically been made applicable:

- (1) *Affidavit of intended utilization*: An affidavit, in a form prescribed by the director, stating the bidder's intent to meet the MBE/WBE goals or to timely request a waiver of the MBE/WBE goals.
- (2) *Agency*: Any public or private entity that receives 66 percent of its funding from the city or any entity with the authority to recommend city tax increment financing or city tax abatements.
- (3) *Agency head*: Person authorized to act on behalf of an Agency.
- (4) *Award of contract*: Execution of a contract and, if necessary, city council or park board authorization.
- (5) *Bid*: An offer to enter into a contract submitted pursuant to an invitation for bid.
- (6) *Bidder*: Any person who submits a bid to the city or an agency in response to an invitation for bid.
- (7) *Bid opening*: The event whereby bids are opened and read aloud at the place, date and time specified in the invitation for bid and any subsequent amendment thereto.
- (8) *Bid shopping*: The practice whereby a person divulges or requires another to divulge a subcontractors bid or proposal for the purpose of securing a lower bid or proposal.
- (9) *City*: City of Kansas City, Missouri.
- (10) *City department*: Department of the city or the division of procurement services when acting on behalf of a department director.
- (11) *Commercially useful function*: Real and actual services that are a distinct and verifiable element of the contracted work based upon private sector trade or industry standards. Determination that an enterprise performs a commercially useful function will be made based on the following considerations:

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- a. An MBE or WBE performs a commercially useful function when it is responsible for execution of the ordinary and necessary work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE or WBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining the quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. To determine whether an MBE or WBE is performing a commercially useful function, one must evaluate the following:
  1. The amount of work subcontracted; and
  2. Industry practices; and
  3. Whether the amount the enterprise is to be paid under the contract is commensurate with the work it is actually performing; and
  4. Whether the MBE or WBE has the skill and expertise to perform work for which it is being utilized; and
  5. The credit claimed for its performance of the work; and
  6. Other relevant factors.
- b. An MBE or WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MBE or WBE participation. In determining whether an MBE or WBE is such an extra participant, one must examine similar transactions, particularly those in which MBEs or WBEs do not participate.
- c. An MBE or WBE firm is not performing a commercially useful function if the MBE or WBE subcontracts a greater portion of the work on a contract or purchases a greater amount of material than would be expected on the basis of normal industry practice for the type of work involved.
- d. Whether the MBE or WBE is participating in the contract as a middle person or broker in the normal course of that business or trade by purchasing the goods and/or services from another business, thereby qualifying expenditures for such goods and/or

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

services to be counted toward utilization requirements for MBEs and WBEs.

- e. Whether the MBE or WBE is responsible for the purchase and quality of, and payment for, materials used to perform its work under the contract.

There shall be a rebuttable presumption that, when the MBE or WBE subcontracts a greater portion of the contract work than normal industry practice, the MBE or WBE is not performing a commercially useful function.

- (12) *Construction contract*: A contract for the construction, reconstruction, improvement, enlargement or alteration of any fixed work or construction site preparation, the majority of which is paid for out of city or agency funds.
- (13) *Contract*: Any city or agency construction contract more than \$300,000.00, and all other city or agency contracts more than \$117,000.00 the majority of either of which is paid for out of city funds or in which an agency is a party, except the following:
  - a. Personal services contracts; and
  - b. Emergency contracts; and
  - c. Imprest accounts in the nature of petty cash funds.
- (14) *Contractor*: Any person who enters into a contract with the city or an agency.
- (15) *Contractor utilization plan*: The statement, in a form prescribed by the director, that must be submitted by a bidder or proposer pursuant to section 3-433 and that states its plan to utilize qualified MBEs and/or WBEs in the performance of a contract.
- (16) *Day*: A calendar day, except as otherwise indicated.
- (17) *Department*: The human relations department (HRD), or the division within the city manager's office that is assigned to perform the tasks delegated to the human relations department by this article.
- (18) *Department director*: Person appointed by the city manager to be responsible for a city department or the manager of procurement services when acting on behalf of a department director or the city.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (19) *Director*: The director of the human relations department or his authorized representative, or the person designated by the city manager to perform the tasks delegated to the director of the human relations department by this article.
- (20) *Disadvantaged business enterprise (DBE)*: A business concern that meets the federal requirements for certification as a DBE.
- (21) *Expertise*: Experience or training in a specialized field that is critical to the firm's operations, indispensable to the firm's potential success, and specific to the type of work the firm performs.
- (22) *Goal*: A numerical objective stated as a percentage of contract dollars for participation by qualified MBEs and WBEs in contracts.
- (23) *Invitation for bid*: A request or invitation for submission of an offer to enter into a contract pursuant to a competitive bidding process.
- (24) *Kansas City metropolitan area*: The Missouri counties of Cass, Clay, Jackson and Platte and the Kansas counties of Johnson, Leavenworth and Wyandotte.
- (25) *Letter of intent to subcontract*: A document, in a form prescribed by the director that demonstrates the prime contractor's intent to enter a contractual agreement with a selected MBE/WBE.
- (26) *M/W/DBE Kansas City Mo. Online Directory*: A source list compiled by the human relations department containing names and addresses of MBE/WBE/DBEs in the business of providing construction, professional services and other services and goods from whom bids and proposals can be solicited. The directory is to facilitate identifying MBE/WBE/DBE subcontractors with capabilities relevant to general contracting requirements and to particular solicitations.
- (27) *Mentor/protégé*: A relationship between an MBE or WBE (protégé) and a person in the same trade or industry (mentor). The mentor/protégé relationship is to provide technical, financial, bonding, equipment and personnel assistance. The purpose of the relationship is to increase the capacity of MBE/WBEs to perform contracts.
- (28) *Minority*: A person who is a citizen or lawful permanent resident of the United States and who is:
  - a. African American, a person whose origins are in any of the Black racial groups of Africa, and who has historically and consistently identified himself or herself as being such a person; or

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- b. Hispanic American and/or Latino American, a person whose origins are in Mexico, Central or South America, or any of the Spanish speaking islands of the Caribbean, (for example Cuba and Puerto Rico) regardless of race, and who has historically and consistently identified himself or herself as being such a person; or
  - c. Asian and/or Pacific Islander American, a person whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent, and who has historically and consistently identified himself or herself as being such a person; or
  - d. Native American, a person having origins in any of the original peoples of North America, and who maintains tribal affiliation or demonstrates at least one-quarter descent from such groups, and who has historically and consistently identified himself or herself as being such a person.
- (29) *Minority Business Enterprise (MBE)*: A for-profit small business concern that:
- a. Is at least 51 percent owned, managed, and independently controlled by one or more minorities; and
  - b. Has a real and substantial presence in the Kansas City metropolitan area as defined by section 3-461(c) and
  - c. Meets the business size standards imposed by 13 CFR 121.201 and as subsequently amended and this ordinance; and
  - d. Performs a commercially useful function; and
  - e. Is certified by the human relations department.

Only persons meeting each of the above criteria shall be deemed an MBE for purposes of this article. Except as provided in section 3-435(c) any person listed as an MBE on the M/W/DBE Kansas City Mo. Online Directory on the date a contractor utilization plan is submitted is eligible to participate as an MBE on a particular contract.

- (30) *Person*: One or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other organizations; except "person" does not include any local, state or federal governmental entity.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (31) *Personal services contract*: A contract or agreement of employment with an individual who is not acting as an independent contractor and who is not part of the city's classified or unclassified service.
- (32) *Principal place of business*: The location at which the business records of the MBE/WBE applicant concern are maintained and the location at which the individual who manages the concern's day-to-day operations spends the majority of his/her working hours.
- (33) *Proposal*: Any offer or list of qualifications submitted to the city in response to a request for proposal.
- (34) *Proposer*: Any person who submits a proposal to enter into a contract, either in response to a request for proposals, request for qualifications or otherwise, but not pursuant to an invitation for bid.
- (35) *Qualified*: Possessing the demonstrated ability to perform the contracted task.
- (36) *Request for proposals*: An invitation for submission of an offer to enter into a contract pursuant to a negotiated process and not a competitive bid, including requests for qualifications.
- (37) *Supplier*: An enterprise that owns, operates or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
- (38) *Supply Broker*: An enterprise that acts as an agent in negotiating contracts for the purchase of materials, supplies, articles or equipment but does not itself own, operate or maintain a store, warehouse or other establishment where such materials, supplies, articles or equipments are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
- (39) *Woman*: A person who is a citizen or lawful permanent resident of the United States and who is a female.
- (40) *Women's Business Enterprise (WBE)*: A for-profit small business concern that:
  - a. Is at least 51 percent owned, managed, and independently controlled by one or more women; and

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- b. Has a real and substantial presence in the Kansas City Metropolitan Area as defined by section 3-461(c); and
- c. Meets the business size standards imposed by 13 CFR 121.201 and as subsequently amended and this ordinance; and
- d. Performs a commercially useful function; and
- e. Is certified by the human relations department.

Only persons meeting each of the above criteria shall be deemed a WBE for purposes of this article. Except as provided in section 3-435(c) any person listed as a WBE on the M/W/DBE Kansas City Mo. Online Directory on the date a contractor utilization plan is submitted is eligible to participate as a WBE on a particular contract.

**Section 3-423. Application of ordinance.**

(a) The provisions of this Division shall apply to all contracts, as defined in section 3-421, entered into by the city or an agency. Federal or state requirements for minority or women business enterprise participation or disadvantaged business enterprise participation shall supersede this article when required by law or federal or state contract.

(b) Each department director and agency head is responsible for using good faith efforts to achieve the city-wide MBE and WBE goals set forth in section 3-429.

(c) Each person with whom the city or an agency enters into a contract for which goals have been set shall either:

- (1) Meet or exceed the goals set for that contract; or
- (2) Make and provide evidence of good faith efforts to achieve the goals and request a waiver of the contract goals.

**Section 3-425. Application to leases, tax increment financing and tax abatement entities.**

(a) *Lease of city property for development.* The provisions of this Division shall apply to all projects on property leased by the city to any person for development of the property by that person or any other authorized person.

(b) *Projects under tax increment financing.* The tax increment financing commission shall adopt an affirmative action program and a minority and women's business enterprise program that is consistent with the city's affirmative action program and minority and women's business enterprise program, as determined by the director of

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

human relations, and that applies to all projects financed in whole or in part by tax increment financing as that term is used in Section 99.800, RSMo et seq. All redevelopment agreements between the tax increment financing commission and a redeveloper must contain MBE/WBE goals and workforce utilization goals which are approved by the director and which are applicable to 100 percent of all redevelopment project costs, identified within a tax increment financing plan approved by the city council. For purposes of this subsection, the "city's affirmative action program" and "minority and women's business enterprise program" shall have the same meaning as used in this Article. Developer's utilization plan must be approved by director prior to the tax increment financing commission reimbursing developer from tax increment financing funds.

(c) *Projects under tax abatement entities.* All corporations organized under Section 353.010, RSMo et seq. for the purpose of redevelopment within the city limits, land clearance for redevelopment authority with an area of operation within the city and planned industrial expansion authority for the city shall adopt an affirmative action program and a minority and women's business enterprise program that is consistent with the city's affirmative action program and minority and women's business enterprise program, as determined by the director of human relations, and that applies to all projects receiving city tax abatement in whole or in part.

**Section 3-427. City-wide goals.**

(a) The goals set forth in this section are city-wide goals to be used by city departments and agencies. The city-wide goals are not goals for individual contracts. They are goals for total MBE and WBE participation in contracts. The city-wide goals are established as follows:

| Classification   | Construction | Professional Service | Other Services | Materials and Supplies |
|--|--------------|----------------------|----------------|------------------------|
| African American   | 9%           | 8%                   | 13%            | 9%                     |
| Hispanic American/Latino American                        | 5%           | 3%                   | 3%             | 3%                     |
| Native American/Asian American/Pacific Islander American | 1%           | 2%                   | 2%             | 2%                     |
| White Women  | 7%           | 8%                   | 10%            | 9%                     |

(b) The city council shall review the city-wide goals at least every five years and determine whether to maintain, modify, or terminate the program, but the failure to do so shall not invalidate the program.

(c) Neither city-wide goals nor individual contract goals should be construed as a limitation on contracting opportunities for the above listed classifications. Such

classifications shall be eligible to be awarded contracts consistent with bidding or other contract procedures over and above the percentages listed.

**Section 3-429. City department and agency MBE/WBE utilization plan.**

(a) Each city department and agency shall prepare and submit to the director by April 1, unless otherwise extended by the director, an annual MBE/WBE utilization plan for the next city fiscal year. Each city department and agency MBE/WBE utilization plan shall include:

- (1) Separate city department or agency goals for participation by qualified MBEs and WBEs as prime contractors and subcontractors in the procurement of goods, professional services, services and construction for the upcoming fiscal year. The goals should be expressed as a percentage of the city department or agency's total fiscal year contract expenditures; and
- (2) Any other information that the city department or agency or the director deems relevant or necessary.

(b) A city department or agency may amend its MBE/WBE utilization plan during the fiscal year to reflect changes in its projected contract expenditures or other relevant circumstances, and shall inform the director of such changes.

(c) In planning its individual contracts, each city department and agency shall utilize the methodologies described in this article and use its good faith efforts to encourage and attempt to obtain participation of qualified MBEs and/or WBEs and shape the scope, specifications and size of a contract to enhance such participation.

(d) City departments and agencies shall encourage eligible businesses to:

- (1) Apply to the human relations department, Kansas Department of Transportation (KDOT) or Missouri Department of Transportation (MODOT) for certification; and
- (2) Have their names included on departmental bidders and proposers lists and in the M/W/DBE Kansas City MO. On Line Directory; and
- (3) Seek pre-qualification when applicable; and
- (4) Compete for city business as prime contractors, subcontractors and suppliers.

(e) City departments and agencies shall make reasonable efforts to:

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (1) Advertise contract opportunities in general circulation media, trade and professional association publications, small business media, and publications of minority and women's business organizations; and
- (2) Send written notice of specific contract opportunities to minority and women's business organizations and those entities on the departmental bidder's and proposer's list; and
- (3) With the assistance of the director, shape the scope, specifications and size of a contract to enhance participation opportunities for qualified MBEs and WBEs.

(f) Each department director, as part of his or her annual evaluation, shall be reviewed concerning the implementation of the city's MBE/WBE program. In the event a deficiency is found, the director of human relations or his or her designee will work with the director to identify prohibiting factors and offer any assistance necessary to successfully implement this program.

**Section 3-431. Setting goals for individual contracts.**

(a) Goals shall be established for individual contracts when deemed practical by the director, as determined pursuant to this section.

(b) Individual contract goals shall be flexible and are to be determined on a contract-by-contract basis. In determining whether goals should be established for an individual contract or in setting the specific goal for an individual contract, the following shall be considered:

- (1) The scope of work; and
- (2) The number and types of qualified MBEs and WBEs available to perform such work, or portions of it; and
- (3) Whether the contract can be structured to create potential opportunities for qualified MBEs and WBEs to participate as subcontractors, service providers and/or suppliers; and
- (4) The level of participation of qualified MBEs and WBEs in similar contracts awarded by other city departments and agencies, and on local projects awarded by the state and federal governments in the previous and current fiscal years; and

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (5) The city department's or agency's progress toward meeting its annual MBE/WBE goals and its expectations as to how future contracts will be used toward meeting such goals; and
  - (6) The potential dollar amount of the contract.
- (c) When goals for individual city contracts are set, they shall be set as follows:
- (1) For city construction contracts with an estimated cost of more than \$300,000.00, by the fairness in construction board upon recommendation of the director; and
  - (2) For all other city contracts, by the director.

(d) When goals are established for a contract, such goals shall be stated in any invitation for bid or request for proposals. No invitation for bid or request for proposals shall be released until goals have been requested and set in accordance with subsection (c) of this section, or until the city department soliciting the contract has been notified by the director that goals will not be established. If the goals are to be set by the fairness in construction board and the board shall have failed to meet for any reason within thirty working days from the date upon which the board shall have last convened, then the invitation for bid or request for proposals may be released with the goals as recommended by the director and an addendum thereto shall be issued setting forth the goals once established by the board.

(e) For contracts other than construction contracts, the director is authorized to require a bidder or proposer to make good faith efforts to achieve MBE/WBE participation without setting a numerical MBE/WBE goal on the solicitation as long as the director could have set an MBE/WBE goal based on the factors in section 3-431(b).

**Section 3-433. Contractor utilization plan.**

(a) When goals have been established for a contract, each bidder or proposer shall submit a notarized contractor utilization plan to the city or agency which shall include the following:

- (1) Names and addresses of each qualified MBE or WBE that will participate in the contract; and
- (2) The work to be performed by each qualified MBE and/or WBE, and the amounts each is to be paid for such work.

(b) Bid shopping is prohibited.

**Section 3-435. Determining contract participation credit for MBEs and WBEs.**

- (a) The following contract amounts shall be credited toward achieving the goals:
  - (1) The total contract dollar amount that a prime contractor has paid or is obligated to pay to a subcontractor that is a qualified MBE or WBE, except as otherwise expressly provided for herein.
  - (2) Twenty-five percent of the total dollar amount paid or to be paid by a prime contractor to obtain supplies or goods from a supplier who is a qualified MBE or WBE.
  - (3) Ten percent of the total dollar amount paid or to be paid by a prime contractor to obtain supplies or goods from a supply broker who is a qualified MBE or WBE.
  - (4) One hundred percent of the total dollar amount paid or to be paid by a prime contractor to a manufacturer of construction supplies who is a qualified MBE or WBE.
  - (5) Subcontractor participation with a lower tier MBE/WBE subcontractor by the subcontractor using one of the above methods of participation.
  
- (b) Notwithstanding any other provision of this section, no credit toward achieving the goals on an individual contract shall be given for:
  - (1) Participation in a contract by any qualified MBE or WBE that does not perform a commercially useful function. The prime contractor shall have the burden of proving that an MBE or WBE is performing a commercially useful function.
  - (2) Any portion of the value of the contract that an MBE or WBE subcontractor subcontracts back to the prime contractor or any other contractor who is not a qualified MBE/WBE.
  - (3) An MBE or WBE prime contractor's own participation in its contract with the city.
  - (4) Materials and supplies used on the contract unless the MBE/WBE is responsible for negotiating price, determining quality and quantity, ordering the materials and installing (where applicable) and paying for material itself.

- (5) Work performed by an MBE or WBE in a scope of work other than that in which the MBE or WBE is currently certified.

(c) In order to be credited towards the MBE or WBE goals on a particular solicitation, an application for certification as an MBE/WBE must be filed no later than 45 days prior to the invitation for bid, or request for proposals, or qualifications for construction-related services. A person must have received its certification by the date on which the bid, proposal or qualifications is due.

**Section 3-437. Waiver of MBE/WBE goals.**

(a) When a request for waiver has been filed, the director may grant a full or partial waiver of contract goals when the director has determined a bidder or proposer has not met the goals despite its good faith efforts, as defined in section 3-441.

(b) Notwithstanding any other provision of this Division, the city council may waive the requirements of this article and award a city contract to a lowest and best bidder or a best proposer if the council determines it is in the best interests of the city.

**Section 3-439. Joint venture and mentor-protégé programs.**

(a) *The joint venture relationship.* The department shall encourage voluntary establishment of joint ventures on all request for proposals (RFP) and requests for qualifications (RFQ). Joint ventures have the potential to create prime contracting opportunities for businesses that include MBE/WBEs on eligible projects.

- (1) A written joint venture agreement must be completed by all parties to the joint venture and executed before a notary public, which clearly delineates the rights and responsibilities of each member or partner, complies with any requirements of the department, as set forth in RFP or RFQ documents, and provides that the joint venture shall continue for the duration of the project. The department shall review joint venture agreements prior to the award of a contract to determine whether the partners, in fact, share a mutual interest in the operation and success or failure of the joint venture. The department may consider:
  - a. The initial capital investment of each joint venture partner; and
  - b. The proportional allocation of profits and losses to each venture partner, at least 40 percent of which must be allocated to the MBE or WBE partners; and
  - c. The partners rights to management, control, and ownership; and

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- d. Whether the partners maintain a joint checking account; and
  - e. The method of and responsibility for accounting; and
  - f. The method by which disputes are resolved; and
  - g. Any additional or further information required by the director or department as set forth in the request for qualifications or proposal documents or otherwise.
- (2) The joint venture, and each member of the joint venture, shall provide the department access to review all records pertaining to joint venture agreements before and after the award of a contract in order to reasonably assess compliance with this article.
- (3) The failure of any joint venture partner to comply with this section shall render the joint venture agreement invalid and subject the joint venture partners to any or all of the penalties contained in section 3-465.

(b) *The mentor/protégé certification.* Mentor/protégé certifications are voluntary and designed to provide MBE/WBE firms with advice, technical assistance and/or training. The program is not intended to remove the responsibility of the minority or women owner from the actual day-to-day management of their firm. The mentor/protégé team shall perform work as designated by the mentor within its relevant scope of work, provided however that the mentor cannot be responsible for the management of the MBE/WBE firm and the mentor and the MBE/WBE must remain separate and independent business entities.

- (1) Mentor companies shall require approval by the department to participate in the program; protégé companies must meet the certification requirements of section 3-461 to participate in the program.
- (2) The mentor/protégé relationship must be established by a written agreement, completed by both parties to the relationship, and executed before a notary public. This agreement shall clearly delineate the rights and responsibilities of the mentor/protégé.
- (3) The department shall review the mentor/protégé agreement for compliance with this section prior to certifying a mentor/protégé relationship.
- (4) The mentor/protégé relationship shall exist at least three years, but no more than five years as agreed to by the mentor/protégé team with approval by the department. Both the mentor and protégé can terminate

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- the relationship at any time for any reason and must notify the director of the termination in writing.
- (5) A mentor may utilize multiple protégés on a city contract but may have no more than three protégés at any one time, each of which shall be mentored in different commercially useful functions.
  - (6) A protégé is limited to two mentor/protégé relationships as a participant in the MBE/WBE program, and each relationship must be with a different mentor.
  - (7) During the term of the mentor/protégé certification, the mentor and protégé businesses must each provide to the department a quarterly summary of the mentor skills provided to the protégé, which shall include:
    - a. The time spent between mentor and protégé business in furtherance of the mentor/protégé relationship; and
    - b. The nature and extent of managerial, technical, financial and/or bonding assistance provided; and
    - c. A summary and explanation of any projects bid on or undertaken by the mentor-protégé team in the private sector or for a governmental entity other than the city; and
    - d. Any additional or further information required by the department or agency as set forth in bid documents or otherwise.
  - (8) Assistance the mentor may provide the protégé includes, but is not limited to, the following:
    - a. Extending financial assistance, in the forms of time notes, loans and stock purchases; and
    - b. Providing technical advice, including cost accounting, estimating, training, plan interpretation, business management, loan packaging, financial counseling, and advice relevant to the success of the particular type of business concern; and
    - c. Providing equipment and personnel for specific and limited purposes, provided that the equipment and personnel is clearly identified through lease agreements and personnel records, and the protégé exercise the necessary control of personnel and equipment within the normal course of business practice regardless of how the personnel and equipment are acquired; and

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- d. Providing bonding by either bonding or guaranteeing the bonding on a project-by-project basis, provided that the mentor and protégé create a development plan that includes provisions for ensuring that the protégé acquires the ability to independently bond its projects; and
  - e. Providing office space, clerical assistance, and other assistance at below market rates.
- (9) The following practices within the mentor/protégé relationship are prohibited:
- a. A mentor requiring, or a protégé voluntarily entering, an agreement with the mentor to have an exclusive bidding agreement; and
  - b. Subcontracting arrangements created to artificially inflate MBE/WBE participation; and
  - c. Formal or informal agreements that unreasonably limit the protégés control or management of its company; and
  - d. A mentor entering into any agreement on behalf of the protégé; and
  - e. An employer/employee relationship between the mentor and protégé at any time during the term of the mentor/protégé relationship.
- (10) *Termination of the mentor/protégé relationship.* Either party to the mentor/protégé relationship may terminate the relationship at will. The department may terminate the mentor/protégé relationship for good cause shown. At the end of the certification, the mentor shall no longer provide the protégé with any assistance and a protégés acceptance of such assistance shall result in the protégé not meeting the eligibility requirements for MBE/WBE certification.
- (11) *Mentor/protégé business thresholds.*
- a. Notwithstanding anything to the contrary herein, a mentors business with a protégé shall not exceed the following amounts:
    - i. End of year 1: 80 percent of the protégés gross receipts;
    - ii. End of year 2: 70 percent of the protégés gross receipts;

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- iii. End of year 3: 60 percent of the protégés gross receipts;
- iv. End of year 4: 50 percent of the protégés gross receipts;
- v. End of year 5: 50 percent of the protégés gross receipts;

unless the director approves a waiver for good cause or the protégé does not exceed the limitation applicable to the previous year.

- b. If the protégé is in its second mentor/protégé relationship, a mentors business with a protégé shall not exceed the following amounts:
  - i. End of year 1: 50 percent of the protégés gross receipts;
  - ii. End of year 2: 50 percent of the protégés gross receipts;
  - iii. End of year 3: 40 percent of the protégés gross receipts;
  - iv. End of year 4: 30 percent of the protégés gross receipts;
  - v. End of year 5: 30 percent of the protégés gross receipts.

**Section 3-441. Standards to determine good faith efforts.**

(a) Good faith efforts are efforts that, given all relevant circumstances, a bidder or proposer actively and aggressively demonstrates in attempting to meet the prescribed goals. Good faith efforts must be demonstrated to be meaningful and not merely formalistic compliance. In evaluating good faith efforts made toward achieving the goals, the director may consider whether the bidder or proposer has performed the following, along with any other relevant factors:

- (1) Advertised opportunities to participate in the contract in general circulation media, trade and professional association publications, small and minority business media, and publications of minority and women's business organizations in sufficient time to allow MBE and WBE firms to participate effectively;
- (2) Provided notice to a reasonable number of minority and women's business organizations of specific opportunities to participate in the contract in sufficient time to allow MBE and WBE firms to participate effectively;
- (3) Sent written notices, by certified mail, e-mail or facsimile, to qualified MBEs and WBEs soliciting their participation in the contract in sufficient time to allow them to participate effectively;

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (4) Attempted to identify portions of the work for qualified MBE and/or WBE participation in order to increase the likelihood of meeting the goals, including breaking down contracts into economically feasible units;
- (5) Requested assistance in achieving the goal from the director and acted on the director's recommendations;
- (6) Conferred with qualified MBEs and WBEs and explained the scope and requirements of the work for which their bids or proposals were solicited;
- (7) Attempted to negotiate in good faith with qualified MBEs and WBEs to perform specific subcontracts, not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities;
- (8) Attended pre-bid meetings when such meetings were indicated.

(b) Additional standards for construction contracts: Within five business days after drawing the bid specifications, the bidder will have sent certified letters, verifiable e-mails or proof of facsimiles to qualified MBEs and WBEs listed on the M/W/DBE Kansas City Mo. Online Directory.

(c) A bidder or proposer shall submit documentation of its good faith efforts when requested by the city or agency.

(d) Good faith efforts shall be made prior to submission of the contractor utilization plan.

**Section 3-443. Modification or substitution.**

(a) A bidder, proposer or contractor shall not make any modification or substitution with regard to the contractor utilization plan unless the modification or substitution has first been requested and approved by the director. After bid or proposal opening or after a contract is awarded, the director may approve substitutions of other qualified MBE/WBEs for those listed in the contractor utilization plan or approve modifications of the amount of participation listed in the contractor utilization plan, if the director finds that the bidder, proposer or contractor made and provided evidence of good faith efforts to substitute the listed MBE/WBE with other qualified MBE/WBEs for the listed scope of work or any other scope of work in the project and also finds one of the following:

- (1) The listed MBE/WBE is non-responsive or cannot perform; or
- (2) The listed MBE/WBE has increased its previously quoted price to the bidder, proposer or contractor without a corresponding change in the scope of the work; or

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (3) The listed MBE/WBE has committed a material default or breach of its contract with the contractor; or
- (4) Requirements of the scope of work of the contract have changed and render subcontracting not feasible or not feasible at the levels required by the goals established for the contract; or
- (5) The listed MBE/WBE is unacceptable to the contracting department; or
- (6) The listed MBE/WBE thereafter had its certification revoked; or
- (7) The bidder, proposer or contractor has not attempted intentionally to evade the requirements of this article and it is in the best interests of the city to allow a modification or substitution.

(b) If there is an increase in the quantity of the scope of work performed by an MBE/WBE, contractor shall make good faith efforts to use such MBE/WBE for the increased work. If extra work not within the general scope of the contract and in excess of \$117,000.00 is required, the director shall assign MBE/WBE goals for the extra work, if appropriate, and the contractor shall make good faith efforts under the circumstances to achieve those goals.

(c) Bid shopping is prohibited.

**Section 3-445. Contract award process.**

(a) Whenever a bidder or proposer has submitted a bid or proposal that is not in material compliance with the requirements of this article, the contracting department or agency shall reject the bid or proposal unless the goals are waived pursuant to section 3-437.

(b) If, after a contract is awarded, it is determined that a solicitation or award is in violation of this article, the contractor may continue performance if the department director or agency head makes a written determination that it is in the best interests of the city or the agency, without prejudice to any other legal remedies available to it under the contract.

**Section 3-447. Liquidated damages.**

All contracts which contain goals shall contain a provision which provides for liquidated damages in the event the contractor fails to achieve the MBE/WBE participation specified in the contractor utilization plan as finally approved by the director. The liquidated damages may not exceed the difference between the monetary amount of the MBE/WBE participation finally approved by the director and the amount actually paid to qualified MBEs and WBEs. In determining the amount actually paid to qualified MBEs and WBEs, no credit shall be given for that portion of the MBE/WBE

participation that was not approved in accordance with the provisions of section 38-94, provided however that the director may allow credit if he determines, in his sole discretion, that the contractor acted in good faith.

**Section 3-449. Fairness in city contracts board.**

(a) There is hereby established a fairness in city contracts board. The board may make recommendations to the director on methodology to increase the utilization of MBEs/WBEs in professional services contracts, other services contracts, goods, materials and supplies contracts.

(b) Board composition. The board shall be composed of seven members (including a chairperson) and six alternates, all appointed by the mayor. Members of the city council and employees of the city are ineligible for appointment.

(c) Board members and alternates shall be residents of the city, provided however that nonresidents may serve if they work in the Kansas City metropolitan area or are appointed to represent the interests of an organization that maintains an office in the Kansas City metropolitan area.

(d) The terms of all board members shall be for a period of four years. Board members serving as of the effective date of this ordinance shall retain their seats for the remainder of their unexpired terms, after which they shall vacate their seats if not reappointed by the mayor.

(e) Alternates. In the event a board member is unable to attend a meeting or has a conflict of interest with regard to an issue at hand, the alternate shall temporarily serve in such member's stead. It is the board member's responsibility to notify his or her alternate that they may be needed at the meeting. The term of an alternate shall expire at the expiration of the term of the board member.

(f) In the event the chairperson is not in attendance at any board meeting, a majority of board members shall select a member to act as chairperson for that meeting.

(g) The board is hereby authorized to establish its own rules and regulations to implement this charge.

**Section 3-451. Fairness in construction board.**

(a) There is hereby established the city fairness in construction board. The board's jurisdiction is limited to city construction bids, proposals and contracts in which the estimated cost thereof is more than \$300,000.00. The board's authority is limited to setting goals for each such city contract and hearing and investigating appeals set forth in section 3-453 hereof arising from bids, proposals and contracts under its jurisdiction.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(b) Board composition: The board shall be composed of seven members and six alternates appointed by the mayor, as follows:

- (1) One member and one alternate recommended by the Builders' Association; and
- (2) One member and one alternate recommended by the Heavy Constructors' Association; and
- (3) One member and one alternate recommended by the Minority Contractors' Association of Kansas City; and
- (4) One member and one alternate recommended by the Kansas City Hispanic Association Contractors Enterprise, Inc.; and
- (5) One member and one alternate recommended jointly by the Women Construction Owners and Executives and National Association of Women in Construction; and
- (6) One member and one alternate jointly recommended by the Heavy Constructors Association and Builders Association; and
- (7) Chairperson appointed by the mayor and submitted to the entities named in section 3-451(b)(1)—(6) for approval. Any one of the named entities can veto the mayor's submission and require another submission.

(c) The terms of all board members shall be for a period of four years. Board members serving as of the effective date of this ordinance shall retain their seats for the remainder of their unexpired terms, after which they shall vacate their seats if not reappointed by the mayor.

(d) Alternates. In the event a board member is unable to attend a meeting of the board or has a conflict of interest with regard to a particular contract or issue, the alternate shall temporarily serve in such member's stead. The term of an alternate shall expire at the expiration of the term of the board member.

(e) Ineligible for appointment. The following are ineligible to serve on the fairness in construction board:

- (1) Members of the city council; and
- (2) Employees of the city; and
- (3) Nonresidents of the city, unless the nonresident works in the Kansas City metropolitan area or is appointed to represent the interests of an organization that maintains an office in the Kansas City metropolitan area.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(f) Conflict of interest. In the event a board member has a conflict of interest in a contract or issue that comes before the board, the member shall be temporarily replaced by the alternate. In the event an alternate has a conflict of interest in a bid, contract or issue that comes before the board, the alternate shall recuse himself.

(g) In the event the chairperson is not in attendance at any board meeting, a majority of board members shall select a member to act as chairman for that meeting.

(h) Quorum. Four members of the board shall constitute a minimum quorum unless otherwise increased by board rules.

**Section 3-453. Responsibilities of the fairness in construction board.**

(a) Goal setting. Prior to solicitation, the department and appropriate city staff shall present to the board recommended MBE/WBE goals for each proposed construction contract. The board shall determine whether any goals are appropriate and, if so, shall set the goals in conformance with section 3-431 hereof. The goals shall be included in the invitation for bid or request for proposals. Except as otherwise provided in section 3-431(d) hereof, no invitation for bid or request for proposals shall be released until goals have been requested and set, or until the city department soliciting the contract has been notified by the director that goals will not be established.

(b) Any bidder or proposer on a city construction project that has an estimated cost of over \$300,000.00 may, prior to award of the construction contract, appeal to the board any determination by the director concerning the following issues:

- (1) Waiver of the individual contract goals pursuant to section 3-437(a); or
- (2) Substitution of an MBE/WBE listed on a contractor utilization plan pursuant to section 3-443; or
- (3) Modification of the percentage of the participation on a contractor utilization plan pursuant to section 3-443.

(c) Any contractor on a city construction contract over \$300,000.00 may appeal to the board any determination by the director concerning the following issues:

- (1) MBE/WBE contract credit towards meeting the percentage of MBE/WBE participation identified in the contractor utilization plan; or
- (2) Liquidated damages; or
- (3) Substitution of an MBE/WBE listed on a contractor utilization plan pursuant to section 3-443; or

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (4) Modification of the percentage of the participation on a contractor utilization plan pursuant to section 3-443.

(d) Appeals shall be made to the fairness in construction board by filing with the director within ten working days after notice of the director's determination a written request for review by the board, stating the grounds of such appeal with specificity. The director shall promptly forward a copy of any appeal to the chairperson and members of the board.

(e) Failure to file a timely appeal shall constitute a waiver of the right of a bidder, proposer or contractor to appeal the director's determination and such person shall be estopped to deny the validity of any determination which could have been timely appealed.

(f) Authority of board. The board shall hold a hearing within twenty working days of the date of filing of a timely appeal. The failure to hold the hearing within the prescribed time shall result in the director's determination being overturned without further action, unless the delay was requested or caused by the party filing the appeal. The board shall have authority to investigate appeals, rejecting those it determines to be frivolous and without merit. The board shall have the power to inquire into all the facts and circumstances of appeals within its jurisdiction and may hold investigative hearings for such purpose. The board may reverse, affirm or modify determinations of the director set forth in subsections (b) and (c) hereof. The board shall issue a written report of its decision within ten working days from the start of the hearing and its decision shall be final for all purposes. Notwithstanding the foregoing, the city council shall retain the right to waive any provision of this article in accordance with section 3-437(b).

(g) Intervention. Any bidder, proposer or contractor whose interests will be affected by any appeal may be permitted by the board to intervene in the appeal.

(h) In the event an appeal is pending before the fairness in construction board and the project is presented to the city council for consideration prior to the board's issuance of its decision, the city council shall be notified by including in the fact sheet notification that there is an appeal pending before the board. The city council may elect to delay award of the project until after the board issues its decision.

(i) Any bidder, proposer or contractor may notify the board of the director's failure to make a determination or take action within the time required by this article and the board has the authority to inquire into the circumstances of the matter.

**Section 3-455. Procedures for construction contracts.**

The following shall apply to construction contracts in which the estimated cost thereof is more than \$300,000.00:

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (1) Bid submissions. Bidders shall submit an affidavit of intended utilization with their bid.
- (2) Forty-eight hour submissions. Bidders shall submit the following within 48 hours after bid opening:
  - a. A notarized contractor utilization plan in conformance with section 3-433 hereof; and
  - b. Letters of intent to subcontract; and
  - c. A request for waiver of the contract goals pursuant to section 3-437(a) if the bidder failed to meet or exceed the goals.
- (3) Timely submission of the contractor utilization plan is a material element of the submission.
- (4) The apparent successful bidder shall submit documentation of good faith efforts made prior to 48 hours after bid opening when requested by the city or the agency. The director is authorized to extend the 48 hour deadline for the letters of intent to subcontract but not the deadline for submission of the contractor utilization plan.
- (5) A notarized affidavit certifying actual MBE/WBE participation in the contract, including the names of such MBE/WBEs and the participation amount, and a certification that all MBE/WBE subcontractors and other subcontractor have been paid must be submitted by the contractor prior to the city's release of retainage under the contract.
- (6) Any increase in the amount of MBE/WBE participation after submission of the contractor utilization plan shall not count toward meeting the contract goals, unless otherwise permitted under section 3-443 hereof.
- (7) Bid shopping is prohibited.

**Section 3-457. Procedures for all other contracts.**

The following procedures shall apply to all contracts not covered by 3-455, and for which goals have been established:

- (1) For contracts awarded pursuant to competitive bidding, bidders shall submit an affidavit of intended utilization with their bid. Within 48 hours after bid opening, they shall submit the following additional documentation:

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- a. A notarized contractor utilization plan in conformance with section 3-433 hereof; and
  - b. Letters of intent to subcontract; and
  - c. A request for waiver of contract goals pursuant to section 3-437(a) if the bidder failed to meet or exceed the goals.
- (2) For contracts awarded pursuant to requests for proposals, proposers shall submit an affidavit of intended utilization with their proposal. Prior to the award of any contract, they shall submit the following additional documentation:
- a. A notarized contractor utilization plan in conformance with section 3-433 hereof; and
  - b. Letters of intent to subcontract; and
  - c. A request for waiver of the contract goals pursuant to section 3-437(a) if the proposer fails to meet or exceed the goals.
- (3) Documentation of good faith efforts shall be submitted when requested by the city or the agency. The director is authorized to extend the 48-hour deadline for the letters of intent to subcontract but not the deadline for submission of the contractor utilization plan.
- (4) Any increase in the amount of MBE/WBE participation after submission of the contractor utilization plan shall not count toward meeting the contract goals, unless otherwise permitted under section 3-443 hereof. Timely submission of the contractor utilization plan is a material element of the bid submission.

**Section 3-459. Required reporting for city contractors.**

All contractors with a contractor utilization plan shall provide any and all information required by the director in a format prescribed by the director in such intervals as the director may determine.

**Section 3-461. Certification and appeals.**

(a) To ensure that this article benefits only MBEs and WBEs that are owned and controlled by bona fide minorities and women, the director shall certify MBEs and WBEs and mentor/protégés who wish to participate in the program. Any person not certified by the human relations department shall not be regarded as an MBE, WBE, or mentor/protégé program under this article.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(b) Each person that seeks certification as an MBE/WBE must demonstrate by written documentation or affidavit that it has suffered from past race or gender discrimination in the city and in the applicable trade or industry. A unified certification process (UCP) certificate, a Missouri Highway and Transportation Department certification or a Kansas Department of Transportation certification along with the documentation stated in this subsection, is sufficient for certification as a DBE so long as the firm has never been denied certification by any federal, state or local authority at any time and meets the definition of section 3-421(a)(20) and the requirements of this section.

(c) Each person that seeks certification as an MBE/WBE in the Kansas City metropolitan area must demonstrate the business enterprise has a real and substantial presence. After the effective date of this provision, any business enterprise shall be deemed to have a real and substantial presence in the Kansas City metropolitan area if:

- (1) The firm's principal office or place of business is in the Kansas City metropolitan area; and
- (2) The firm maintains full-time employees in one or more of the firm's offices within the Kansas City metropolitan area to conduct or solicit business in the Kansas City metropolitan Area the majority of their working time; and
- (3) The firm has transacted business more than once in the Kansas City metropolitan area within the last three years; and
- (4) The firm has been in existence in the Kansas City metropolitan area at least one year prior to application for participation in the MBE/WBE program.

If an MBE/WBE does not have a real and substantial presence in the Kansas City metropolitan area as specified under subsection (c)(1) through (c)(4), the firm shall remain certified until their certification expires. After the firm's certification expires, the firm must meet the requirements of subsection (c)(1) through (c)(4) to be recertified.

(d) All applicants and certified businesses shall be subject to an audit by the director at any time. An applicant's or certified business' refusal to facilitate an audit shall be grounds for denial of its certification application or revocation of its certification.

(e) All applicants and certified businesses shall be required to demonstrate and prove that the business has the skill and expertise to perform as a subcontractor in the particular area of work for which it is requesting listing or is listed on the M/W/DBE Kansas City, Mo. Online Directory.

(f) All applicants and certified businesses shall submit such information or documentation as may be required by the director in connection with its certification as an MBE or WBE, including, but not limited to current licenses and federal, state and

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

local tax returns and schedules (business and personal), and all other forms that are required to be included with or attached to the return at the time of filing. Failure to submit such information or documentation shall result in the denial of its certification application or revocation of its certification.

(g) A certification application may be withdrawn by an applicant without prejudice at any time prior to an on-site audit. All applications and documentation submitted to support an application will not be returned to the applicant. Following the withdrawal of a certification application, the applicant may not reapply for certification for a period of one year from the date of withdrawal of the application.

(h) Burden of proof in the certification process. The firm seeking certification has the burden of demonstrating to the director, by a preponderance of the evidence, that it meets all the requirements for certification. The director shall make determinations concerning whether individuals and firms have met their burden of demonstrating minority and woman status, business size, expertise, commercially useful function, ownership, management, independence and control by considering all the facts in the record, viewed as a whole.

(i) Determination of minority and woman status. If the director has reason to question whether an individual is a minority or woman, the director shall require the individual to demonstrate, by a preponderance of the evidence, that he or she is a minority or woman. In making such a determination, the director must consider whether the person has held himself or herself out to be a minority or woman over a long period of time prior to application for certification and whether the person is regarded as such by the relevant community. Evidence of active participation in relevant community organizations will be considered in such determinations. The director may require the applicant to produce appropriate documentation.

(j) Business size determinations. To be an MBE/WBE, a firm (including its affiliates) must be an existing and currently functioning small business. The director shall apply the SBA business size standard(s) found in 13 CFR part 121.201 and as amended as of the date of application and appropriate to the type(s) of work the firm seeks to perform.

(k) Determination of ownership. In determining whether the minority or women participants in a firm own the firm, the director shall consider all the facts in the record, viewed as a whole.

(1) To be an MBE/WBE, a firm must be at least 51 percent owned by one or more minority and women individuals, reflected as follows:

- a. In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- b. In the case of a partnership, 51 percent of each class of partnership interest must be owned by minority and women. Such ownership must be reflected in the firm's partnership agreement.
  - c. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by the minority and women individuals.
- (2) The firm's ownership by minority or women must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The minority or women owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
- (3) All securities that constitute ownership of a firm shall be held directly by the minorities or women. Except as provided in this subsection (3), no securities or assets held in trust, or by any guardian for a minor, are considered as held by minority or women individuals in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a minority or woman for purposes of determining ownership of the firm, if:
- a. The beneficial owner of securities or assets held in trust is a minority or woman, and the trustee is the same or another such individual; or
  - b. The beneficial owner of a trust is a minority or woman who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same minority or woman is the sole grantor, beneficiary, and trustee.
- (4) The contributions of capital or expertise by the minority or women owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
- (5) In situations where expertise is relied upon as part of a minority or woman owner's contribution to acquire ownership:

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- a. The owner's expertise must be:
    - i. In a specialized field; and
    - ii. In areas critical to the firm's operations; and
    - iii. Indispensable to the firm's potential success; and
    - iv. Specific to the type of work the firm performs; and
    - v. Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
  - b. The individual whose expertise is relied upon must have a significant financial investment in the firm.
- (6) The director shall always deem as held by a minority or woman individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual:
- a. As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
  - b. Through inheritance, or otherwise because of the death of the former owner.
- (7) Presumptions regarding interests obtained without consideration:
- a. The director shall presume as not being held by a minority or woman individuals, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-minority or male individual or non-MBE/WBE firm who is:
    - i. Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm; or
    - ii. Involved in the same or a similar line of business; or
    - iii. Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- b. To overcome this presumption and permit the interests or assets to be counted, the minority or woman individual must demonstrate to the director, by clear and convincing evidence, that:
    - i. The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as an MBE/WBE; and
    - ii. The minority or woman individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of non-minority or male individual or non-MBE/WBE firm who provided the gift or transfer.
- (8) The director shall apply the following rules in situations in which marital assets form a basis for ownership of a firm:
- a. When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the director shall deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. The director shall not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the minority or woman owner of the applicant firm.
  - b. A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for MBE/WBE certification.
- (9) The Director may consider the following factors in determining the ownership of a firm. However, the director must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:
- a. A minority or woman individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in subsection (7) of this section; or

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- b. There is a provision for the co-signature of a spouse who is not a minority or woman individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
- c. Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a minority or woman to a spouse who is such an individual. In this case, the director must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a minority or woman individual.

(l) Determinations concerning control. In determining whether the minority or women owners control a firm, the director must consider all the facts in the record, viewed as a whole.

- (1) Only an independent business may be certified as an MBE/WBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.
  - a. In determining whether a potential MBE/WBE is an independent business, the director must scrutinize relationships with non-MBE/WBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
  - b. The director must consider whether present or recent employer/employee relationships between the minority or woman owner(s) of the potential MBE/WBE and non-MBE/WBE firms or persons associated with non-MBE/WBE firms compromise the independence of the potential MBE/WBE firm.
  - c. The director must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential MBE/WBE firm.
  - d. In considering factors related to the independence of a potential MBE/WBE firm, the director must consider the consistency of relationships between the potential MBE/WBE and non-MBE/WBE firms with normal industry practice.
- (2) An MBE/WBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the minority or women owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g.,

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the minority or women owners, without the cooperation or vote of any non-minority or male, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents.

- (3) The minority and women owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
  - a. A minority or women owner must hold the highest officer position in the company (e.g., chief executive officer or president).
  - b. In a corporation, minority or women owners must control the board of directors.
  - c. In a partnership, one or more minorities or women owners must serve as general partners, with control over all partnership decisions.
- (4) Individuals who are not minorities or women may be involved in an MBE/WBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
- (5) The minority and women owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are minority or women. Such delegations of authority must be revocable, and the minority and women owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the minority and women owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the minority and women owners actually exercise control over the firm's operations, management, and policy.
- (6) The minority and women owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The minority and women owners are not required to have experience or expertise in every critical area of the firm's operations, or to

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

have greater experience or expertise in a given field than managers or key employees. The minority and women owners must have the expertise, technical competence, and ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

- (7) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the minority or women persons who own and control a potential MBE/WBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, the director must not deny certification solely on the ground that the person lacks the license or credential. However, the director may take into account the absence of the license or credential as one factor in determining whether the minority or women owners actually control the firm.
- (8) The director may consider differences in remuneration between the minority and women owners and other participants in the firm in determining whether to certify a firm as an MBE/WBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. The director may determine that a firm is controlled by its minority or woman owner although that owner's remuneration is lower than that of some other participants in the firm. In a case where a non-minority or non-woman individual formerly controlled the firm, and a minority or women individual now controls it, the director may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-minority or non-woman individual remains involved with the firm and continues to receive greater compensation than the minority or woman individual.
- (9) In order to be viewed as controlling a firm, a minority or woman owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

- (10) A minority or woman individual may control a firm even though one or more of the individual's immediate family members (who themselves are not minorities or women) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, the director must make a judgment about the control the minority or woman owner exercises vis-a-vis other persons involved in the business as in other situations, without regard to whether or not the other persons are immediate family members. If the director cannot determine that the minority or woman owners, as distinct from the family as a whole, control the firm, then the minority or woman owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.
- (11) Where a firm was formerly owned and/or controlled by a non-minority or non-woman individual (whether or not an immediate family member), ownership and/or control were transferred to a minority or woman individual, and the non-minority or non-woman individual remains involved with the firm in any capacity, the minority or woman individual now owning the firm must demonstrate to the director, by clear and convincing evidence, that:
  - a. The transfer of ownership and/or control to the minority or woman individual was made for reasons other than obtaining certification as an MBE/WBE; and
  - b. The minority or woman individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-minority or non-woman individual who formerly owned and/or controlled the firm.
- (12) In determining whether a firm is controlled by its minority or women owners, the director shall consider whether the firm owns equipment necessary to perform its work. However, the director must not determine that a firm is not controlled by minority or women individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.
- (13) The director shall grant certification to a firm only for specific types of work in which they are currently functioning and in which the minority or women owners have the ability to control the firm. To become certified in an additional type of work, the firm needs to demonstrate to the director

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

that its minority or women owners are able to control the firm with respect to that type of work. The director may not, in this situation, require that the firm be recertified or submit a new application for certification, but must verify the minority or women owner's control of the firm in the additional type of work.

- (14) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the director should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.
- (15) In order for a partnership to be controlled by minority or women individuals, any non-minority or non-women partners must not have the power, without the specific written concurrence of the minority or women partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.
- (16) The minority or women individuals controlling a firm may use a professional and commercial employee leasing company. The use of such a company does not preclude the minority or woman individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.
- (17) The director may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the MBE/WBE program.
- (18) The director shall evaluate the eligibility of a firm on the basis of present circumstances. The director shall not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by the minorities or women at some time in the past, if the firm currently meets the ownership and control standards of this part.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (19) MBE/WBE firms and firms seeking MBE/WBE certification shall cooperate fully with the director's requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.
- (20) An eligible MBE/WBE firm must be owned by individuals who are minorities and women. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even an MBE/WBE firm—cannot be an eligible MBE/WBE.
- a. If the minorities or women own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, the director may certify the subsidiary if it otherwise meets all requirements of this section. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.
- b. The director may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by the minority and women individuals. The following examples illustrate how this cumulative ownership provision works:

*Example 1:* Minority and women individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

*Example 2:* Minority and women individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

*Example 3:* Minority and women individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by minority and women individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so the director may certify the subsidiary, if all other requirements are met.

*Example 4:* Same as example 2 or 3, but someone other than minorities or women owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by minority or women individuals, through the holding or parent

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

company, the director cannot certify it because it fails to meet control requirements.

*Example 5:* Minority or women individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by minority or women individuals is about 31 percent. This is less than 51 percent, so the director cannot certify the subsidiary.

*Example 6:* The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap. Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

- (21) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by minority and women individuals.

(m) An MBE/WBE's certification shall expire three years from the date of certification effective immediately. An application for renewal shall be submitted on forms provided by the Director. The Director is authorized to require MBE/WBE's firms to submit yearly updates of information including, but not limited to, current licenses and federal, state and local tax returns and schedules (business and personal), and all other forms that are required to be included with or attached to the return at the time of filing.

(n) Once certified, an MBE/WBE must notify the department in writing within 30 calendar days of any change(s) in circumstances affecting the firm's ability to meet ownership, control, or size requirements or any material change(s) in the information provided in the certification application process. The statement must include supporting documentation describing in detail the nature of such changes. Change(s) in management responsibility among members of a limited liability company are also covered by this requirement. If the MBE/WBE fails to make timely notification of such change(s), it will be deemed to have failed to cooperate and certification may be revoked.

(o) The director shall safeguard information that reasonably may be regarded as confidential business information from disclosure to unauthorized persons consistent with federal, state and local law.

(p) If the United States Department of Transportation changes the requirements for certifications, the city council shall re-examine the certification requirements imposed by this section.

- (q) Appeals of denials of certification.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (1) If the city denies a request for MBE/WBE certification from a firm which is not currently certified by the city, then the firm shall be ineligible to reapply for MBE/WBE certification for one year from the later of the date of the denial of certification or the final date of any decision on an appeal.
- (2) Persons who have applied for DBE certification in conjunction with MBE/WBE certification and have been denied MBE/WBE certification may be certified if the reason(s) for denial is solely for MBE/WBE certification criteria equivalent to the DBE certification criteria and they successfully appeal their DBE certification and otherwise fulfill the requirements for MBE/WBE certification.
- (3) Persons who have applied for MBE/WBE certification and who have not applied for DBE status may appeal the denial of certification to the same extent and subject to the same provisions applicable to appeals of revocation of certification, except as provided in (4) of this subsection.
- (4) In circumstances where a firm has failed to submit required documentation, failed to demonstrate real and substantial presence, or exceeded business size standards, there will be no administrative reconsideration of a denial of MBE/WBE certification

(r) *Appeals of revocations of certification.*

- (1) Persons who have who have had their MBE/WBE certification revoked by the department may be reinstated if the reason(s) for revocation is solely for MBE/WBE certification criteria equivalent to the DBE certification criteria and they successfully appeal their DBE certification, and they otherwise fulfill the requirements for MBE/WBE certification. If a person was certified as a DBE, the person must follow the UCP appeal procedures and there is no city appeal.
- (2) In circumstances where a certified firm has failed to submit required documentation, failed to demonstrate real and substantial presence, or exceeded business size standards, there will be no administrative reconsideration of a revocation of MBE/WBE certification.
- (3) Upon the revocation of certification as an MBE/WBE/DBE or mentor/protégé by the department, the director shall notify the affected party in writing by certified mail, setting forth the reason(s) for the revocation of certification. Except as provided in (1) and (2) of this subsection, any firm who has had certification as an MBE/WBE or mentor/protégé revoked by the department may appeal the decision by filing a written notice of appeal as designated by the director within 20

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

business days of receipt of the notice of the revocation of certification. The procedures applicable to any appeal shall be as follows:

- a. The written notice of appeal must state the reason(s) for the appeal and include all supporting documentation to be considered for the appeal. The information or documentation submitted is limited to the issue(s) raised in the written notice of appeal. No new or additional documentation or information shall be considered for the appeal without a showing by the firm that it was not available or, through due diligence, could not have been made available. The written notice must specify whether the firm wishes to appeal in writing and/or appear personally for a hearing and if they intend to be accompanied by counsel.
- b. Within ten business days of receipt of the notice of appeal from the aggrieved party, the director shall forward the notice to a neutral hearing officer selected through the city's standard procurement process.
- c. Within ten business days from the date of receipt of the notice from the director, the hearing officer shall set a hearing date. The hearing officer shall cause notice of the hearing to be served upon all parties by certified mail. Such notice shall set forth with particularity the charges filed by the aggrieved business and shall include the hearing date, time, and place.
- d. At the hearing, all parties shall be provided a fair and impartial hearing and shall be allowed to make a presentation concerning the determination of noncompliance with the requirements of this article or the revocation of certification as an MBE/WBE or mentor/protégé. Legal counsel may accompany the firm during the hearing, speak on behalf of the firm, respond to questions, and otherwise make a presentation. Each owner will be limited to a period of 15 minutes to address the hearing officer, unless extended by the hearing officer for good cause. Reasonable accommodations will be made for those with disabilities and/or limited language proficiency. For the appeal, the burden of proof rests on the MBE/WBE or mentor/protégé to show that the revocation of certification was improper.
- e. The hearing officer shall, within 15 business days of the hearing or within 15 days of the deadline set by the hearing officer for the submission of any additional documentation, if applicable, make a written decision on the appeal, which decision shall affirm, alter, or reverse the revocation of certification by the department.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

Written notice of the decision on the appeal shall be sent to all parties by mail setting forth the reasons for the decision.

- f. If the hearing officer finds for the aggrieved party, as appropriate, the business shall be reinstated as an MBE/WBE or mentor/protégé and added to the certification database maintained by the department. The decision of the hearing officer shall be binding on all parties, subject to the right of appeal as provided by law.
- g. The firm that receives a decision from the hearing officer upholding the revocation of certification is ineligible to reapply for MBE/WBE certification for two years from the later of the date of the revocation of certification, or the final date of any court decision.

(s) The city manager is authorized to revoke MBE and WBE certification for cause. The certification of a person who has been debarred by the city in a debarment proceeding shall be automatically terminated or modified in a manner provided by the debarment ordinance. If an MBE/WBE has its DBE or MBE/WBE certification revoked by another governmental entity after a hearing, its MBE/WBE certification shall automatically be terminated with the city unless the MBE/WBE's certification was revoked for violating a certification requirement that is not a violation of the city's MBE/WBE certification requirements. No individual, corporation, partnership, limited liability company or any other business entity whatsoever shall be certified as an MBE or WBE if the minority or female whose ownership interest would serve as the basis for obtaining certification, or who would control the entity seeking certification, presently owns or previously owned a majority interest in or controlled an MBE or WBE whose certification has been revoked for cause within the five year period immediately preceding the submittal of the certification application. No individual, corporation, partnership, limited liability company or any other business entity whatsoever shall be certified as an MBE or WBE if the minority or female whose ownership interest would serve as the basis for obtaining certification, or who would control the entity seeking certification, presently owns or previously owned a majority interest in or controlled an MBE or WBE whose certification has been suspended for cause, provided however that this restriction shall last no longer than the term of the suspension.

(t) MBE/WBE program graduation.

- (1) If an MBE or WBE has been certified by the city in more than one North American Industry Classification System (NAICS) code or has an affiliate which has been certified by the city in a NAICS code other than that of the MBE or WBE, then the annual receipt level used as the graduation criterion for such MBE or WBE shall apply separately to each NAICS code for which the MBE or WBE and its affiliate have been certified subject to the business size standards in this ordinance. Such an MBE or WBE and any affiliate that has exceeded the graduation criteria in one

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

NAICS code shall be deemed to be graduated from the MBE/WBE contracting program as to that major group, and may continue to be certified in another NAICS code having a higher monetary graduation level but shall no longer be considered eligible to be or remain certified in the NAICS code with the lower size standard. An MBE or WBE that has exceeded the graduation criteria for the largest NAICS code applicable to its activities shall be deemed to be graduated from the MBE/WBE program for all purposes.

- (2) The department shall send a graduation determination letter which shall serve to notify the MBE or WBE that it has graduated from the MBE/WBE program. The mailing of the graduation determination letter shall trigger a three-year termination period. During the termination period, an MBE or WBE may bid and perform work to the same extent it was able to do so before graduation, and its utilization may be applied towards satisfaction of contract goals, if any, to the extent it is performing a commercially useful function corresponding to a NAICS code in which it was certified prior to graduation.
- (3) The termination period shall expire three years from the date of mailing of the graduation determination letter. Any work bid by the graduated MBE or WBE after expiration of the termination period shall not be applied towards satisfaction of contract goals, if any. Any work performed by the graduated MBE or WBE after expiration of the termination period shall not be applied towards satisfaction of contract goals, if any, unless the work was commenced or is scheduled to commence pursuant to solicitation made prior to the expiration of the termination period.
- (4) During the termination period, the MBE or WBE shall comply with the requirements of this article to the same extent it was required to comply prior to graduation. A failure to do so may result in the reduction or elimination of the termination period.
- (5) Application to affiliates. The graduation criteria set forth above shall be deemed to apply to the minorities or women upon whom eligibility for certification is based and all affiliates to such minorities and women. No business enterprise shall be certified based upon one or more minorities or women who owned or who was an affiliate of an MBE or WBE which has become ineligible for renewed certification because of the achievement of graduation criteria.

**Section 3-463. Duties and authority of director.**

- (a) The director is hereby authorized to establish rules and regulations to implement this Division.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(b) Notwithstanding any other section to the contrary, the director is hereby authorized to establish rules and regulations to implement the city's MBE/WBE program requirements into contracts that utilize alternative construction delivery methods pursuant to Chapter 3, Code of Ordinances, or other alternative procurement or contracting methods if the contract would be subject to MBE/WBE goals under this article. Except for cooperative agreements that involve construction, the fairness in construction board shall set the MBE/WBE goals for construction contracts.

(c) The director shall, in addition to any other duties specified herein:

- (1) Administer and enforce this article to ensure that MBE/WBEs have equal opportunity to participate in city contracts and subcontracts and work with all city department directors and agency heads to implement the city's MBE/WBE program; and
- (2) Coordinate the establishment of MBE/WBE methodologies with all city departments and agencies including establishment of goals, except goals for construction contracts subject to section 3-453 hereof, as may be appropriate to remedy underutilization of MBE/WBEs; and
- (3) Update the M/W/DBE Kansas City Mo. Online Directory available to all bidders, proposers, the general public, city departments and agencies; and
- (4) Assist city departments and agencies in finding qualified MBEs and WBEs to participate in contracts; and
- (5) Identify appropriate participation opportunities for qualified MBEs and WBEs in contracts; and
- (6) Publish an annual report for the city's fiscal year which states for each city department and agency:
  - a. The number of contracts awarded and the total contract dollars awarded pursuant to such contracts; and
  - b. The number of prime contracts awarded to WBEs and MBEs as identified by race and/or ethnicity and the total dollars awarded and paid pursuant to such contracts; and
  - c. The number of subcontracts awarded to WBEs and MBEs as identified by race and/or ethnicity and the total contract dollars awarded and paid pursuant to such contracts; and
  - d. A summary of total waiver requests submitted that are granted or denied and the reasons for the grant or denial; and

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- e. The number of MBE/WBE firms certified by race and/or ethnicity; and
- (7) Provide a compliance report to the city manager within 30 days after the end of each quarter which shall include:
- a. The total number of contracts awarded and the total contract dollar amount awarded pursuant to such contracts; and
  - b. The number of contracts awarded to qualified MBEs as identified by race and/or ethnicity and WBEs and the total contract dollar amount awarded and paid pursuant to such contracts; and
  - c. The director of human relations evaluation of the city's progress toward meeting MBE/WBE utilization plans and any actions he or she intends to take to address any shortfall in meeting the goals established in such plans; and
  - d. Any other information as may be required by the city manager; and
- (8) Develop and maintain relationships with organizations representing contractors, including minorities and women organizations, and solicit their support for the city's program; and
- (9) Furnish staff assistance to the fairness in construction board. This shall include but not be limited to providing to the board within thirty days following the end of each quarter interim reports containing the information described in subsection (6) and such other reports and information as the board, from time to time, may request; and
- (10) Implement any federal or state minority business enterprise program required by law or federal or state contract; and
- (11) Appoint a designated neutral hearing examiner for certification revocation hearings.

**Section 3-465. Penalties for noncompliance; no retaliation.**

(a) Whenever a bidder, proposer or contractor has submitted a bid that is not in material compliance with the requirements of Division, the contracting department or agency shall reject the bid or proposal unless the goals are waived pursuant to section 3-437.

(b) The director is authorized to recommend suspension, revocation, sanction or debarment of any contract or contractor, as appropriate, for providing false or misleading

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

information to the department, purposefully omitting or refusing to provide information requested by the department, or otherwise violating any provision of this Division.

(c) The director is authorized to suspend or revoke the certification of an MBE/WBE or mentor/protégé, as appropriate, for providing false or misleading information to the department, purposefully omitting or refusing to provide information requested by the department, or otherwise violating any provision of this Division, without having to make a recommendation to any other person or department.

(d) Sanctions shall be imposed in conformity with any applicable federal, state or local laws. In determining whether to suspend or revoke the certification an MBE/WBE or mentor/protégé, the director shall consider the following factors:

- (1) Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may be reasonably concluded to have resulted from a misunderstanding on the part of the MBE/WBE or mentor/protégé; and
- (2) The number of specific incidents of failure by the MBE/WBE or mentor/protégé to comply; and
- (3) Whether the MBE/WBE or mentor/protégé has been previously suspended; and
- (4) Whether the MBE/WBE or mentor/protégé has failed or refused to provide the director with any information requested by the director or required to be submitted to the director pursuant to law or these procedures; and
- (5) Whether the MBE/WBE or mentor/protégé has materially misrepresented any applicable facts in any filing or communication to the director; and
- (6) Whether any subsequent restructuring of the subject business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.

(e) Suspensions may be for any length of time not to exceed five years. Suspensions in excess of one year and revocations of certification shall be reserved for cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in contravention of applicable requirements, cases where the MBE/WBE or mentor/protégé has been previously suspended, or other similarly egregious conduct.

(f) The making of any false or misleading statements shall be grounds for application of any applicable criminal and or civil penalties in addition to the grounds for sanction.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(g) No person shall intimidate, threaten, coerce or discriminate against any individual or business for the purpose of interfering with the implementation or enforcement of any provision of this Article because such individual or business filed a complaint or cooperated in the investigation of a complaint.

**Section 3-467. Mediation of disputes.**

(a) Any claim or dispute between a contractor, subcontractor or supplier that remains unresolved after 30 calendar days shall be subject to mandatory mediation conducted in accordance with the rules of the Uniform Mediation Act. The mediation shall be conducted by an impartial mediator appointed by the department, who shall render his or her services with full regard for each party's interests. If the subject matters of the dispute or the parties to the dispute are such that the assigned mediator would have a conflict of interest or personal interest in the outcome of the mediation, he or she shall immediately be recused and another mediator shall be appointed.

(b) The procedures for the mediation shall be established by the appointed mediator in conjunction with the parties, who shall attempt to resolve their dispute in good faith.

(c) Except to the extent disclosure is otherwise required by law, the mediation and the terms of any settlement reached by the parties shall remain confidential.

(d) The mediation provided for by this section shall be a condition precedent to the initiation or pursuit of any other lawful means of resolving the dispute, including arbitration and other legal proceedings.

(e) The contractors shall share equally the expense of the mediator's fee. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(f) Every contractor entering into a contract as defined by section 3-421(a)(13) shall incorporate the provisions of this section into each related agreement with a subcontractor or supplier, but the failure to do so shall not alleviate the obligation of the parties to utilize the mediation provided for herein as a condition precedent to the initiation or pursuit of any other lawful means of resolving the dispute, including arbitration and other legal proceedings. The requirements of this section shall be deemed incorporated into each related agreement by operation of law and shall supplant any term or provision, written or oral, to the contrary.

**Section 3-469. Severability.**

The provisions of this Division are severable. If any provision or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remaining provisions, including the application of such provisions to other persons or circumstances, shall continue in full force and effect.

**Sections 3-470—3-500. Reserved**

DIVISION 3. CONSTRUCTION WORKFORCE

**Section 3-501. Definitions applicable to the construction employment program.**

- (a) The following definitions shall apply to this Division 3:
- (1) *Apprentice* means person of legal working age who has entered into a program for training and employment to learn a skilled construction trade.
  - (2) *Apprenticeship program* means a program approved by the bureau of apprenticeship training providing for no less than 2,000 hours of reasonably continuous employment and for participation in an approved schedule of work experience through employment, which shall be supplemented by a minimum of 144 hours per year of related instruction.
  - (3) *City* means the City of Kansas City, Missouri.
  - (4) *City construction contract* means a contract estimated by the city prior to solicitation as requiring more than 800 construction labor hours and with an estimated cost that exceeds \$324,000.00 for the construction, reconstruction, improvement, enlargement or alteration of any fixed work for which tax abatement has been granted, or in which any portion is paid for out of city funds, tax increment financing, or funds administered by the city pursuant to a federal or state grant, including, but not limited to any building, road, street, public utility or other public facility, regardless of the contracts dollar amount, and regardless further of whether the city is a signatory to the contract.
  - (5) *Construction contractor* means any individual, partnership, corporation, association or other entity, or any combination of such entities, who or which enters into a city construction contract, regardless of the number of employees.
  - (6) *Construction employment goals* means the percentages of construction labor hours to be performed by, minority and women workers for a construction contractor on all construction projects of that construction contractor throughout the Kansas City metropolitan statistical area, on a particular city construction contract, during the construction time period of that city construction contract unless otherwise waived by the director or the construction work force board.
  - (7) *Construction employment program* means a program enacted by ordinance regarding the recruitment, training, mentoring and retention of employees,

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

including apprentices and journeymen, on construction projects. The term "construction employment program" shall also mean workforce ordinance.

- (8) *Construction hours affidavit* means a statement by a construction contractor, verified under oath, setting forth the construction contractor's intent to meet or exceed the construction employment goals while performing a city construction contract.
- (9) *Construction labor hour* means a 60-minute period of time devoted by a worker, employed by a contractor or subcontractor, performing labor on a construction project job site; or, preparing, fabricating or painting materials or equipment to be used or incorporated on a construction project job site.
- (10) *Construction project* means any project performed by a construction contractor in the Kansas City metropolitan statistical area.
- (11) *Construction workforce board* means a board, created as provided herein.
- (12) *Director* means the director of the human relations department of the city or his/her designee, or the person within the city manager's office that is assigned to perform the tasks delegated to the director of the human relations department by this article.
- (13) *Equal opportunity clause* means a statement prohibiting discrimination on construction projects based on race, color, sexual orientation, age, gender, national origin, religion, mental or physical disability.
- (14) *Good faith waiver* means a waiver that is granted by the director, or upon appeal of the director's decision, by the construction workforce board based upon a showing by a construction contractor that despite undertaking in good faith the actions outlined in sections 3-501—3-525, the construction contractor was unable to achieve the minimum employment goals.
- (15) *Incentive construction employment goal* means an aspirational goal for company-wide employment of minorities and women intended to encourage construction contractors to invest additional money and resources to hire and retain minorities and women on their workforce in order to achieve participation percentages well in excess of the minimum employment goals and the percentage of minorities and women generally available in the workforce by providing public recognition upon the completion of a city construction contract, to the construction contractor who achieves such goal.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (16) *Journeyperson* means one who has completed an apprenticeship in a trade or craft and is recognized in the particular trade or craft as a journeyperson.
- (17) *Labor union* means any organization which exists, in whole or in part, for the purpose, of collective bargaining; for dealing with employers concerning grievances, terms or conditions of employment; or, for other mutual aid or protection of workers in relation to employment.
- (18) *Metropolitan statistical area (MSA)* means the Kansas City metropolitan statistical area as defined by the United States Department of Labor.
- (19) *Minimum construction employment goal* means a minimum goal for company-wide employment of minorities and women that a construction contractor is expected to endeavor to meet by undertaking in good faith the actions outlined in this Division.
- (20) *Minority* means a person who is a citizen or lawful permanent resident of the United States and who is:
  - (1) African American, a person whose origins are in any of the Black racial groups of Africa, and who has historically and consistently identified himself or herself as being such a person; or
  - (2) Hispanic American and/or Latino American, a person whose origins are in Mexico, Central or South America, or any of the Spanish-speaking islands of the Caribbean, (for example Cuba and Puerto Rico) regardless of race, and who has historically and consistently identified himself or herself as being such a person; or
  - (3) Asian and/or Pacific Islander American, a person whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent, and who has historically and consistently identified himself or herself as being such a person; or
  - (4) Native American, a person having origins in any of the original peoples of North America, and who maintain tribal affiliation or demonstrate at least one-quarter descent from such groups, and who has historically and consistently identified himself or herself as being such a person.
- (21) *Resident* means an individual residing or domiciled within the city.
- (22) *Woman* means a person who is a citizen or lawful permanent resident of the United States and who is a female.

- (23) *Workforce preparedness program* means a program that actively seeks the participation of minorities and women and provides them with the skills and resources necessary to enter a program for training and employment to learn a skilled construction trade.

**Sec. 3-503. Establishing and declaring the purpose of the construction employment program.**

(a) The construction employment program is hereby established. The purpose of the construction employment program is to:

- (1) Increase recruitment, training, and retention of residents, minorities and women on city construction contracts and throughout the Kansas City MSA; and
- (2) Prescribe policies and procedures to implement the city's objective in accordance with this Division; and
- (3) Promote workforce preparedness programs and apprenticeship programs to increase the number of skilled minority and women employees in the construction trades with the goal of increasing minority participation in apprenticeship programs to 30 percent by 2014 and female participation in apprenticeship programs to five percent by 2014.
- (4) Further the retention of minorities and women in the current workforce by promoting mentoring programs to assist such workers and establishing goals to encourage city contractors to retain such workers.

(b) This Division shall not be construed as requiring or encouraging a construction contractor, or any subcontractor or supplier working in conjunction with the construction contractor, to make employment decisions or otherwise alter the terms and conditions of employment based upon race or gender.

(c) The director is authorized to adopt rules and regulations to implement the construction employment program.

**Sec. 3-505. Application of ordinance.**

- (a) The provisions of this Division shall apply to all city construction contracts.
- (b) Entities with the authority to issue tax increment financing or grant tax abatement shall adopt a workforce policy that is consistent with this Division.

**Sec. 3-507. Construction employment goals.**

(a) Construction employment goals, expressed as a percentage of total construction labor hours of a construction contractor on all construction projects within the Kansas City MSA shall be established by this Division for an initial five-year time period subject to adjustment and renewal by the city council as provided herein. Such goals shall be reviewed annually by the director in consultation with the construction workforce board and the director and construction workforce board shall have the right to recommend to the city council adjustments as it deems to be in the best interests of the city and its citizenry.

(b) In establishing the construction employment goals the city has considered:

- (1) The general population in the city and in the city metropolitan statistical area (MSA); and
- (2) The general workforce in the city and in the city metropolitan statistical area (MSA); and
- (3) The availability of minority and women in the workforce in the city and in the city metropolitan statistical area (MSA); and
- (4) The utilization of minorities and women in the workforce in the city and in the city metropolitan statistical area (MSA); and
- (5) The projected growth of the city construction industry;
- (6) Information from contracting associations, labor organizations, workforce preparedness programs and community groups concerning workforce availability in the commercial marketplace; and
- (7) Any other requirements imposed by federal, state or local laws.

(c) In recommending any adjustments to the construction employment goals, the director in consultation with the construction workforce board shall consider all of the information described in subsection (b) and any statistical data subsequently gathered regarding the construction employment program

(d) Construction employment goals are established as follows:

- (1) For minorities an incentive goal of 20 percent and a minimum goal of ten percent.
- (2) For women an incentive goal of four percent and a minimum goal of two percent.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(e) These construction employment goals are not the goals for individual city construction contracts; they are company-wide goals for any construction contractor performing work on a city construction contract. Company-wide goals are intended to further the city's interest in promoting greater long term retention of minorities and women. Both goals shall be based upon minorities and women working sufficient hours to qualify for benefits.

(f) The construction employment goals shall be reviewed on an annual basis by the director in consultation with the construction workforce board. The director and the construction workforce board shall present an evaluation to the city council of the construction employment program every year. Annually, the city council shall review the director's and construction workforce board's evaluation of the construction employment program and evaluate whether the program should be amended. Every five years, the city council shall evaluate whether the program should be extended or terminated, but failure to do so shall not invalidate this Division or any contract or solicitation.

(g) A construction contractor is expected to meet the minimum employment goals unless granted a good faith waiver. In the event that minimum construction employment goals have not been met, the city construction contractor may request that the director waive the goals. The director shall grant a construction contractor's request for waiver if the construction contractor can demonstrate that good-faith efforts have been made to achieve the goals. In determining whether a construction contractor made a good faith effort to meet the minimum employment goals, the director shall consider whether the construction contractor undertook the following actions:

- (1) For those construction contractors that are not signatories to a collective bargaining agreement with organized labor:
  - a. Requested in writing the assistance of the director with respect to efforts to promote the utilization of, minorities and women in the workforce and acted upon the director's recommendations; and
  - b. Advertised in minority or women trade association newsletters and/or minority or women owned media at least 15 calendar days prior to the utilization of any construction services on the city construction contract, and used terminology that sufficiently describes the work available, the pay scale, the application process, and anything else that one might reasonably be expected to be informed of relevant to the position being advertised; and
  - c. Maintained copies of each advertisement and a log identifying the publication and date of publication; and
  - d. Conducted real and substantial recruitment efforts, both oral and written, targeting resident, minority and women community-based organizations, schools with a significant minority student

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- population, and training organizations serving the recruitment area;  
and
  - e. Established and maintained a current list of resident, minority and women recruitment sources, providing written notifications to the recruitment sources of available employment opportunities, and maintained records of the notices submitted to the organizations and any responses thereto; and
  - f. Maintained a current file for the time period of the city construction contract with the name, address, and telephone number of each resident, minority and woman job applicant, the source of the referral, whether or not the person was hired, and in the event that the applicant was not hired, the reason therefore; and
  - g. Required by written contract all subcontractors to comply with this provision.
  - h. Promoted the retention of minorities and women journeypersons in its workforce with the goals of achieving sufficient annual hours for minorities and women to qualify for applicable benefits.
- (2) For those construction contractors that are signatories to collective bargaining agreements with organized labor:
- a. Support the efforts of the joint apprenticeship training committee (JATC) a joint effort of labor unions and contractors, or some other apprenticeship program, whose purpose is to recruit, train and employ new workers for a full time career in the construction industry.
  - b. Requested in writing from each labor union representing crafts to be employed by the city contractor that:
    - i. The labor union make efforts to promote the utilization of residents of the city, minorities and women in the workforce;
    - ii. The labor union identify any residents of the city, minorities and women in its membership eligible for employment by the city contractor;
    - iii. The JATC take substantial and real steps to increase the participation of minorities in the union apprenticeship programs in the aggregate to 30 percent by 2014 and encourage other labor unions to do the same;

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- iv. The JATC take substantial and real steps to increase the participation of women in the union apprenticeship programs in the aggregate to five percent by 2014 and encourage other labor unions to do the same;
  - v. The JATC partner with workforce preparedness programs, community based organizations, employment referral programs and school-sponsored programs to accomplish these goals.
- c. Collaborate with labor unions in promoting mentoring programs for journeypersons intended to assist minorities and women in increasing retention with the goals of achieving sufficient annual hours to qualify for applicable benefits.
  - d. Maintained a current file with the name, address, and telephone number of each resident, minority and woman worker identified by the labor union, whether or not the person was hired, and in the event the person was not hired, the reason therefore.
  - e. To the extent that the good-faith effort requirements set forth in this section are in conflict with the procedures implemented by the construction contractor in order to comply with a competitive bargaining agreement, the construction contractor shall substitute other procedures, as may be approved by the director in writing, in order to accomplish the purpose and intent of this section.
- (h) Required by written contract all subcontractors to comply with this provision;  
and
- (i) Notwithstanding anything contained in this section, if the waiver is required by federal or state or local law, the director shall grant a waiver to a construction contractor that nonetheless fails to meet:
- (1) The minority and women employment goals; and
  - (2) The standards set forth in section 3-507(g).
- (j) When a request for good faith waiver has been filed and the director has determined that the construction contractor has not met the goals despite its good faith efforts as defined in this section, the director may grant a full or partial waiver to the construction contractor. If the director denies a construction contractor's request for waiver, the construction contractor may appeal the director's decision to the construction workforce board.

**Sec. 3-509. City sponsored recruitment of construction workforce.**

(a) The city shall partner with workforce preparedness programs, apprenticeship programs, labor unions, other construction training programs, community-based organizations, employment referral programs and school-sponsored programs to accomplish the goals of the construction employment program. Activities to increase resident, minority and women participation shall be conducted on a scheduled basis and shall include:

- (1) Sponsoring workshops and events involving local minority community-based organizations and educational institutions to promote the construction industry and encourage residents to apply for apprenticeship programs and journey worker jobs on construction projects; and
- (2) Partnering with community-based organizations, the school district, and post secondary educational institutions to create programs that facilitate entry into the construction industry by providing job readiness training, construction trades awareness, construction trades training, skills assessment testing, and increasing the ability to pass the construction trades entrance examinations.
- (3) Establishing a first source program intended to give the first opportunity during the first 30 days of the 60 day notice period as described herein to qualified residents of the city to apply, be interviewed and be hired on city construction contracts.
- (4) Making a good faith effort to inform residents of the city and minorities and women, regardless of residency, through advertisements in media in the city and in minority or women trade association newsletters and/or minority or women owned media at least 60 calendar days prior to the issuance of an invitation for bid for a particular city construction contract, if deemed practical by the city to do so, of:
  - a. The name of the project;
  - b. The nature of the work to be performed;
  - c. The crafts anticipated to be required for the work; and,
  - d. Locations within the city and a website in which residents of the city may register for consideration for employment on the city construction project.

Failure of the city to advertise shall not invalidate any solicitation or contract.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (5) Conducting real and substantial recruitment efforts, both oral and written, targeting resident, minority and women community-based organizations, schools with a significant minority student population, and training organizations serving the recruitment area; and
- (6) Establishing and maintaining a current list of resident, minority and women recruitment sources, providing written notifications to the recruitment sources of available employment opportunities, and maintaining records of the notices submitted to the organizations and any responses thereto; and
- (7) Collaborating with labor unions, contractors and their respective associations to determine information that may be reasonably required of prospective workers.
- (8) Collecting and furnishing such information to labor unions, contractors and their respective associations for their use in identifying qualified residents of the city desiring work on city construction contracts.
- (9) Establishing a pre-qualification program for subcontractors whereby subcontractors can provide employment data to the director evidencing that they meet or exceed the minimum construction employment goals for the purpose of being included in a subcontractor directory on HRDs website to assist construction contractors in identifying those subcontractors that can assist the construction contractor in meeting the construction employment goals.
- (10) Submitting an affirmative action monthly report (AAMR) to the construction workforce board by the end of each month for the previous month stating the number of resident, minority and women construction labor hours performed by construction contractors, in a format acceptable to the construction workforce board.

**Sec. 3-511. Incentive construction employment goals.**

The director, in consultation with the construction workforce board, is authorized to provide public recognition to construction contractors on a city construction contract that achieve the minority and female incentive construction employment goals of the construction employment program.

**Sec. 3-513. Monitoring and compliance with construction employment program.**

(a) At the time a bid is submitted, the construction contractor shall submit a construction hours affidavit in a format determined by the director stating the city construction contractor's intent to meet or exceed the minimum construction employment goals while performing the city construction contract or request a waiver.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(b) After the city construction contract has been awarded, but before construction begins, the director may require the selected construction contractor to meet with the director or his/her designee for the purpose of discussing first opportunity given to residents of the city, the construction employment goals for minority and women workers, how the construction contractor will endeavor in good faith to meet the minimum construction employment goals, and any problems that may affect the construction contractors ability to employ residents of the city or achieve the construction employment goals.

(c) After completion of work on the city construction contract but before release of retainage, final acceptance and closeout, the construction contractor shall provide to the director, in a format approved by the director, the payroll records of the construction company and its subcontractors on the city construction contract, for the economic quarter years spanning the duration of the city construction contract:

- (1) The total number of hours of work performed by minorities and women on the city construction contract and company-wide on all projects in the city MSA as compared to the total number of hours of work performed by all workers on the city construction contract and company-wide on all projects in the city MSA; and
- (2) The hours worked per capita by minorities and women as compared to the hours worked per capita by all other workers in the workforce.

(d) All city contractors are expected to comply with all federal laws, including those of the Immigration and Naturalization Service and the Department of Homeland Security. Only those hours performed by workers in compliance with federal law may be counted towards the construction employment goals.

(e) On all city construction contracts, the director shall have access, at all reasonable times, to all books, papers, records, reports or accounts in possession of or under the control of all construction contractors and subcontractors as may be reasonably necessary to ascertain compliance with this Division, and all construction contractors and their respective subcontractors shall furnish such further information as may be required of such person within ten working days of the date it is so requested in writing. The construction contractor shall require all its subcontractors to comply with the requirements of this subsection.

(f) The director shall be authorized to conduct on-site audits and records inspections of any construction contractor and subcontractor without prior notice as may be necessary to ascertain compliance with this Division. The construction contractor shall require all its subcontractors to comply with the requirements of this subsection.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(g) The construction contractor is required to obtain and retain documentation establishing the residence of record for any person working on a construction project. The documentation must show an address within the city and may be one of the following:

- (1) Driver's license or identification card issued by a government or governmental agency with a photograph of the holder; or
- (2) Voter's registration card; or
- (3) Utility bill showing the account holders name and address; or
- (4) Valid United States Passport; or
- (5) Document falling within any other category that the director determines sufficiently establishes residency.

(h) Monthly reporting: The construction contractor performing work on a city construction contract shall submit a contractor affirmative action monthly report (CAAMR) to the director by the fifteenth of each month through the duration of the city construction contract. The contractor affirmative action monthly report shall state the number of resident, minority and women construction labor hours performed on site per trade, and shall be submitted in a format determined by the director.

**Sec. 3-515. Equal employment standards.**

(a) All city construction contracts shall contain language requiring as a condition thereof that all construction contractors will adhere to the equal opportunity clause set forth in section 38-103. The equal opportunity clause shall include, at a minimum, the following provisions:

- (1) The construction contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability or sexual orientation.
- (2) The construction contractor will take affirmative action to ensure that employees are treated fairly during employment without regard to their race, color, religion, sex, national origin, disability or sexual orientation. Such action shall include, but not be limited to the following: Employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (3) The construction contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the nondiscrimination clause.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(b) The construction contractor will, in all solicitations or advertisements for employees placed by or on behalf of the construction contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, disability or sexual orientation.

(c) In the event of the construction contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, the contract may be canceled, terminated, or suspended in whole or in part and the construction contractor may be declared ineligible for further contracts with the city. A construction contractor may appeal any such determination to the construction workforce board.

**Sec. 3-517. Complaint procedures.**

The city shall provide complaint procedures set forth in section 38-23 to all persons working under the construction employment program.

**Sec. 3-519. Remedies.**

(a) If the director shall find after investigation that a construction contractor has not met the construction employment goals and the construction contractor has not made a good faith effort to meet the goals, the director may:

- (1) Recommend the assessment of liquidated damages, as specified in the city construction contract;
- (2) Recommend that the construction contractor be declared ineligible to receive any city construction contract for a period of time up to one year.

(b) Any recommendation by the director to assess liquidated damages or to bar a construction contractor from bidding on city construction contracts may be appealed by the construction contractor to the construction workforce board.

**Sec. 3-521. Construction workforce board.**

(a) There is hereby established the city construction workforce board for the purpose of offering community input to the director; reporting issues and recommendations to the city manager and city council concerning the construction employment program; hearing certain appeals of determinations and recommendations of the director; and making certain recommendations to the city council. The construction workforce board's responsibilities specifically include:

- (1) Meeting quarterly in a forum open to the public, to review the monthly workforce reports including the director's AAMR, monitor compliance with the provisions of this Division, and make recommendations to the director regarding enforcement of this Division; and

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (2) Hearing appeals brought by construction contractors after a determination by the director that a construction contractor has failed to make a good faith effort to meet the resident, minority and women workforce goals and has recommended a remedy authorized by this Division.

(b) The construction workforce board shall be composed of 11 members and ten alternates proposed by the following groups to represent the following groups and appointed by the mayor, as follows:

- (1) One member and one alternate representing the local labor organizations/unions;
- (2) One member and one alternate representing the school sponsored training programs;
- (3) One member and one alternate representing the workforce referral organizations;
- (4) Two members and two alternates representing the community;
- (5) One member and one alternate representing the Heavy Constructors Association;
- (6) One member and one alternate representing the Builders Association;
- (7) One member and one alternate representing the MBE Contractors Coalition (Minority Contractors Association (MCA) and Kansas City Hispanic Association Contractors Enterprise (KCHACE));
- (8) One member and one alternate representing WBE Contractors Coalition (Women Construction Owners and Executives and National Association of Women in Construction),
- (9) One member and one alternate representing the subcontractor associations (Sheet Metal Contractors National Association (SMACNA), National Electrical Contractors Association (NECA), and Mechanical Contractors Association (MCA))
- (10) Chairperson appointed by the mayor.

(c) Board members serve at the leisure of the constituents each board member represents and may be recalled by such constituents or the mayor at any time.

(d) In the event a board member is unable to attend a meeting of the board or has a conflict of interest with regard to a particular contract or issue, the alternate shall

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

temporarily serve in such member's stead. The term of an alternate shall expire at the expiration of the term of the board member.

(e) The following are ineligible to serve on the Construction Workforce Board:

- (1) Members of the city council; and
- (2) Employees of the city.

(f) In the event a board member becomes ineligible or is unable to serve on the construction workforce board after appointment, the represented group shall nominate and the mayor shall appoint another person to fill the vacancy for the remainder of the board members unexpired term.

(g) In the event a board member has a conflict of interest in a contract or issue that comes before the board, the member shall be temporarily replaced by the alternate. In the event an alternate has a conflict of interest in a bid, contract or issue that comes before the construction workforce board, the alternate shall recuse himself.

(h) In the event the chairperson is not in attendance at any construction workforce board meeting, a majority of board members shall select a member to act as chairman for that meeting.

(i) Six members of the construction workforce board shall constitute a quorum.

(j) The construction workforce board shall adopt rules to govern the exercise of their duties.

(k) The terms of all board members shall be for a period of four years. Board members serving as of the effective date of this ordinance shall retain their seats for the remainder of their unexpired terms, after which they shall vacate their seats if not reappointed by the mayor.

**Sec. 3-523. Appeals to the construction workforce board.**

(a) Any construction contractor may appeal to the construction workforce board:

- (1) Determinations of the director that a construction contractor did not meet the construction employment goals and did not use good faith efforts to meet the goals; and
- (2) The director's recommendation of assessment of liquidated damages pursuant to this Division; and

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (3) The director's recommendation that a construction contractor be declared ineligible to receive any city construction contract for a period of time up to one year.

(b) Appeals shall be made to the construction workforce board by filing with the director within ten working days after notice of the director's determination, a written request for review by the construction workforce board, stating the grounds of such appeal with specificity. The director shall promptly forward to the chairperson and members of the construction workforce board a copy of any appeal.

(c) Failure to file a timely appeal shall constitute a waiver of the right of a construction contractor to appeal the director's determination and such person shall be estopped to deny the validity of any order, recommendation, determination or action taken by the director which could have been timely appealed.

(d) The construction workforce board shall have authority to require that a party first make a written submission of its appeal prior to permitting a hearing and may summarily dispose of those appeals that it determines to be frivolous and without merit.

(e) After receiving an appeal from the city construction contractor, the construction workforce board shall set a date upon which a hearing shall be held by the construction workforce board and shall notify all parties of the date thereof. The notice of hearing shall be served upon the parties at least ten calendar days prior to the date of the hearing. A copy of the director's determination shall be attached to each such notice. A hearing shall be set no later than 21 calendar days after receipt of the request for appeal by the director.

(f) The hearing shall be conducted under rules adopted by the board. The board may subpoena witnesses, compel their attendance, administer oaths, take the testimony of persons under oath, and require the production for examination any books, papers or other materials relating to any matter under investigation or in question before the board.

(g) The board shall cause all proceedings before it to be either audio recorded or held before a certified court reporter.

(h) The board shall have authority to affirm, modify or reverse the determination of the director.

**Sec. 3-525. Severability.**

If any section, subsection, clause, or provision of this Division is deemed to be invalid or unenforceable in whole or in part, this Division shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable subsection(s), clause(s), provision(s) or portion(s) thereof, and alter the balance of those same sections in order to render the same valid and enforceable.

**Secs. 3-526—3-600. Reserved.**

DIVISION 4. SMALL LOCAL BUSINESS ENTERPRISES (SLBE)

**Sec. 3-601. Definitions.**

- (a) The following definitions apply to this Division 4:
- (1) *Agency.* Any public or private entity that receives 66 percent of its funding from the city or any entity with the authority to recommend city tax increment financing or city tax abatements.
  - (2) *Agency head.* The individual authorized to act on behalf of an agency.
  - (3) *Business.* An individual, corporation, partnership, limited liability company, or other recognized business association that may lawfully be established for the purpose of conducting a for-profit business within the state.
  - (4) *City.* The City of Kansas City, Missouri.
  - (5) *Construction contract.* A contract for the construction, reconstruction, improvement, enlargement or alteration of any fixed work or construction site preparation, the majority of which is paid for out of city or agency funds.
  - (6) *Construction supply contract.* A contract for the purchase of construction materials, supplies, articles or equipment intended to be used or consumed on a construction contract, the majority of which is paid for out of city or agency funds.
  - (7) *Department.* The human relations department (HRD), or the division within the city manager's office that is assigned to perform the tasks delegated to the human relations department.
  - (8) *Department director.* The individual appointed by the city manager to be responsible for a city department or the manager of procurement services when acting on behalf of a department director or the city.
  - (9) *Director.* The director of the human relations department or his authorized representative, or the person designated by the city manager to perform the tasks delegated to the human relations department.
  - (10) *Eligible contract.* Any construction contract or construction supply contract estimated by the city or agency prior to solicitation as having a value less than \$300,000.00, and all other professional services or supplies

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

city or agency contracts having a value less than \$117,000.00, the majority of either of which is paid for out of city funds or in which an agency is a party.

- (11) *Invitation for bid.* A request or invitation for submission of an offer to enter into a contract pursuant to a competitive bidding process.
- (12) *Kansas City Metropolitan Area.* The Missouri counties of Cass, Clay, Jackson and Platte and the Kansas counties of Johnson, Leavenworth and Wyandotte.
- (13) *Person.* An individual, corporation, partnership, limited liability company, or other recognized business association which may lawfully be established for the purpose of conducting a for-profit business within the state.
- (14) *Principal place of business.* The location at which the business records of the SLBE applicant are maintained and the location at which the individual who manages the concern's day-to-day operations spends the majority of his/her working hours.
- (15) *Request for proposals.* An invitation for submission of an offer to enter into a contract pursuant to a negotiated process and not a competitive bid, including requests for qualifications.
- (16) *Professional services or supplies.* The term includes contracts for purely labor-related services up to and including highly technical or specialized services and design professional services, as well as contracts for the purchase of materials, supplies, articles or equipment intended to be used or consumed by the city or agency procuring the same, provided however that the term excludes construction contracts and construction supply contracts.
- (17) *Small local business enterprise (SLBE).* A for-profit business that:
  - a. Is at least 51 percent owned, managed and independently controlled by the applicant(s); and
  - b. Exists independently and is not an affiliate or subsidiary of any other business.
  - c. Is able to demonstrate that they have the skill and expertise to perform in the particular area(s) of work for which they are seeking certification; and

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- d. Has a real and substantial presence in the Kansas City Metropolitan Area. A business enterprise shall be deemed to have a real and substantial presence in the Kansas City Metropolitan Area if:
    - 1. The business' principal place of business is in the Kansas City Metropolitan Area.
    - 2. The business maintains the majority of its full-time employees in the Kansas City Metropolitan Area.
    - 3. The business has transacted business more than once in the Kansas City Metropolitan Area within the last two (2) years; and
  - e. Has annual gross receipts that, when added with those of its subsidiary or subsidiaries and averaged over three consecutive years, do not exceed five percent of the applicable business size standard for the SBA General Contractor Classification which is equivalent of the NAIC code 236220 as established in 13 CFR 121.201, as amended; and
  - f. Is certified by the human relations department as a small local business enterprise.
- (18) *SLBE directory.* A source list compiled by the human relations department containing names and addresses of SLBEs eligible to participate in the SLBE program.
- (19) *SLBE program.* The small local business enterprise program as enacted in this Division.

**Sec. 3-603. Policy; applicability.**

(a) The SLBE program is intended to provide opportunities by limiting solicitations to SLBEs or providing SLBEs a bid incentive, as provided in section 3-607. The SLBE program is not a goal-based program, nor shall it be extended to every contract. Application of the SLBE program shall be limited to those eligible contracts in which the director has determined it to be proper as provided herein.

(b) The SLBE program, when determined to be applicable by the director, shall extend to eligible contracts solicited by the city or any agency. Every agency shall adopt a small local business enterprise program that is substantially consistent in every material respect with this Division, as determined and approved by the director of human relations. No ordinance shall be passed to approve any development plan, redevelopment plan, urban renewal plan, or particular project arising under any such plan and for which

economic incentives have been approved or recommended for approval by an agency, nor shall the city execute a contract with an agency for the purpose of providing funds for their development and redevelopment services, unless the agency has first adopted and implemented a small local business enterprise program in the manner provided for herein.

(c) The director shall review the SLBE program annually and make recommendations to the city council as to whether the SLBE program should be maintained or modified, but the failure of the director to do so shall not invalidate the SLBE program.

(d) The city council shall have the authority to waive the applicability of the SLBE program in its entirety, or any portion thereof, if it determines that doing so is in the city's best interests.

**Sec. 3-605. Applicability of SLBE program to eligible contract solicitations.**

(a) Prior to issuing any invitation for bid or request for proposal for any eligible contract, the department director or agency head shall confer with the director for purposes of determining whether the eligible contract is one whose solicitation shall be limited to SLBEs or, on non-construction contracts, whether SLBEs shall be allowed a bid incentive not to exceed five percent, as provided in [section 3-607](#).

(b) The director shall give consideration to the input of the department director or agency head and shall make the final determination as to which SLBE incentive, if any, shall be applicable to the particular solicitation. Any invitation for bid or request for proposal shall be solicited in compliance with the city's Code of Ordinances or the procurement policies and procedures of the relevant agency and shall clearly and conspicuously be delineated with the applicable provision, which shall read substantially as follows:

[Applicable to Construction Contracts, Construction Supply Contracts and Professional Services or Supplies Contracts]

This Invitation for Bid/Request for Proposal is limited to those entities that are certified by the City of Kansas City, Missouri as a Small Local Business Enterprise (SLBE) or that have applied for certification as a SLBE at least 45 days prior to the date of this solicitation and who will have received that certification by the date on which the bid/proposal/qualification is due. Any bid/proposal/qualification received from any entity not having submitted a timely application or not certified as a SLBE on the due date shall be rejected and will not be considered.

-OR-

[Applicable only to Professional Services or Supplies Contracts]

This Invitation for Bid/Request for Proposal is subject to the City of Kansas City, Missouri's Small Local Business Enterprise Program. Any

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

entity who has applied for certification as a Small Local Business Enterprise (SLBE) at least 45 days prior to the date of this solicitation and has received that certification by the date on which the bid/proposal/qualification is due shall receive a bid incentive of five percent.

(c) No person shall be entitled to participate in any solicitation as an SLBE or receive the benefit of any incentive reserved for a SLBE unless the person has submitted an application for certification as a SLBE to the department at least 45 days prior to the invitation for bid or request for proposals and received SLBE certification by the date on which the bid or proposal is due.

(d) In the event any person that is not certified as a SLBE submits a bid or proposal in response to a solicitation that has been limited to SLBEs and did not apply for and receive its certification within the time periods provided for herein, the bid or proposal shall be summarily rejected as non-responsive.

**Sec. 3-607. SLBE incentives.**

(a) The director is authorized to encourage the utilization of SLBEs on any eligible contract except as otherwise limited in [section 3-609](#) through the utilization of the following SLBE incentives:

- (1) Limiting solicitation to SLBEs. The director is authorized to limit an invitation for bid or request for proposal to SLBEs, and shall consider the following factors in making a determination:
  - a. The estimated or potential dollar amount of the contract; and
  - b. The scopes of work to be performed; and
  - c. The availability of SLBEs certified in the primary scope of work to be performed; and
  - d. The city's utilization of SLBEs to date.
- (2) Bid incentives. The director is authorized to allow a bid incentive to SLBEs not to exceed five percent, and shall consider the following factors in making a determination as to whether to allow the incentive and establishing the amount thereof:
  - a. The estimated or potential dollar amount of the contract; and
  - b. The primary scope of work to be performed; and
  - c. The city's utilization of SLBEs to date; and

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- d. The amount of the bid incentive awarded on past contracts of a similar nature; and
- e. The amount of the bid incentive reasonably anticipated as being needed for purposes of enabling SLBEs to effectively compete for the contract; and
- f. The ability of the city department or agency to fund any increased cost that may reasonably be expected to arise as a result of the application of a bid incentive.

Any bid eligible for the bid incentive shall be adjusted for evaluation purposes by reducing the bid by the percentage of the incentive. This adjustment shall be used solely for the purpose of establishing the apparent low bidder. The actual value of the contract, if awarded to the SLBE, shall be the amount of the actual bid submitted by the SLBE.

(b) Any contract awarded to an SLBE pursuant to the SLBE program shall contain provisions providing for the following, notwithstanding the application of any other SLBE incentive as provided in subsection (a) of this section:

- (1) Pre-payment of up to ten percent of the contract amount to be tendered upon city's issuance of notice to proceed; and
- (2) The elimination of any retainage requirement; and
- (3) Payment every two weeks provided the SLBE has requested payment in the manner required by its contract with the city and is otherwise entitled to receive payment thereunder.

**Sec. 3-609. Limitations on use of SLBE incentives.**

(a) Notwithstanding anything contained within this Division:

- (1) No bid incentive shall be awarded to any SLBE submitting a bid in response to any invitation for bids that has been expressly limited to SLBEs.
- (2) No solicitation shall be limited to SLBEs unless the same has been clearly and conspicuously noted in the invitation for bid or request for proposal and no bid incentive shall be allowed any SLBE unless the same has been clearly and conspicuously noted in the invitation for bid.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (3) No solicitation shall be limited to SLBEs unless there is a minimum of three eligible SLBEs capable of performing the work and certified in the primary scope of work to be performed.
- (4) No bid incentive shall be allowed on any construction contract or construction supply contract.
- (5) No bid incentives shall be allowed on any other eligible contract unless there are fewer than three eligible SLBEs capable of performing the work and certified in the primary scope of work to be performed.
- (6) No contract shall be awarded to an SLBE who, taking into consideration the applicability of any bid incentive, is not the lowest and best bidder or is not the best proposer.
- (7) No contract shall be awarded to an SLBE responding to any invitation for bid or request for proposal that has been limited to SLBEs if it is in the city's or agency's best interest to reject all bids or proposals. In the event the city or agency elects to re-solicit the goods or services, the applicability of any provision of the SLBE program to the re-solicitation shall be determined anew.
- (8) No solicitation or contract shall be subject to any provision of the SLBE program if doing so would cause the city or agency to violate the requirements of any grant or otherwise violate any provision of state or federal law.

**Sec. 3-611. Small local business enterprise development program.**

(a) The director shall establish a small local business enterprise development program designed to assist SLBEs in identifying those organizations that have identified themselves as being able and willing to provide financial and other assistance to SLBEs including, but not limited to, bonding; financing; technical and managerial training and assistance; and referral, networking and outreach activities. The director may provide small business development services through the department but shall not provide financial assistance to any SLBE or take any action that would purport to obligate the city to guarantee or repay any debt incurred by any SLBE.

(b) The small local business enterprise development program shall include, but shall not be limited to, facilitation of the following services:

- (1) Surety bond prequalification program through a third party source; and
- (2) Working capital loans through a third party source; and
- (3) On-site construction management services; and

- (4) Technical and managerial training and assistance; and
- (5) Referral, networking and outreach activities.

**Sec. 3-613. Certification and appeals.**

(a) The director shall be responsible for all certification decisions with regard to SLBEs and shall ensure that only persons meeting the requirements for certification as an SLBE are certified as such. The director shall apply the standards within this section in making a certification decision. To the extent not otherwise inconsistent with anything contained herein, the director shall have the authority to establish rules and regulations for purposes of ensuring that only persons meeting the definition of an SLBE as provided in section 3-601(a)(17) obtain certification.

(b) All persons applying for certification or who possess certification shall be subject to an audit by the director at any time. An applicant's or certified business' refusal to facilitate an audit shall be grounds for denial of its certification application or revocation of its certification.

(c) All applicants shall be required to demonstrate that they have the skill and expertise to perform in the particular area(s) of work for which they are seeking certification.

(d) All applicants shall be required to demonstrate that they have annual gross receipts that, when added with those of its subsidiary or subsidiaries and averaged over three consecutive years, do not exceed five percent of the applicable business size standard for the SBA general contractor classification which is equivalent of the NAIC code 236220 as established in 13 CFR 121.201, as amended.

(e) All applicants shall be required to demonstrate that the business is an independent business and is not a subsidiary or affiliate of any other person.

- (1) Independence shall be determined by considering the ability of the applicant to perform satisfactorily in its area(s) of specialty without substantial reliance upon finances, resources, bonding, expertise, staff, facilities, or equipment of non-SLBEs. Recognition of the applicant as a separate and distinct entity by governmental taxing authorities is not dispositive of the applicant's assertion of independence.
- (2) Independence will be established by the degree to which financial, equipment leasing, business and other relationships with larger established firms vary from normal industry practices, and other appropriate factors.
- (3) Independence will be evaluated as of the date of application submission.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (4) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business and is not a subsidiary or affiliate of another person.

(f) All applicants and certified businesses shall submit such information or documentation as may be required by the director in connection with its certification as an SLBE, including, but not limited to current licenses and federal, state and local tax returns and schedules (business and personal), and all other forms that are required to be included with or attached to the return at the time of filing. Failure to submit such information or documentation shall result in the denial of its certification application or revocation of its certification.

(g) A certification application may be withdrawn by an applicant without prejudice at any time prior to an audit. Documentation submitted to support an application will not be returned to the applicant. An applicant may reapply for certification at any time, except that any applicant who withdraws an application for reasons relating to their ownership or control of the business shall be required to wait three months before reapplying.

(h) The applicant has the burden of demonstrating to the director, by a preponderance of the evidence, that it meets all the requirements for certification. The director shall make determinations concerning whether the applicant has met its burden by considering all the facts in the record, viewed as a whole.

(i) Certification of an applicant shall be valid for three years from the effective date of the certification and only as to the area(s) of specialty specified therein, contingent upon the annual establishment by the certified firm of its continued eligibility. The director is authorized to require SLBEs to submit yearly updates of information including, but not limited to, current licenses and federal, state and local tax returns and schedules (business and personal), and all other forms that are required to be included with or attached to the return at the time of filing.

(j) Once certified, an SLBE must notify the department in writing within 30 calendar days of any change(s) in circumstances affecting the SLBEs continued ability to meet the SLBE certification requirements or of any material change(s) in the information provided in the certification application process. The statement must include supporting documentation describing in detail the nature of any changes. If the SLBE fails to make timely notification of such change(s), it will be deemed to have failed to cooperate and it may have its certification suspended or revoked on that ground, notwithstanding the fact that the changes, if disclosed, may not have impaired the SLBEs ability to retain its certification intact.

(k) The director shall safeguard information that reasonably may be regarded as confidential business information from disclosure to unauthorized persons consistent with federal, state and local law.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

(l) The director is authorized to deny certification as an SLBE to any person not meeting the requirements for certification as such, and to suspend or revoke certifications an SLBE as provided in section 3-617.

(m) The director shall notify an SLBE or applicant for certification as an SLBE of any decision to deny, suspend or revoke that certification. Notification shall be in writing and shall indicate the basis for the director's decision. That decision shall be final, subject to the right of appeal to the fairness in city contracts board or fairness in construction board, as appropriate, and as set forth herein. The procedures shall be as follows:

- (1) Within ten business days of the date the director sends written notice of his decision, any aggrieved person wishing to appeal the director's decision shall file with the director a written notice of appeal stating the reasons for the appeal and including all supporting documentation they wish to be considered. The information or documentation submitted shall be limited to the issue(s) raised in the written notice of appeal. No new or additional information shall be considered for the appeal without a showing by the appellant that it was not available or, through due diligence, could not have been made available. The written notice must specify whether the firm wishes to appeal in writing and/or appear personally for a hearing and if they intend to be accompanied by counsel. The failure to file a written notice of appeal complying with the requirements herein shall constitute a full and complete waiver of any right to appeal or otherwise protest any decision.
- (2) Within five business days of receipt of an effective written notice of appeal, the director shall forward the notice to the chairperson or the fairness in city contracts board or chairperson of the fairness in construction board. The fairness in construction board's jurisdiction shall include appeals from certification decisions that relate to certification in area(s) of work specific to the construction trades or the supply of construction related materials. The fairness in city contracts board shall have jurisdiction over all other appeals. In the event that there is any question as to which body has jurisdiction over the appeal, the matter shall be left to the discretion of the director whose decision in that regard shall be conclusive.
- (3) Within five business days from the date of receipt of notice from the director, the respective chairperson shall set a hearing date, provided however that the hearing date will be no more than 60 days from the date notice is received from director. The chairperson shall cause notice of the hearing to be served upon all parties by certified mail. Such notice shall set forth with particularity the issues on appeal and shall include the hearing date, time and place.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

- (4) At the hearing, all parties shall be provided a fair and impartial hearing. Legal counsel may accompany the SLBE or applicant for certification as an SLBE during the hearing, speak on their behalf, respond to questions, and otherwise make a presentation. Each side will be limited to a period of 15 minutes to address the board, unless extended by the hearing officer for good cause. Reasonable accommodations will be made for those with disabilities and/or limited language proficiency. For the appeal, the burden of proof rests on SLBE or applicant for certification as an SLBE to establish that the director's decision was improper.
  - (5) The board shall, within 15 business days of the hearing or within 15 days of the deadline set by the hearing officer for the submission of any additional documentation, if applicable, make a written decision on the appeal, which decision shall affirm, alter, or reverse the director's decision. Written notice of the decision on the appeal shall be sent to all parties by mail setting forth the reasons for the decision. The decision of the board shall be binding on all parties, subject to the right of appeal as provided by law.
  - (6) Any person receiving a decision upholding the director's decision to deny or revoke certification as an SLBE shall be ineligible to reapply for SLBE certification for one calendar year from the later of the date the board's decision was issued, or the final date of any court decision.
- (n) An SLBE shall be graduated from the SLBE program as follows:
- (1) If the annual gross receipts of the SLBE when added with those of its subsidiary or subsidiaries and averaged over three consecutive years exceed five percent of the applicable business size standard for the SBA general contractor classification which is equivalent of the NAIC code 236220 as established in 13 CFR 121.201, as amended, the SLBE shall graduate from the SLBE program.
  - (2) An SLBE shall graduate from the SLBE program without regard to annual gross receipts ten years after the date it is first certified as an SLBE.
  - (3) The director shall notify an SLBE in writing that it has graduated from the SLBE program.
- (o) Notwithstanding any anything within this section to the contrary, no SLBE shall be entitled to appeal any decision to remove or otherwise deny a renewal of certification on the grounds that the SLBE has graduated from the SLBE program due to the expiration of the ten-year certification period as provided in subsection (n)(2).

**Sec. 3-615. Duties and authority of director.**

(a) The director is hereby authorized to establish rules and regulations to implement the SLBE program. This authorization shall include, but not be limited to, authority to establish a uniform application fee to be paid by any person requesting certification as an SLBE, provided however that the application fee shall not exceed the costs reasonably expected to be incurred by the department in certifying an SLBE.

(b) The director shall, in addition to any other duties specified herein:

- (1) Administer and enforce the SLBE program;
- (2) Update the SLBE directory available to the general public, city departments and agencies;
- (3) Assist city departments and agencies in finding qualified SLBEs to participate in the SLBE program;
- (4) Identify appropriate contracting opportunities for qualified SLBEs;
- (5) Publish an annual department and agency report for the city's fiscal year detailing the results of the SLBE program; and
- (6) Provide a semi-annual compliance report to the city manager, the fairness in construction board and the fairness in city contracting board that discloses the total contract dollars awarded to SLBEs and total dollar value of bid incentives awarded to SLBEs.
- (7) Develop and maintain relationships with organizations representing contractors, including small business organizations, and solicit their support for the SLBE program.

(c) Every city department and agency shall maintain and provide the director such information as may reasonably be requested for purposes of monitoring the total contract dollars awarded to SLBEs and total dollar value of bid incentives awarded to SLBEs.

(d) Each department director shall cooperate in providing the director the information necessary to publish an annual report.

**Sec. 3-617. Penalties for noncompliance; no retaliation.**

(a) The director is authorized to recommend suspension, revocation, sanction or debarment of any contract or contractor, as appropriate, for providing false or misleading information regarding the SLBE program to the department, purposefully omitting or

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 130041

refusing to provide information requested by the department, or otherwise violating any provision of the SLBE program.

(b) The director is authorized to suspend or revoke the certification of an SLBE, as appropriate, for providing false or misleading information to the department, purposefully omitting or refusing to provide information requested by the department, or otherwise violating any provision of the SLBE program, without having to make a recommendation to any other person or department.

(c) Sanctions shall be imposed in conformity with any applicable federal, state or local laws. In determining whether to suspend or revoke the certification of an SLBE, the director shall consider the following factors:

- (1) Whether the failure to comply with applicable requirements involved intentional misconduct or, alternatively, may be reasonably concluded to have resulted from a misunderstanding on the part of the SLBE;
- (2) The number of specific incidents of failure by the SLBE;
- (3) Whether the SLBE has been previously suspended;
- (4) Whether the SLBE has failed or refused to provide the director with any information requested by the director or required to be submitted to the director pursuant to law or these procedures;
- (5) Whether the SLBE has materially misrepresented any applicable facts in any filing or communication to the director; and
- (6) Whether any subsequent restructuring of the subject business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.

(d) Suspensions may be for any length of time not to exceed five years. Suspensions in excess of one year and revocations of certification shall be reserved for cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in contravention of applicable requirements, cases where the SLBE has been previously suspended, or other similarly egregious conduct.

(e) The making of any false or misleading statements shall be grounds for application of any applicable criminal and or civil penalties in addition to the grounds for sanction.

(f) No person shall intimidate, threaten, coerce or discriminate against any individual or business for the purpose of interfering with the implementation or enforcement of any provision of the SLBE program because such individual or business filed a complaint or cooperated in the investigation of a complaint.

**Sec. 3-619. Coordination with fairness boards.**

In addition to semi-yearly reports, the director shall consult from time-to-time with the fairness in city contracts board and the fairness in construction board for the purpose of reporting on the implementation of the SLBE Program and identifying methods by which the city may increase the participation of SLBEs in eligible contracts. The boards may make recommendations to the director with regard to the small local business enterprise development program.

**Sec. 3-621. Severability clauses.**

The provisions of this Division are severable. If any provision or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remaining provisions, including the application of such provisions to other persons or circumstances, shall continue in full force and effect.

**Secs. 3-622—3-700. Reserved.**

Section 7. That this ordinance shall become effective on May 1, 2013.

Section 8. That all contracts entered into by the city prior to the effective date of this ordinance shall continue in full force and effect and shall be carried to completion in accordance with the provisions of those ordinances in effect as of the date upon which such contracts became effective.

Section 9. That any contract solicitation or award having commenced prior to the effective date of this ordinance or otherwise pending or under consideration by the city council prior to the effective date of this ordinance shall remain unaffected and may be acted upon and disposed of as if they had originated and been introduced under the provisions of this ordinance.

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Approved as to form and legality:

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Brian T. Rabineau  
Assistant City Attorney