



## Legislation Text

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**File #:** 210645, **Version:** 1

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### ORDINANCE NO. 210645

Amending various sections of Chapter 2, “Administration,” Chapter 3, “Contracts and Leases,” and Chapter 38, “Human Relations,” for the purpose of changing the name of the Human Relations Department to the Civil Rights and Equal Opportunity Department.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 2 of the Code of Ordinances entitled “Administration” is hereby amended by repealing Sections 2-141, 2-551, 2-552, 2-553, 2-554, 2-1902, and 2-1903, and enacting in lieu thereof new sections of like number and subject matter to read as follows:

**Sec. 2-141. Reorganization of departmental duties.**

*(a) Findings.*

- (1) The city is called upon to perform a multitude of functions.
- (2) The organizational structures appropriate to the most efficient and effective delivery of services can quickly change depending upon forces and pressures outside the complete control of the city.
- (3) From time to time the council has established new departments to meet important needs of the time.
- (4) For the city manager to possess the necessary discretion to organize city government to best meet the current needs of the city's residents, the ability to shift certain responsibilities between departments from time to time, either on a temporary or permanent basis, is necessary.
- (5) When established by ordinance, the functions of departments are intended to constitute the initial assignment of duties, but are not intended to preclude later transfer of duties.

*(b) Purpose.* The purpose of this section is to permit the city manager to modify the assignment of duties among departments, except when the city charter mandates a specific responsibility be held by a certain department, or its successor.

*(c) Authority of the city manager.*

- (1) *Transfer of duties.* The city manager is authorized to transfer duties or activities among departments within his management control, subject to the limitations below.

- (2) *Purpose of transfers.* Such transfers may be made when the city manager finds reassignment of duties or activities should improve the efficiency or effectiveness of the service or activity.
- (3) *Limitation--Express prohibition.* Establishment of duties for specific departments by the council shall not preclude reassignment by the city manager unless those duties or activities are assigned to the Civil Rights and Equal Opportunity Department by ordinance, resolution or contract or expressly prohibited in the ordinance mandating an activity be performed by a specific department.
- (4) *Limitation--City Charter.* The city manager may not transfer the duties and activities of departments made by the people through the City Charter.

(d) *Council notification.* Before effecting a transfer of duties and activities of departments, the city manager will inform the city council by reporting to a standing committee of the council designated by the mayor for that purpose.

#### **Sec. 2-551. Establishment.**

There is hereby established a department to be known as the civil rights and equal opportunity department.

#### **Sec. 2-552. Appointment and designation of director.**

The civil rights and equal opportunity department shall be under the supervision, control and management of a director to be appointed by the city manager, and to be known as the director of the civil rights and equal opportunity department.

#### **Sec. 2-553. Qualifications of director.**

The director of civil rights and equal opportunity shall be a person skilled and experienced in the science of human relations, and shall possess executive and administrative ability.

#### **Sec. 2-554. Duties of director.**

The director of civil rights and equal opportunity shall be responsible for the management and operation of the civil rights and equal opportunity department, and shall perform such other duties as may from time to time be imposed upon him or her by the city council by ordinance.

#### **Sec. 2-555. Personnel; assistance to advisory commission on civil rights and equal opportunity.**

The director of civil rights and equal opportunity shall appoint such subordinates and clerical employees as may be required to carry out the duties and functions of the department as established by ordinance, for whom appropriation of funds may be made by the city council from time to time, and shall furnish the advisory commission on civil rights and equal opportunity such clerical assistance as required for the performance of its duties.

#### **Sec. 2-1902. Responsibility for development of program; implementation of program.**

The director of human resources jointly with the director of civil rights and equal opportunity shall be responsible for the development and administration of a comprehensive affirmative action program, and, when the program, together with such rules and regulations as are described in this article, shall have been adopted by ordinance duly passed by the council of the city, they shall have the force and effect of an enactment of the council.

### **Sec. 2-1903. Rules and regulations for administration and enforcement.**

The director of human resources jointly with the director of civil rights and equal opportunity shall have power to adopt, promulgate, amend and enforce rules and regulations relating to the administration and enforcement of the affirmative action program. A true copy of the rules and regulations promulgated by the directors of human resources and civil rights and equal opportunity as authorized in this section shall be filed in the office of the director of records upon approval by the council and shall be available at all times for inspection by interested persons. Copies of the rules and regulations may be obtained from the director of records by payment of a proper charge therefor.

Section 2. That Chapter 3 of the Code of Ordinances entitled "Contracts and Leases" is hereby amended by repealing Sections 3-401, 3-403, 3-421, 3-429, 3-449, 3-461, 3-463, 3-501, 3-509, 3-601, 3-603, and 3-622 and enacting in lieu thereof new sections of like number and subject matter to read as follows:

### **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.
- (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 civil rights and equal opportunity.
- (10) *Director* means the director of the civil rights and equal opportunity department or such director's delegate.
- (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.
- (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 civil rights and equal opportunity department prior to receiving its first payment under the contract, unless a copy thereof shall have already been submitted to the civil rights and equal opportunity 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 civil rights and equal opportunity department prior to receiving its first payment under the contract, unless a copy thereof shall have already been submitted to the civil rights and equal opportunity 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 civil rights and equal opportunity 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 civil rights

and equal opportunity department within thirty (30) days from the date the subcontract is executed.

### **Sec. 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) *Award of contract*: Execution of a contract and, if necessary, city council or park board authorization.
- (3) *Bid*: An offer to enter into a contract submitted pursuant to an invitation for bid.
- (4) *Bidder*: Any person who submits a bid to the city or an incentive agency in response to an invitation for bid.
- (5) *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.
- (6) *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.
- (7) *Board or boards*: Fairness in construction board, fairness in professional services and goods board, or both, as applicable.
- (8) *Budget*: The total costs reflected within a contract for which MBE/WBE goals are to be set pursuant to this division.
- (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:
  - 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 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, of which any amount is paid for out of city or agency funds.
- (13) *Contract:* Any contract more than \$300,000.00, and all other city or agency contracts more than \$160,000.00 the majority of either of which is paid for out of city funds or in which an incentive 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 incentive agency.
- (15) *Contractor utilization plan or CUP*: 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 civil rights and equal opportunity department or the division within the city manager's office that is assigned to perform the tasks delegated to the civil rights and equal opportunity department by this division.
- (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.
- (19) *Developer*: Entity seeking tax increment financing or city tax abatement incentives from an incentive agency described in subsection 3-425(b) or 3-425(c).
- (20) *Director*: The director of the civil rights and equal opportunity department or his authorized representative, or the person designated by the city manager to perform the tasks delegated to the director of the civil rights and equal opportunity department by this article.
- (21) *Disadvantaged business enterprise (DBE)*: A business concern that meets the federal requirements for certification as a DBE.
- (22) *Economic disadvantage*: A diminished ability to compete in the free enterprise system due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are found to be socially disadvantaged. In determining whether an individual is economically disadvantaged, the director shall follow the guidance provided in appendix E to 49 CFR Part 26.
- (23) *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.
- (24) *Goal*: A numerical objective stated as a percentage of contract dollars for participation by qualified MBEs and WBEs in contracts.
- (25) *Incentive agency or agency*: Each of the commissions, agencies and authorities described in subsection 3-425(b) or 3-425(c), or any entity with the authority to recommend to the city tax increment financing or tax abatement.



- (26) *Incentive agency head*: Person authorized to act on behalf of an incentive agency.
- (27) *Incentive project*: A project receiving tax increment financing or tax abatement or exemption from an incentive agency pursuant to contracts described in sections 3-425(b) and 3-425(c).
- (28) *Invitation for bid*: A request or invitation for submission of an offer to enter into a contract pursuant to a competitive bidding process.
- (29) *Kansas City metropolitan area*: The Missouri counties of Cass, Clay, Jackson and Platte and the Kansas counties of Johnson, Leavenworth and Wyandotte.
- (30) *Letter of intent to subcontract*: A document, in a form prescribed by the director that demonstrates the prime contractor or developer's intent to enter a contractual agreement with a selected MBE/WBE.
- (31) *M/W/DBE Kansas City Mo. online directory or directory*: A source list compiled, maintained and updated by the civil rights and equal opportunity department containing (when provided) the names, mailing addresses, e-mail addresses and facsimiles of certified MBE/WBE/DBEs and the NAICS codes denoting scopes of work for which each such MBE/WBE/DBE is certified, which MBE/WBE/DBEs are 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.
- (32) *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.
- (33) *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
  - 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; or

- e. On a case-by-case basis, an individual found by the director to have been subjected to individualized prejudice or cultural bias within American society within the city's marketplace and has demonstrated economic disadvantage and social disadvantage as defined in this section.

(34) *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 as subsequently amended and this division; and
- d. Performs a commercially useful function; and
- e. Is certified by the civil rights and equal opportunity department.

Beginning October 1, 2020, a for-profit small business concern must meet the following additional criteria to qualify as an MBE:

- f. Whose owner's or, for businesses with multiple owners, each individual owner's personal net worth (as defined in this section) is equal to or less than the permissible personal net worth amount determined by the U.S. Department of Transportation to be applicable to its DBE program.

Submission of documentation evidencing that an owner meets this personal net worth criteria shall begin on July 1, 2020 and be completed by August 1, 2020.

Only persons meeting each of the above criteria shall be deemed an MBE for purposes of this division. In order to be credited towards the goals on a particular solicitation for a particular scope of work, the MBE shall be certified as of or listed on the directory on the date a contractor utilization plan is submitted.

(35) *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.

(36) *Personal Net Worth*: The net value of the assets of an individual after total liabilities is deducted. An individual's personal net worth does not include the individual's ownership interest in a

certified M/WBE or applicant for such certification or the individual's equity, if any, in his or her primary place of residence. An individual's personal net worth includes only his or her share of assets held individually or jointly with the individual's spouse.

- a. Except as set forth in subsection b., an individual's personal net worth also includes any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is the individual or an immediate family member, or to the certified M/WBE or applicant firm for less than fair market value, within two years prior to an application for certification as an M/WBE or within two years of submission of the firm's annual affidavit, unless the individual can demonstrate that the transfer is to or on behalf of an immediate family member for that family member's education, medical expenses, or some other form of essential support.
  - b. Any assets transferred by an individual to an immediate family member that are consistent with the customary recognition of special occasions, such as, but not limited to, birthdays, graduations, weddings, anniversaries, and retirements shall not be included in the personal net worth calculation.
- (37) *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 cities classified or unclassified service.
  - (38) *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 minority or woman individual owner who manages and controls the day-to-day operations spends the majority of his/her working hours.
  - (39) *Proposal*: Any offer or list of qualifications submitted to the city in response to a request for proposal.
  - (40) *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.
  - (41) *Qualified*: Possessing the demonstrated ability to perform the contracted task.
  - (42) *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.
  - (43) *Social disadvantage*: A diminished ability to compete in the free enterprise system due to at least one objective, distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, sexual orientation, or disability. In determining whether an individual is socially disadvantaged, the director shall follow the guidance in appendix E to 49 CRF Part 26.
  - (44) *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.

(45) *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 equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business.

(46) *Woman*: A person who is a citizen or lawful permanent resident of the United States and who is a female.

(47) *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
- 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 division; and
- d. Performs a commercially useful function; and
- e. Is certified by the civil rights and equal opportunity department; and

Beginning October 1, 2020, a for-profit small business concern must meet the following additional criteria to qualify as a WBE:

- f. The owner's or, for businesses with multiple owners, each individual owner's personal net worth is equal to or less than the permissible personal net worth amount determined by the U.S. Department of Transportation to be applicable to its DBE program.

Submission of documentation evidencing that an owner meets this personal net worth criteria shall begin on July 1, 2020 and be completed by August 1, 2020.

Only persons meeting each of the above criteria shall be deemed a WBE for purposes of this division. In order to be credited towards the WBE goals on a particular solicitation for a particular scope of work, the WBE shall be certified as of or listed in the directory on the date a contractor utilization plan is submitted.

### **Sec. 3-429. City department and incentive agency MBE/WBE utilization plan.**

(a) Each city department and incentive 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 incentive 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 incentive agency's total fiscal year contract expenditures; and

- (2) Any other information that the city department or incentive agency or the director deems relevant or necessary.

(b) A city department or incentive 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 incentive agency shall utilize the methodologies described in this division 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 incentive agencies shall encourage eligible businesses to:

- (1) Apply to the city's 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 in the directory; and
- (3) Seek pre-qualification when applicable; and
- (4) Compete for city business as prime contractors, subcontractors and suppliers.

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

- (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 city department, 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 civil rights and equal opportunity or his or her designee will work with the city department to identify prohibiting factors and offer any assistance necessary to successfully implement this minority and women business enterprise program.

### **Sec. 3-449. Fairness in professional services and goods board.**

(a) Establishment and authority. There is hereby established a fairness in professional services and goods board. The board's authority is limited to bids, proposals and contracts for professional services, other

services, goods, materials and supplies, (other than construction materials and supplies) for the city or an incentive project in which the estimated cost of such professional services, other services, goods, materials and supplies is more than \$160,000. The board shall set goals to increase the utilization of MBEs/WBEs in professional services contracts, other services contracts, goods, materials and supplies contracts (other than construction materials and supplies), to make determinations as to whether good faith efforts have been made and the assessment and amount of liquidated damages on incentive agency projects when the applicable agency and the director fail to mutually agree, and has the authority to hear and investigate appeals on city contracts as set forth in section 3-450.

(b) Board composition. The board shall be composed of seven members (including a chairperson) and six alternates, all appointed by the mayor and all of whom shall be industry experts in the areas of professional services, general services and goods and materials.

(c) Term. The terms of all board members shall be for a period of four years; however, all members shall continue in office as such until the respective successors shall have been appointed.

(d) 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.

(e) Absence of chairperson. 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.

(f) Ineligibility. The following persons are ineligible to serve on the 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 city metropolitan area or is appointed to represent the interests of an organization that maintains an office in the city metropolitan area.

(g) 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.

(h) Quorum. Four members of the board shall constitute a minimum quorum.

(i) Convening the board. The board shall be appointed and first convene no later than February 1, 2019. The goal-setting responsibilities of the board as stated in section 3-450(a) will be performed by the director or the civil rights and equal opportunity department until such time as the board is convened.

### **Sec. 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 civil rights and equal opportunity department shall not be regarded as an MBE, WBE, or mentor/protégé program under this division.

(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 entity seeking certification as an MBE/WBE must demonstrate by written documentation or affidavit that it's owner or individual owner's personal net worth (as defined in this section) is equal to or less than the permissible personal net worth amount determined by the U.S. Department of Transportation to be applicable to its DBE programs. Entities seeking certification as an MBE/WBE shall submit all information or documentation requested by the city's civil rights and equal opportunity department in determining whether the entity complies with this subsection.

(d) 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's principal office or place of business has been in existence in the Kansas City metropolitan area at least six months 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.

(e) 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.

(f) 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.

(g) 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 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.

(h) 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.

(i) 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.

(j) 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. An entity may be simultaneously certified as an MBE or WBE if it meets all criteria for both MBE and WBE certification

(k) 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.

(l) 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.

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:
  - a. The owner's expertise must be:
    1. In a specialized field; and
    2. In areas critical to the firm's operations; and
    3. Indispensable to the firm's potential success; and
    4. Specific to the type of work the firm performs; and
    5. 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:
    1. Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm; or
    2. Involved in the same or a similar line of business; or
    3. Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.
  - 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:
    1. The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as an MBE/WBE; and
    2. 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
- 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.

(m) 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 and 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., 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 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 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-à-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 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.

- (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 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.

(n) 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.

(o) 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.

(p) 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.

(q) 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.

(r) Appeals of denials of certification.

(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 re-consideration of a denial of MBE/WBE certification.



(s) *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 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. 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.

(t) 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.

(u) 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 division. Such an MBE or WBE and any affiliate that has exceeded the graduation criteria in one 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.

### **Sec. 3-463. Duties and authority of director.**

(a) The director is hereby authorized to establish rules and regulations to implement this division which rules and regulations shall be submitted to the city council for its approval and shall be in writing and published.

(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 division. 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

incentive agencies including establishment of goals, except goals to be established by the applicable Board, 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 incentive agencies no less frequently than every three (3) months; and
- (4) Assist city departments incentive agencies, bidders, proposers, contractors and developers 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
  - 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 civil rights and equal opportunity 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) Provide monthly compliance reports to the applicable incentive agency for contracts entered into in connection with sections 3-425(b) and 3-425(c) updating the incentive agency as to the project developer's compliance with the M/WBE goals and work with the applicable incentive

agency to assist developers who are not compliant. Failure of the director to furnish these reports does not absolve incentive agency or developer from complying with the processes outlined by agreement with the incentive agency; and

- (9) Provide the city council a report outlining the effects of any revisions to this division within 18 months of their effective date. The purpose of this report is to ensure that such revisions promote increased opportunities for minority or women business enterprise participation on contracts.
- (10) Develop and maintain relationships with organizations representing contractors, including minorities and women organizations, and solicit their support for the city's program; and
- (10) Furnish staff assistance to the boards established in this division. This shall include but not be limited to providing to the boards 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
- (11) Implement any federal or state minority business enterprise program required by law or federal or state contract; and
- (12) Appoint a designated neutral hearing examiner for certification revocation hearings.

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

(a) The following definitions apply to sections 3-501 through 3-527:

- (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 \$300,000.00 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 contract's 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 minorities and women working under the city construction contract and on construction projects in the metropolitan statistical area during the term of the city construction contract, unless otherwise waived by the director or the Construction Workforce Board on appeal from a determination of the director.
- (7) *Construction employment program* means a program enacted by ordinance regarding the recruitment, training, mentoring and retention of employees, including apprentices and journeymen, on construction projects. The term "construction employment program" shall also mean construction 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, and to cause the subcontractors of every tier 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 civil rights and equal opportunity 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 civil rights and equal opportunity department by this article.
- (13) *Equal opportunity clause* means a statement prohibiting discrimination on construction projects based on race, color, sex, sexual orientation, gender identity, age, national origin, or ancestry, religion, or disability as proscribed in the Kansas City Code of Ordinances, chapter 38, article III, section 38-103.
- (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 3-501-3-527, the construction contractor, the subcontractors of any tier, or both, were unable to achieve the minimum construction employment goals.
- (15) *Incentive construction employment goal* means an aspirational goal for company-wide employment of minorities and women intended to encourage 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 construction 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.

- (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) *Minority* means 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
  - 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.
- (20) *Resident* means an individual residing or domiciled within the city.
- (21) *Woman* means a person who is a citizen or lawful permanent resident of the United States and who is a female.
- (22) *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. 3-509. City sponsored recruitment of existing construction workforce.**

(a) The city shall partner with labor unions, community-based organizations, and employment referral 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 or jobs requiring prior construction labor experience; and
- (2) Establishing a first source program intended to give residents of the city the first opportunity to apply, be interviewed and be hired on city construction contracts; and
- (3) 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 or request for proposals 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.

- (4) 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
- (5) Collaborating with labor unions, contractors and their respective associations to determine information that may be reasonably required of prospective workers.
- (6) 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.
- (7) 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 the department's website to assist construction contractors in identifying those subcontractors that can assist the construction contractor in meeting the construction employment goals.
- (8) Submitting monthly reports to the Construction Workforce Board stating the number of resident, minority and women construction labor hours performed by construction contractors and their subcontractors, in a format acceptable to the Construction Workforce Board.



**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 civil rights and equal opportunity department, or the division within the city manager's office that is assigned to perform the tasks delegated to the civil rights and equal opportunity 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 civil rights and equal opportunity department or his authorized representative, or the person designated by the city manager to perform the tasks delegated to the civil rights and equal opportunity 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 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
  - 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 civil rights and equal opportunity department as a small local business enterprise.
- (18) *SLBE directory.* A source list compiled by the civil rights and equal opportunity 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 civil rights and equal opportunity. 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. 3-622. Prevailing Wage Application to Incentive Plans.**

(a) For any new development plan, or substantial modification to an existing plan, that is approved by the city council or any economic development agency created by the city and that seeks ad valorem real and personal property tax abatement, exemption or redirection, the developer, redeveloper or other entity that applies for approval of such plan or modification shall pay or cause to be paid a Prevailing Wage Rate to all workmen performing work as a part of the construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair of any project for which the total project cost exceeds seventy-five thousand dollars conducted as part of the plan.

(b) For the purposes of this section, Prevailing Wage Rate shall be determined as set forth in Sections 290.210 to 290.340 of the Revised Statutes of Missouri.

(c) The director of the civil rights and equal opportunity department of the city shall promulgate rules and regulation as are necessary to carry out the provisions of this section. All such rules and regulations shall be provided to the economic development agencies created by the city and authorized to approve tax abatement, exemption or redirection within 10 days of their promulgation.

(d) Notwithstanding the foregoing provisions of this section, the City Council and any economic development agency created by the City shall retain the discretion to authorize the abatement, redirection or exemption, in whole or in part, of ad valorem real property taxes to the full extent authorized by any provision of law. The City Council shall give particular consideration to the following exceptions

("Extraordinary Qualifications") in determining whether to authorize any abatement or exemption structure, or approve any development plan providing for incentives to be conveyed on a project-specific basis that is not in compliance with this section:

- (1) Projects located in a severely distressed census tract that has continuously maintained such status for not less than ten (10) years immediately prior to the effective date of the request; or
- (2) Projects that support affordable housing and extremely affordable housing by meeting the requirements of Committee Substitute for Ordinance No. 201038, as Amended, for such housing.
- (3) Projects that connect residents living in continuously distressed census tracts to new employment opportunities by:
  - (i) providing at least 100 new entry-level jobs to Kansas City with an annual salary of at least \$32,000, or \$42,000 inclusive of wages and benefits; and
  - (ii) incorporating options for mass public transportation or locating in an established high-frequency transit corridor.
- (4) Projects that involve the renovation or rehabilitation of a building has been designated by a government entity as a local or national historic landmark or contribute to a historic district, or projects that have filed an application with the National Park Service to be placed on the National Register of Historic Places, in which case the exclusion would be subject to such designation being approved.

Determination of eligibility for Extraordinary Qualifications shall be made upon receipt by the City or any economic development agency created by the City of an application or request for ad valorem real and personal property tax abatement, exemption or redirection.

(e) This section shall apply only to projects that have not yet submitted an application for the abatement, redirection or exemption of taxes and shall not be construed in a manner as to apply to any tax abatement or transaction authorized by the City or any other public entity prior to May 14, 2021. Notwithstanding the foregoing, the requirements of this ordinance shall be imposed on any project that has submitted an application for the abatement, redirection or exemption of taxes prior to its effective date but has not received final approval from the relevant authorizing body within three years of May 14, 2021.

Section 3. For any new development plan, or substantial modification to an existing plan, that is not required to have approval of the City Council and that seeks ad valorem real and personal property tax abatement, exemption or redirection, the City Council recommends that any economic development agency created by the City, including Port KC, shall only approve abatements, exemptions or redirections for projects that a prevailing wage rate is paid to all workmen performing work as a part of the construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair of any project if the total project cost exceeds seventy-five thousand dollars.

Section 4. That this ordinance shall have an effective date of May 14, 2021, which is an additional 60 days beyond the minimum effective date established by the City Charter.

Section 5. That Chapter 38 of the Code of Ordinances entitled “Human Relations” is hereby amended by changing the name to “Civil Rights” and repealing Sections 38-1, 38-21, 38-43, 38-63, 38-65, and 38-113 and enacting in lieu thereof new sections of like number and subject matter to read as follows:

**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.
  - 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 civil rights and equal opportunity.
- (9) *Director* means the director of the civil rights and equal opportunity 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
  - 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,
  - 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 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.

#### **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 or she 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 civil rights and equal opportunity. 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 or she 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.
- (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. 38-43. Powers and duties.**

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

(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.

(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 civil rights and equal opportunity 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.

(n) The chairperson may appoint hearing review panels composed of not less 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

<[http://library.municode.com/HTML/10156/level2/PTIICOOR\\_CH38HURE.html](http://library.municode.com/HTML/10156/level2/PTIICOOR_CH38HURE.html)>, 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.

#### **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 civil rights and equal opportunity 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 civil rights and equal opportunity 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 civil rights and equal opportunity department. The director of civil rights and equal opportunity 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 civil rights and equal opportunity, 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.

#### **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 civil rights and equal opportunity 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.

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Approved as to form and legality:

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Dustin E. Johnson  
Assistant City Attorney