

INTRODUCED BY COUNCILMEMBER _____

CITY ATTORNEY’S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING ORDINANCE NO. 13101 C.M.S., WHICH REVISED OAKLAND’S LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE (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, AS SET FORTH IN EXHIBIT A ATTACHED HERETO

WHEREAS, on December 18, 2001, the City Council adopted Ordinance No. 12389 C.M.S., which authorized Oakland’s Local and Small Business Enterprise (L/SLBE) Program; and

WHEREAS, on December 20, 2011, the City Council adopted Ordinance No. 13101 C.M.S. amending Ordinance No. 12389 C.M.S., to, among other things, change business size standards and establish new LBE categories, increase local and small business participation requirements, establish new preference program requirements for Very Small Business Enterprises (VSBE), local businesses that produced goods (LBE-LPG), and increase penalties for noncompliance; and

WHEREAS, the City of Oakland currently faces a significant economic crisis as a result of the COVID-19 pandemic which has forced many Oakland businesses to close, threatens the existence of many others, and has resulted in significant loss of jobs and high unemployment in Oakland; and

WHEREAS, more than 80% of Oakland businesses are small businesses, and national data establishes the small business market as the greatest source of employment particularly in urban areas such as Oakland; and

WHEREAS, the Oakland City Council understands there is direct correlation between high rates of unemployment and increased crime rates and as such is desirous of finding ways to create

contracting and vending opportunities for Oakland Businesses and employment opportunities for Oakland residents; and

WHEREAS, Federal and state contracting laws support the development of small businesses, mandate that a certain portion of most public works projects be given to small contractors for public benefit; and aim to increase the talent and contract pool in bidding for government contracts; and

WHEREAS, enhancements of Oakland's local business enterprise purchasing programs is likely to increase the number of firms with primary business offices in Oakland by encouraging firms to move to Oakland and creating opportunities for the formation of new Oakland-based firms; and

WHEREAS, Oakland contracting opportunities present a significant opportunity for Oakland businesses to build capacity and experience in their fields, and will later assist them in gaining additional work in these field in Oakland and other jurisdictions, which would significantly bolster Oakland's economy; and

WHEREAS, the City of Oakland does hereby find that there is an urgent need to provide opportunities for and enforce the award of city construction, professional services, contracts and the purchase of commodities and associated services to local and small local business enterprises including those owned and operated by minorities and women through the creation and adoption of city policies; and

WHEREAS, the City Council further finds that there is an urgent need to provide opportunities for and enforce the award of construction, professional services, contracts and the purchase of commodities and associated services to local and small local business enterprises including those owned and operated by minorities and women through the creation and adoption of city policies; and

WHEREAS, it is the intent of the City Council to stimulate the local Oakland economy and to ensure Oakland businesses have equal opportunities to do business with the City of Oakland and in turn afford additional employment opportunities for Oakland residents; and

WHEREAS, the Council further finds that the revised Local and Small Local Business Enterprise Program (L/SLBE) will include new mechanisms to improve the effectiveness of City policy in maximizing participation of small local businesses in the City's contracting process while continuously improving efficiencies in doing business in Oakland; and

WHEREAS, adjustments to the City's trucking program are necessary to enhance the program and increase the number of local trucking firms doing business in the City by increasing the City's L/SLBE trucking participation requirement, and eliminating the need to garage a trucking fleet in Oakland; and

WHEREAS, a Sheltered Market program that provides access to small-scale project contracting opportunities on a rotational basis for pre-certified Small Business Enterprises will lead to greater access and participation from a range of Oakland's small businesses allowing for more business growth and employment opportunities; and

WHEREAS, the Council finds that there is a need to adjust the size standards for small local businesses to increase their competitiveness as well as create a new category of business called Jumbo Local Business Enterprises (JLBE) that will allow for local businesses that are no longer categorized as “small businesses” to be more competitive when competing with large non-local businesses; and

WHEREAS, the Council finds that enhancing the definition of “substantial business presence” will benefit Oakland residents and the Oakland business community by ensuring that businesses who benefit from the program have strong ties to Oakland geographically, economically and with respect to job creation; and

WHEREAS, the Council finds that a more explicit requirement for businesses to present their best offer for L/SLBE compliance at the time of initial bid/ RFP response will yield greater L/SLBE participation and signal to the market the City’s commitment to the L/SLBE program; and

WHEREAS, the Council recognizes that to help very small local businesses (VSLBEs) grow to become SLBEs and LBEs, that they often need additional support to increase their competitiveness, and believes that a 5% bid discount will help more VSLBEs have access to contracting opportunities and is a worthwhile investment that will yield increase local business growth and job creation; and

WHEREAS, the Council recognizes the need to monitor L/SLBE compliance and other important equity data for all of its spend categories, including within subcontracting opportunities made possible through development agreements, and the importance of automating certain aspects of compliance monitoring through improved processes and tools; and

WHEREAS, the Council also recognizes that cooperative agreements are helpful for efficiency of contracting, but also allow for bypassing of the city’s L/SLBE program requirements and there is an opportunity to maintain flexibility and efficiency while better aligning to the goals of the L/SLBE program by providing L/SLBE enterprises to “match” the terms and conditions of the proposed cooperative agreement; and

WHEREAS, the Council finds that mentorship programs are important to grow and increase the number of local small businesses in the City, and an increase in the preference point percentage from 5% to 10% will likely yield an increase in the adoption and participation in this already established program; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines that the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City Council.

SECTION 2. Based upon all written and oral reports and presentations to City Council, including the Agenda Report, the City Council finds and determines that the proposed amendments to the

City's Local and Small Local Business Enterprise (L/SLBE) Program are necessary to increase the use of Oakland L/SLBEs in City contracting, with said amendments as follows:

- Increasing the City's L/SLBE trucking participation requirement from 50% to 75% based on a list of certified truckers to enhance the participation of locally based trucking firms in city funded public works projects; and
- Implementing a Sheltered Market Program where the City will award, on a rotational basis, to SLBEs and VSLBEs informal construction contracts and informal professional services contracts that are valued at \$50,000 and under according to market specialty; and
- Creating a Jumbo Local Business Enterprise category and reduction of the size of an LBE where revenue generated is 80% or more of that generated by Oakland businesses according to each industry; and
- Redefining "substantial presence" as applied to City-related businesses and defining a "local-based manufacturer;" and
- Limiting modifications to L/SLBE schedules after bid opening; and
- Applying a bid discount of 5% to a VSLBE prime contractor during construction bid evaluation, and a bid discount of 5% for professional services contract bids where the VSLBE meets a 50% subcontractor goal; and
- Requiring that all developers engaged via a Development and Disposition Agreement submit a schedule of the projected award of construction and construction-related agreements, with all such agreements required to include the L/SLBE Program requirements; and
- The City's Contracts and Compliance office confirming that the needed goods or services from potential Cooperative agreements are not offered by an L/SLBE and should agree in writing with the City department's findings before the City executes such a cooperative agreement; and

Increasing the preference percentage for Mentor-Protégé teams on construction and professional services contracts from 5% to 10% , and mentor protégé teams may not exceed two per project;

- ; and
- Updating the list of schedules applicable to the L/SLBE program.

SECTION 3. The current LBE/SLBE Program manual, as initially included with the report accompanying Ordinance No. 13101 C.M.S., is hereby amended to update the City's L/SLBE Program as set forth in Exhibit A, attached hereto and which is incorporated herein and made a part hereof.

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 5. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES -FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR,
THAO AND PRESIDENT KAPLAN

NOES –

ABSENT –

ABSTENTION –

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

Date of Attestation: _____

NOTICE AND DIGEST

AN ORDINANCE AMENDING ORDINANCE NO. 13101 C.M.S., WHICH REVISED OAKLAND'S LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE (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, AS SET FORTH IN EXHIBIT A ATTACHED HERETO

This ordinance will amend Ordinance No. 13101 C.M.S., which amended Oakland's Local and Small Local Business Enterprise (L/SLBE) program, to increase the use of Oakland L/SLBEs in City contracting, with said amendments as follows and as more specifically set forth in Exhibit A this ordinance:

- Increasing the City's L/SLBE trucking participation requirement from 50% to 75% based on a list of certified truckers to enhance the participation of locally based trucking firms in city funded public works projects.
- Implementing a Sheltered Market Program where the City will award, on a rotational basis, to SLBEs and VSLBEs informal construction contracts and informal professional services contracts that are valued at \$50,000 and under according to market specialty.
- Creating a Jumbo Local Business Enterprise category and reduction of the size of an LBE where revenue generated is 80% or more of that generated by Oakland businesses according to each industry.
- Redefining "substantial presence" as applied to City-related businesses and defining a "local-based manufacturer."
- Limiting modifications to L/SLBE schedules after bid opening.
- Applying a bid discount of 5% to a VSLBE prime contractor during construction bid evaluation, and a bid discount of 5% for professional services contract bids where the VSLBE meets a 50% subcontractor goal.
- Requiring that all developers engaged via a Development and Disposition Agreement submit a schedule of the projected award of construction and construction-related agreements, with all such agreements required to include the L/SLBE Program requirements.
- The City's Contracts and Compliance office confirming that the needed goods or services from potential Cooperative agreements are not offered by an L/SLBE and should agree in writing with the City department's findings before the City executes such a cooperative agreement.
Increasing the preference percentage for Mentor-Protégé teams on construction and professional services contracts from 5% to 10%, and mentor protégé teams may not exceed two per project;
- .
- Updating the list of schedules applicable to the L/SLBE program.
- .