

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**AN ORDINANCE AMENDING ORDINANCE NO. 13101 C.M.S., WHICH REVISED OAKLAND'S LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE (L/SLBE) PROGRAM PROVISIONS, TO (1) CHANGE LOCAL AND SMALL LOCAL TRUCKING PARTICIPATION REQUIREMENTS; AND (2) IMPLEMENT A NEW SHELTERED MARKETS ROTATIONAL PROGRAM; AND (3) ADJUST THE LBE SIZE STANDARD, CREATE A NEW LOCAL BUSINESS CERTIFICATION CATEGORY, AND ADJUST ASSOCIATED BID DISCOUNTS; AND (4) CHANGE THE DEFINITION OF "SUBSTANTIAL PRESENCE," AND "LOCAL-BASED MANUFACTURER", AND "THE RULE OF THREE"; AND (5) LIMIT MODIFICATIONS TO L/SLBE SCHEDULES AFTER BID OPENING; AND (6) ESTABLISH SEPARATE PROGRAM PROVISIONS SPECIFIC TO DISPOSITION AND DEVELOPMENT AGREEMENTS (DDA) AND ALL OTHER SIMILAR AGREEMENTS; AND (7) APPLY CITY POLICIES TO THE PROCUREMENT OF GOODS AND SERVICES BY WAY OF THE USE OF COOPERATIVE AGREEMENTS; AND (8) ESTABLISH A LOCAL BUSINESS ADVISORY TASKFORCE; AND (9) ESTABLISH AND FUND ADDITIONAL EMPLOYEE POSITIONS NECESSARY TO IMPLEMENT THE ADOPTED PROGRAM ENHANCEMENTS, AND OTHER PROGRAM ENHANCEMENTS TO ADDRESS RACE AND GENDER DISPARITIES IN LOCAL CONTRACTING AND PROCUREMENT**

**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 Rotational 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 Small Business Administration Local Business enterprise (SBA-LBE) 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:

- Revise the City's L/SLBE Trucking Program requirements by (a) requiring that to meet the 50% participation goal, contractors may only use trucking companies certified through the L/SLBE trucking program; and (b) removing the requirement that companies house or store trucks within the City's geographic region, and
- Implement a revised Sheltered Market Rotational 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
- Create a business certification category referred to as a:
  - "Small Business Administration-Local Oakland Business Enterprise (SBA-LBE) category; and
  - Reduce the size standard of an LBE where the 3-year average of gross receipts is less than or equal to 80% of the 3-year average revenue generated by Oakland businesses according to each industry; and
- Redefining "substantial presence" and "local-based manufacturer" as applied to City-related businesses; and
- Limiting modifications to L/SLBE schedules after bid opening; and
- Applying a 5% discount to a VSLBE prime contractor during construction bid evaluation, and a 5% bid discount for professional services contract bids where the VSLBE meets a 50% subcontractor goal; and
- Requiring that all developers participating in a Development and Disposition Agreement submit a schedule of the projected awards of construction and construction-related agreements prior to executing the DDA, with all such agreements required to include the L/SLBE Program requirements; and

- Requiring that the City’s Department of Workplace and Employment Standards confirm in writing that needed goods or services from potential cooperative agreements are not offered by an L/SLBE before the City executes such a cooperative agreement, and allowing the City Administrator to enter into a contract with the identified L/SLBE at similar terms as defined in the cooperative agreement without a competitive bid process and without returning to council; and
- Increasing the preference percentage for Mentor-Protégé and Joint Venture teams on construction and professional services contracts from 5% to 10%, and establishing criteria for eligible agreements that ensures mentees and junior JV partner receive the intended mentorship and growth opportunity in addition to the business opportunity. Mentor protégé teams may not exceed two per project; and updating the list of schedules applicable to the L/SLBE program.
- Establish a Local Business Advisory Taskforce that supports the Contracts & Compliance Division of DWES in meeting its L/SLBE prime contracts and subcontracts goals, including increasing access to contracting opportunities and advancing initiatives that impact L/SLBE participation

**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 (1) Change Local And Small Local Trucking Participation Requirements; And (2) Implement A New Sheltered Markets Rotational Program; And (3) Adjust The LBE Size Standard, Create A New Local Business Certification Category, And Adjust Associated Bid Discounts; And (4) Change The Definition Of “Substantial Presence,” And “Local-Based Manufacturer”, And “The Rule Of Three”; And (5) Limit Modifications To L/SLBE Schedules After Bid Opening; And (6) Establish Separate Program Provisions Specific To Disposition And Development Agreements (DDA) And All Other Similar Agreements; And (7) Apply City Policies To The Procurement Of Goods And Services By Way Of The Use Of Cooperative Agreements; And (8) Establish A Local Business Advisory Taskforce; And (9) Establish And Fund Additional Employee Positions Necessary To Implement The Adopted Program Enhancements, And Other Program Enhancements To Address Race And Gender Disparities In Local Contracting And Procurement**

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:

- Revise the City’s L/SLBE Trucking Program requirements by (a) requiring that to meet the 50% participation goal, contractors may only use trucking companies certified through the L/SLBE program and (b) removing the requirement that companies house or store trucks within the City’s geographic region, and
- Implement a revised Sheltered Market Rotational 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
- Create a business certification category referred to as a:
  - “Small Business Administration-Local Oakland Business Enterprise (SBA-LBE) category; and
  - Reduce the size standard of an LBE where the 3-year average of gross receipts is less than or equal to 80% of the 3-year average revenue generated by Oakland businesses according to each industry; and
- Redefining “substantial presence” and “local-based manufacturer” as applied to City-related businesses; and
- Limiting modifications to L/SLBE schedules after bid opening; and
- Applying a 5% discount to a VSLBE prime contractor during construction bid evaluation, and a 5% bid discount for professional services contract bids where the VSLBE meets a 50% subcontractor goal; and

- Requiring that all developers participating in a Development and Disposition Agreement submit a schedule of the projected awards of construction and construction-related agreements prior to executing the DDA, with all such agreements required to include the L/SLBE Program requirements; and
- Requiring that the City's Department of Workplace and Employment Standards confirm in writing that needed goods or services from potential cooperative agreements are not offered by an L/SLBE before the City executes such a cooperative agreement, and allowing the City Administrator to enter into a contract with the identified L/SLBE at similar terms as defined in the cooperative agreement without a competitive bid process and without returning to council; and
- Increasing the preference percentage for Mentor-Protégé and Joint Venture teams on construction and professional services contracts from 5% to 10%, and establishing criteria for eligible agreements that ensures mentees and junior JV partner receive the intended mentorship and growth opportunity in addition to the business opportunity. Mentor protégé teams may not exceed two per project; and updating the list of schedules applicable to the L/SLBE program.
- Establish a Local Business Advisory Taskforce that supports the Contracts & Compliance Division of DWES in meeting its L/SLBE prime contracts and subcontracts goals, including increasing access to contracting opportunities and advancing initiatives that impact L/SLBE participation