

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY VICE MAYOR KAPLAN, COUNCIL PRESIDENT FORTUNATO
BAS, PRESIDENT PRO TEM THAO, AND COUNCILMEMBER FIFE

**RESOLUTION TO ADVANCE EQUITY AND BETTER UNDERSTAND
DISPARITIES BETWEEN THE AVAILABILITY AND UTILIZATION OF
BLACK, INDIGENOUS, AND PEOPLE OF COLOR, AND WOMEN
OWNED BUSINESSES IN THE CITY OF OAKLAND BY ADOPTING THE
UPDATED 2019 RACE AND GENDER DISPARITY STUDY CONDUCTED
BY MASON TILLMAN ASSOCIATES LTD AND DIRECT THE CITY
ADMINISTRATION TO IMPLEMENT THE RECOMMENDATIONS TO
REMEDY THE DISPARITIES ILLUSTRATED WITHIN THE STUDY**

WHEREAS, Oakland voters in 1996 added Section 808(b) to the City Charter, obligating the City of Oakland to conduct a race and gender disparity evaluation to determine if the City had been an active or passive participant in actual, identifiable discrimination; and

WHEREAS, in September 2005, the City of Oakland and Redevelopment Agency commissioned the Fairness in Purchasing and Contracting Disparity Study authorized by Resolution No. 79385 C.M.S., and selected Mason Tillman Associates Ltd. ("Mason Tillman") to conduct the study; and

WHEREAS, since the completion of the initial race and gender Disparity Study, which studied contracts awarded from 2002-2005, the City did not conduct a new analysis and inquiry until 2017, which was then updated in 2019; and

WHEREAS, the updated 2019 disparity study reviewed contracts and subcontracts that were awarded between 2011 and 2016, where researchers compared the proportion of contract dollars awarded to Black, Indigenous, and People of Color (BIPOC) and women-owned businesses to the proportion of available BIPOC and women-owned businesses in the relevant market area; and

WHEREAS, the study conducted statistical tests to calculate the contract dollars each race and gender group was expected to receive, based on each group's availability in the market area. Researchers subsequently computed the difference between each race and gender group's expected contract amount and the actual contract amount received by each group. The disparity ratio was then calculated by dividing the actual contract amount by the expected contract amount; and

WHEREAS, in the study, the data were disaggregated into 7 different groups to analyze disparities - African American, Asian Pacific American, Asian Indian American, Hispanic American, Native American, Caucasian Female, White Male, Minority-owned business, and Women-owned business; and

WHEREAS, the City issued 7,780 prime contracts during the study period, 530 of which were for construction, 1,509 for professional services, 1,454 for services, and 4,287 for goods and commodities; and

WHEREAS, the payments made by the City during the study period totaled over \$566 million dollars for all prime contracts, approximately \$272 million for construction, \$122 million for professional services, \$61 million for services, and \$112 million for goods and commodities; and

WHEREAS, Mason Tillman also analyzed 289 construction and 25 professional services subcontracts, altogether totaling over \$25.2 million subcontract dollars awarded between the 2011 to 2016 study period; and

WHEREAS, following the legal framework in the Supreme Court ruling *City of Richmond v. J.A. Croson Co.*, the updated 2019 Disparity Study concluded there was clear, statistical evidence that preference has been given by the City and its prime contractors in the selection of white, male-owned businesses; and

WHEREAS, African Americans experienced statistically significant disparities among prime contract awards across all four industry sectors for both smaller contract awards (under \$50,000) and larger contract awards (\$50,000 to \$780,000); and

WHEREAS, specifically - despite African Americans comprising 16.51% of available businesses in construction, they were awarded only .32% of contracts by percent of dollars; despite African Americans comprising 9% of available businesses in professional services, they were only awarded .91% of contracts by percent of dollars; despite African Americans comprising 11.66% of businesses in services, they were awarded only 1.54% of contracts by percent of dollars; and despite African Americans comprising 9.86% of available businesses in goods and commodities, they were awarded only .43% of contracts by percent of dollars; and

WHEREAS, the analysis revealed that Local Business Enterprise-certified African American businesses lost \$42,862,662 in City contracts during the study period (see page 10-21); and

WHEREAS, in addition, there was a statistically significant underutilization of Hispanic businesses in prime contracts for services, and a statistically significant underutilization of Hispanic women in awards of goods and commodities prime contracts; and

WHEREAS, there was a statistically significant underutilization of Asian American and Pacific Islander business in prime contracts for services, and goods and commodities; and

WHEREAS, the study also revealed, when researchers disaggregated the data by gender within races, women of color were consistently and significantly underutilized in contracting across all four industries; and

WHEREAS, on average, 8% of selected businesses across the four industry categories that received prime contracts received 70% of all total prime contract dollars, illustrating that a very small group of prime contractors received a majority of money awarded by the City; and

WHEREAS, within the anecdotal evidence portion of the study, interviewees cited the use of preferred contractors or “the good old boy network” for creating a barrier for BIPOC and Women-owned businesses on the City’s contracts; and

WHEREAS, many interviewees reported on instances of discriminatory behaviors by the City and the prime contractor community which prevented them from receiving construction contracts from the City and their prime contractors; and

WHEREAS, the study, as set forth in *Croson*, presents both race/gender-conscious and race/gender-neutral recommendations based on identified statistical findings of discrimination in Chapter 10, Section VI. Implementation of Race and Gender Conscious Remedies and Section VII. Race and Gender-Neutral Remedies; and

WHEREAS, the Study’s recommendations are narrowly tailored as a result of the strong evidentiary framework Mason Tillman provided in their analysis, and in compliance with *City of Richmond v. J.A. Croson Co.*, federal law applicable to race-based programs, and the California Constitution; and

WHEREAS, on March 1, 2022, the City Council passed Resolution No. 89058 C.M.S. authorizing the City Administrator to award a new contract to Mason Tillman to conduct an updated Disparity Study analyzing data from 2016 to 2021; and

WHEREAS, the Disparity study was submitted in 2020 and analyzes data collected from 2011 to 2016. The data provided in the study is the most current evidence the city has available, and provides the appropriate factual predicate under case law in regards to challenges to race-conscious programs. Therefore, delaying or rejecting the adoption of the Disparity Study due to issues regarding staleness of data is not supported by federal case law; and

WHEREAS, remedying the inequities between Black, Indigenous, and People of Color (BIPOC) and women owned businesses compared to white males is an enduring and structural challenge which necessitates constant attention and immediate action; now, therefore, be it

RESOLVED: That the City Council hereby adopts the Updated 2019 Race and Gender Disparity Study, and be it

FURTHER RESOLVED: That the City Administration shall implement the recommendations provided within the study to remedy disparities

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO,
PRESIDENT FORTUNATO BAS
NOES –
ABSENT –
ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California