

ORDINANCE AMENDING CHAPTER 2, SECTION 117 OF THE GREENSBORO CODE OF
ORDINANCES WITH RESPECT TO ADMINISTRATION – MINORITY/WOMEN’S BUSINESS
ENTERPRISE PARTICIPATION IN CITY CONSTRUCTION, PROFESSIONAL SERVICES, GOODS
AND OTHER SERVICE CONTRACTS

Sec. 2-117. - Minority/women's business enterprise participation in city construction, professional services, goods and other services contracts.

Recitals

This section establishes an minority/women's business enterprise policy to authorize the city manager to adopt and administer a "M/WBE program" for firms that engage in business with the City of Greensboro. The purposes of this section are: (a) to establish a clear policy against discrimination in business transactions and dealings on the basis of race, gender, religion, national origin, ethnicity, age, or disability; (b) to authorize and direct the establishment and administration of narrowly tailored policy and contracting procedures by the city manager to remedy the ongoing effects of identified marketplace discrimination that is adversely affecting the award of prime contracts and subcontracts to minority- and women-owned businesses in city contracts; and (c) to authorize and direct the establishment and administration of narrowly tailored policy and contracting procedures by the city manager to prevent the city from becoming a passive participant in private sector marketplace discrimination that is adversely affecting the formation, growth, and competitiveness of small, minority, and women-owned business enterprises in the city's relevant geographic market from which it routinely purchases goods and services.

The city council finds that in order to avoid becoming a passive participant in private sector commercial discrimination, it is necessary to establish and firmly enforce a clear policy against discrimination in business on the basis of race, gender, religion, national origin, ethnicity, age, or disability. Under this policy, the city shall not contract with business firms that discriminate in the solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, or commercial customers. Such a commercial non-discrimination policy approach has been favorably commented upon by the United States Supreme Court in *City of Richmond v. J. A. Croson*, 488 U.S. 469, 509-510 (1989), and by other federal courts.

After careful and lengthy consideration of a strong basis in evidence, including, but not limited to, disparity studies conducted by the North Carolina Institute of Minority Economic Development in 1992 and 1997, MGT of America, Inc. in 2012, and most recently by Griffin & Strong, P.C., in 2018, (the findings and recommendations of the latter having been formally adopted by city council on August 21, 2018), the city council has further determined that it continues to have a compelling interest in assuring that the public funds that are collected from all of its citizens and then spent in city contracting do not serve to finance private prejudice on the basis of race, gender, religion, national origin, ethnicity, age, disability, or any other form of unlawful discrimination. The city council has further considered a full range of narrowly tailored race- and gender-neutral and race- and gender-conscious remedial policy options that were presented to city council on August 21, 2018, and that are legally defensible and effective for addressing identified barriers to the full and equal participation of small and minority-owned businesses in city contracting. By this section, city council authorizes and directs the city manager to adopt and administer an M/WBE program that is based upon this factual predicate and consistent with these identified remedial policy options.

The city council further determines that it is in the best interests of the City of Greensboro to enhance competition on city projects by promoting equal opportunity and the full participation of all segments of its business community in a robust and inclusive marketplace environment that is free from the effects of discrimination. The city is likely to benefit from a discrimination-free marketplace through lower prices for the goods and services it purchases, higher revenues through increased employment opportunities for its citizens, increased business-to-business sales, and a more vibrant local economy.

The city manager or designee(s), are authorized and directed to administer a minority/women business enterprise program ("M/WBE program") for application to the city's procedures for the solicitation, selection, and award of city contracts and subcontracts for construction, professional services, goods and other services. The M/WBE program shall be consistent with the city council's factual findings, and the range of remedial policy options considered by city council, as follows:

- (a) It is the policy of the city to provide minorities and women equal opportunity to participate in all aspects of city contracting and purchasing programs, including but not limited to participation in procurement contracts for commodities and services as well as for contracts relating to construction and repair work activities. It is further the policy of the city to prohibit discrimination in business transactions and dealings on the basis of race, gender, religion, national origin, ethnicity, age or disability;
- (b) The M/WBE program is narrowly tailored to ensure policy and contracting procedures to remedy the ongoing effects of identified marketplace discrimination that is adversely affecting the award of prime contracts and subcontracts to minority- and women-owned businesses in city contracts; and
- (c) The city manager is authorized to assign duties, responsibilities and establish appropriate procedures for administration and implementation of a narrowly tailored policy and contracting procedures to prevent the City from becoming a passive participant in private sector marketplace discrimination that is adversely affecting the formation, growth, and competitiveness of minority- and women-owned business enterprises within the city's relevant geographic market from which it routinely purchases goods and services. The plan shall contain goals, standards and criteria for implementation in accordance with state and federal laws. In addition, the plan shall be subject to review and approval of the city council.

(Ord. No. 13-132, § 1, 10-15-13)

Editor's note— Ord. No. 13-132, § 1, adopted Oct. 15, 2013, amended § 2-117 in its entirety to read as set out herein. Former § 2-117 pertained to minority/women's business enterprise participation in city procurement and construction contracts and derived from the Code of 1961, §§ 5A-35, 5A-36.