



# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** Mary Mayberry  
Interim Director, Department  
of Workplace and  
Employment Standards

**SUBJECT:** Ordinance to Amend Ordinance No.  
13647 C.M.S. Requirements for  
L/SLBE Certification

**DATE:** June 2, 2022

City Administrator Approval 

Date: Jun 22, 2022

## **RECOMMENDATION**

**Staff Recommends That The City Council Adopt An Ordinance Amending Ordinance No. 13647 C.M.S., Which Amended Certification Requirements in Oakland's Local and Small Local Business Enterprise (L/SLBE) Program, To Revise and Correct Certification Requirements.**

## **EXECUTIVE SUMMARY**

On May 4, 2021, the City of Oakland adopted Ordinance No. 13647 C.M.S. which, among other things amended local business certification criteria and requirements, in the City's Local and Small Local Business Enterprise Program (L/SLBE). District 6 Councilmember Loren Taylor and City staff found that the City's program contained several areas warranting revision to better address the needs of the business community. Specifically, the Ordinance revised Oakland's L/SLBE program provisions to change local and small local trucking participation requirements, add new local business categories and certification criteria, change the definition of "substantial presence," define "local-based manufacturer", add and change bid discounts, limit modifications to L/SLBE schedules after bid opening, and provisions related to disposition and development agreements and cooperative agreements, and update the list of applicable schedules. After its enactment, staff noted that there were some clerical issues that adversely impacted the City's ability to certify local and small local businesses. For that reason staff requested that the clerical issues be addressed by Council to alleviate the impediments.

## **BACKGROUND / LEGISLATIVE HISTORY**

On May 4, 2021, the City Council enacted Ordinance No. 13647 C.M.S., amending Ordinance No. 13101 C.M.S., which revised Oakland's L/SLBE program provisions, to change local and

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small local trucking participation requirements, add new local business categories and certification criteria, change the definition of "substantial presence," define "local-based manufacturer", add and change bid discounts, limit modifications to L/SLBE schedules after bid opening, and provisions related to disposition and development agreements and cooperative agreements, and update the list of applicable schedules.

Once implementation of these changes occurred, staff discovered that there were some "unintended consequences" resulting from implementation of the changes, specifically related to the definition of substantial presence for Local Business Enterprises. The changes to the definition prohibited staff's ability to certify certain firms, because they were unable to fulfill the criteria as applied in the new definition. As a result, staff has had to deny certification to a number of firms, hampering their ability to participate as certified L/SLBE firms in the City's procurement process. This has also necessitated an increase in the granting of waivers to participation due to the decrease in the number of available L/SLBE firms in some trades.

For the several months, a Contracting Disparity Action Team comprised of City staff and community stakeholders met to develop strategies for addressing the disparities in the City's procurement processes. One of those strategies is the complete overhaul of the City's Local and Small Local Business Enterprise Program. A subcommittee was formed to oversee the revisions. While the subcommittee plans a full report to the Council later this year, they chose to bifurcate the revisions as set forth in this report to mitigate the "unintended consequences" and allow staff to increase the number and type of businesses the City is able to certify. Given the importance of maintaining sufficient numbers of certified firms as it impacts levels of participation by L/SLBE firms in City procurement, an immediate action is warranted. It is important to note that the Certification Section of the program is included here for the sake of clarity. Staff will return to Council at a later date to present the remainder of the recommended revisions to the Program.

## **ANALYSIS AND POLICY ALTERNATIVES**

The urgency for enactment of this ordinance amendment is two-fold:

1. The City has denied requests for certification to a number of firms, that previously held certification, but no longer conform to the revised policy; and
2. Denying certifications decreased the number of certified firms across trade sectors, resulting in the need to grant more requests for waivers of the L/SLBE Program requirements.

Changes to the program are enumerated as follows (strike through indicates language deleted and boldface and underlined text indicates language added) and can be found in **Attachment A** on page 21. This report focuses on two aspects of the definition of "substantial presence": a clear definition of "headquarters" as opposed to "office", and the timeliness of certification application submittal as it relates to submittal of bid documents.

Specifically, the changes recommended as a part of this report include:

- (1) deletion of the word “headquarters” in section 1b and adding the word “office”
- (2) deletion of the words “Prior to the closing date of a competitive process” in section 1c and adding the phrase “submitting the certification application” and
- (3) in section 1d, deleting the word “certification” and adding business tax certificate” and deleting “prior to the closing date of a competitive process” and adding “submitting the certification application”.

These changes will allow businesses to apply for certification in a manner that is more responsive relative to bid date. Tying the window for applying for certification to the close of a competitive bid process, prevents some firms from being certified in sufficient time to bid. With respect to demonstrating substantial presence through workforce, some companies may have a headquarters in another jurisdiction (outside Oakland) but maintain a workforce in an office established in Oakland for the purpose of conducting business and, the applicant conforms to all of the other mandates as a part of the overall definition of substantial presence.

The word “certification” in section 1D should have been written as “business tax license”, essentially a clerical error. Again, the words “prior to the closing date of the bid process” changes the timeframe during which an application can be submitted for processing, making it easier for businesses to apply in time to bid on contracts. These revisions will serve to:

- Reduce the number of certification denials issued for failure to meet the criteria for demonstrating physical location and location of workforce
- Increase the number of certified firms across all trades who are able to demonstrate substantial presence in the city of Oakland
- Decrease the need to approve waivers to the L/SLBE Program thereby increasing participation in the procurement process, and
- Allow greater equity for firms owned and operated by Black Indigenous and People of Color (BIPOC) community.

Advancing the recommendation set forth in this report essentially impacts all four of the Citywide priorities: 1) **holistic community safety**, 2) **housing, economic, and cultural security**, 3) **vibrant, sustainable infrastructure**, and 4) **responsive, trustworthy government**. Oakland’s economic infrastructure depends in large measure to the strength of its small businesses. Helping small businesses to compete for City contracts provides economic empowerment and serves to build their capacity. This recommendation provides the City with added economic security by recirculating funds back to residents. Moreover, added and enhanced program efficiencies within the City’s Local and Small Local Business Enterprise Program will allow staff to be more responsive to internal as well as external stakeholders who depend on our ability to provide compliance services. Improved certification policies increase the number and type of businesses ready, willing and able to compete for contracts and increase participation in the L/SLBE Program when they successfully bid and are awarded contracts. Business owners are able to employ Oakland residents, thereby improving the quality of life for impacted workers.

### **FISCAL IMPACT**

There is no anticipated fiscal impact or cost due to the recommended amendments to the City's L/SLBE program proposed under this ordinance.

### **PUBLIC OUTREACH / INTEREST**

The primary stakeholders, including impacted business owners and operators, Chambers of Commerce and other business-related organizations, collaborated with City staff and District 6 City Council Office to assist with shaping the policy changes.

### **COORDINATION**

The forgoing modifications were made in coordination with the Department of Workplace and Employment Standards, the Office of the City Attorney, the Budget Bureau, the Office of the City Administrator and District 6 City Council Office.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** Adoption of the forgoing amendments to Ordinance No. 13640 C.M.S. will serve to further enhance the participation of local, small local, and very small local businesses in the City's procurement process and strengthen the City's economic infrastructure.

**Environmental:** There are no environmental opportunities associated with this report.

**Race & Equity:** Adoption of the forgoing amendments to the Ordinance No. 13647 C.M.S. will serve to provide greater opportunities for people of color and women who own and operate local and small local businesses whose participation in the City's procurement process would be otherwise adversely impacted.

### **ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt An Ordinance Amending Ordinance No. 13647 C.M.S., Which Amended Certification Requirements in Oakland's Local and Small Local Business Enterprise (L/SLBE) Program, To Revise and Correct Certification Requirements.

Respectfully submitted,

*Mary Mayberry*

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