

ORDINANCE NO. 4982-21

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF WEST PALM BEACH, FLORIDA, AT CHAPTER 2 (ADMINISTRATION), ARTICLE IV (OFFICES, DEPARTMENTS AND DIVISIONS), DIVISION 1, (MAYOR’S OFFICE) SECTION 2-135 (OFFICE OF EQUAL OPPORTUNITY) TO CHANGE THE TITLE OF THE OFFICE OF ECONOMIC OPPORTUNITY TO THE OFFICE OF SMALL AND MINORITY BUSINESS PROGRAMS AND AMENDING CHAPTER 66 (PROCUREMENT), ARTICLE IX (SMALL BUSINESS PROGRAM), SECTIONS 66-223, 66-224, 66-226, 66-227, 66-230, 66-233, 66-234, 66- 236, 66-237 AND 66-238 AND ARTICLE XI (MINORITY/WOMEN BUSINESS ENTERPRISE), SECTIONS 66-258, 66-260, 66-262, 66-263, 66-265, AND 66-266-273 TO REFLECT THE DUTIES OF THE DIRECTOR OF THE OFFICE OF SMALL AND MINORITY BUSINESS PROGRAMS TO BE CONSISTENT WITH AMENDMENTS TO CHAPTER 2, ARTICLE IV, DIVISION 1, SECTION 2-135; PROVIDING A CONFLICTS CLAUSE, A CODIFICATION CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, on December 17, 2018, the City Commission adopted the Minority/Women Business Enterprise Ordinance, Ordinance No. 4679-18, and created the City of West Palm Beach MWBE Program; and

WHEREAS, on April 19, 2021, the City Commission adopted Ordinance No. 4937-21 amending Chapter 2, (Administration), Division 1, (Mayor’s Office), to create Section 2-135, (Office of Economic Opportunity) to administer the Small Business and Minority/Women Business Enterprise Program; and

WHEREAS, the Office of Economic Opportunity would like to change its name to the Office of Small and Minority Business Programs. The current name is too similar, to the Economic Development area and does not accurately describe the services offered nor the target area; and

WHEREAS, the City Commission desires to ensure that both the Small Business Program and the Minority/Women Business Enterprise Program are accurately described and easily accessible by the qualifying businesses and individuals.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, that:

SECTION 1: Chapter 2 (Administration), Article IV (Offices, Departments and Divisions), Division 1 (Mayor’s Office), of the Code of Ordinances of the City of West Palm Beach is hereby amended to read as follows:

Sec. 2-135. - Office of economic opportunity.

- (a) There is hereby created, as a division within the office of the mayor, the office of ~~economic opportunity~~ small and minority business programs.
- (b) The head of this division shall be known as the director of the office of ~~economic opportunity~~ small and minority business programs.
- (c) The director of the office of ~~economic opportunity~~ small and minority business programs shall perform all of the duties of the office, including the following:
- (1) Facilitate and administer programs that foster workforce development, business development, and professional education and training for businesses located in the city;
 - (2) Educate and inform all business on how to work with the city;
 - (3) Administer the city's small business program;
 - (4) Administer the city's minority/women business enterprise program;
 - (5) Develop and maintain records of certified small businesses so that small business listings can be made available to potential contractors, subcontractors, material suppliers and providers of goods, services and construction;
 - (6) Provide reports to the city commission at least annually, detailing small business and women/minority business enterprise participation in the city's procurement. This report shall include total available dollars and the percentages of small business participation;
 - (7) Plan and participate in training seminars for the purpose of informing potential bidders/proposers/vendors of the city's small business program.

SECTION 2: Chapter 66 (Procurement), Article IX (Small Business Program) is hereby amended as follows:

Sec. 66-223. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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Small business (SB) means a small business person or firm that is:

- (1) Domiciled in Palm Beach County; and
- (2) Certified as a small business by Palm Beach County, the School Board of Palm Beach County or the city.
- (3) Whose adjusted gross margin, including all offices or locations, does not exceed the following:
 - (a) For construction, the annual adjusted gross margin of \$9,000,000.00 (averaged over the previous three years or, if in business less than three years, averaged during the duration of the business).
 - (b) In commodities, the annual adjusted gross margin of \$5,000,000.00 (averaged over the previous three years or, if in business less than three years, averaged during the duration of the business).
 - (c) For professional services (CCNA), the annual adjusted gross margin of \$5,000,000.00 (averaged over the previous three years or, if in business less than three years, averaged during the duration of the business).
 - (d) For other industries, the annual adjusted gross margin of \$5,000,000.00 (averaged over the previous three years or, if in business less than three years, averaged during the duration of the business); however, the director of the office of small and minority business programs procurement official may set specific criteria for a specific procurement, based on industry statistics or state statutes.

Sec. 66-224. - Program administration.

The director of the ~~office of economic opportunity~~ office of small and minority business programs has the overall responsibility for administering the small business program. The ~~office of economic opportunity~~ office of small and minority business programs shall be responsible for developing, managing and implementing the small business program on a day-to-day basis. The director of the ~~office of economic opportunity~~ office of small and minority business programs may promulgate policies and procedures consistent with this article and any federal or state law, regulation or grant requirement.

Sec. 66-226. - Goals.

(a) Contract goals. The office of ~~economic opportunity~~ small and minority business programs shall establish the small business goal on each procurement solicitation, unless otherwise provided in this section. In setting the goal, considerations shall include whether the scope of work or services is suitable for performance by subcontractors, and the availability and capacity of small businesses to perform under the particular contract. A small business goal shall be set as a percentage of the total contract value.

(b) The director of the office of ~~economic opportunity~~ small and minority business programs may reduce the goal if all participating small businesses with reasonable terms have been selected and the small business goal has not been met.

(c) A small business goal shall not be set when the procurement method will be by single source.

(d) A small business goal need not be set when the contract will be procured by piggyback.

(e) A small business goal need not be set when the procurement or contract is subject to the minority and women-owned business program.

(e) A small business goal shall not be set on those contracts that are subject to other state or federal participation goals, i.e., DBE programs.

(f) The director of the office of ~~economic opportunity~~ small and minority business programs may modify or waive any small business goal whenever such director determines that such modification or waiver would be in the best interest of the city. The procurement official may require a bidder or proposer requesting a modification or waiver of a small business goal to provide evidence of all attempts to obtain small business participation or other evidence to support such modification or waiver.

Sec. 66-227. - Subcontracting for construction projects.

(a) The maximum small business goal for any construction project or construction management solicitation not subject to sheltering or MWBE participation will be 18 percent. The goal shall be applied as a percentage of the total contract value, to be assigned to small businesses.

(b) Any bid failing to meet the established small business goal shall be deemed non-responsive and shall be disqualified, except where the ~~office of~~ director of

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~~the economic opportunity small and minority business programs~~ or the procurement official determines that such disqualification would not be in the best interests of the city under the particular circumstances.

(c) At bid submittal, all bidders must submit, as part of their bid documentation, a subcontractor utilization plan which includes the following:

(1) Form SB01-Statement of Small Business Participation which identifies all certified small businesses which will be utilized as subcontractors; and

(2) Form SB03-Letter of Intent signed by the small business subcontractor(s). A small business prime contractor that intends to perform 100 percent of the work does not need to include this form.

The subcontractor utilization plan shall reflect the intent of the bidder and small business subcontractor(s) to establish a business relationship as well of the type of work and percentage of work that the small business subcontractor will perform.

(d) Failure to submit a complete subcontractor utilization plan shall be grounds for disqualification from participation in that bid.

Sec. 66-230. - Sheltered markets.

The city may shelter contracts for bid or solicitation only by small businesses for: (i) construction contracts and construction management services for an estimated contract cost equal to the maximum amount permitted by F.S. § 255.20; (ii) professional services to which F.S. § 287.055 does not apply; and (iii) any other contracts for goods or services. In order to shelter a contract, the ~~procurement official~~ director of the office of small and minority business programs shall determine and identify at least three small businesses who are available and capable of performing the type of work, services or commodity within the scope of the proposed solicitation or contract. When a procurement solicitation is sheltered, only small businesses will be eligible to bid or to submit a proposal, qualifications, quote or other response.

Sec. 66-233. - Substitution.

Prime contractors shall notify the ~~office of economic opportunity small and minority business programs~~ when the need to replace a small business subcontractor arises and shall submit an amendment to the subcontractor utilization plan which includes the following:

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- (1) Form SB01-Statement of Small Business Participation which contains an explanation of the reasons for replacement of the small business; and
- (2) Form SB03-Letter of Intent signed by the substitute small business subcontractor.

Small businesses shall be replaced with other certified small businesses unless approval to the contrary is granted by the office of ~~economic opportunity~~ small and minority business programs.

Sec. 66-234. - Waiver.

- (a) *Emergency waiver.* Whenever an emergency procurement is authorized by the mayor pursuant to the procurement code, the requirements of this article shall be deemed waived.
- (b) *Single source waiver.* Whenever the procurement official makes a single source determination pursuant to the procurement code, the requirements of this article shall be deemed waived.
- (c) *Performance waiver.* The procurement official may waive compliance with this article if such compliance is not possible or practicable during the period of performance of the contract.
- (d) *Insufficiency waiver.* The director of the office of ~~economic opportunity~~ small and minority business programs may reduce the goal or waive compliance with this article if all small businesses that submitted a responsive bid or proposal to participate in the solicitation with reasonable terms have been selected for participation and the small business goal has not been met.

Sec. 66-236. - Compliance.

- (a) The director of the office of ~~economic opportunity~~ small and minority business programs shall establish procedures for monitoring and evaluating program performance and compliance.
- (b) Failure to comply with the small business requirements of an awarded contract shall be considered a breach of such contract and may result in suspension or debarment of the firms or individuals involved in accordance with the procurement code.
- (c) Failure to comply with the small business requirements of an awarded contract will be a factor to be considered by the city in determining past performance and best value in future solicitations.

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(d) Failure to comply with the small business requirements of an awarded contract may be a factor for consideration of suspension under [section 66-123](#) or debarment under [section 66-124](#) of this code.

Sec. 66-237. - Decertification.

(a) A business shall not be eligible for continued participation in the small business preferential programs contained in this article if the business no longer meets the criteria for certification as a small business contained in this article.

(b) The city shall also decertify the small business if the small business:

- (1) Is no longer in business;
- (2) Is no longer licensed to do the type of business for which it was certified;
- (3) Cannot be contacted at the last-known address;
- (4) Obtained its original certification and/or recertification through false representation or deceit;
- (5) Experienced such a substantial change in ownership or control that continued certification would be contrary to the policy of the city's small business program;
- (6) Is debarred or suspended as a vendor by any government agency. At the expiration of any suspension, the firm may reapply for certification.

(c) The city shall notify the small business in writing that it is decertified. The small business may request an appeal of the decertification in accordance with this article.

(d) Nothing in this section shall prevent the director of the office of ~~economic opportunity~~ small and minority business programs from commencing an investigation regarding the legitimacy of a firm's small business certification based upon information received from an independent third party.

(e) Notwithstanding the foregoing, if a small business is providing service as a small business contractor under an existing contract at the time it no longer meets the criteria for certification of a small business due only to an increase in gross revenues, the small business may complete its services under the contract and the prime contractor will be credited with small business participation. Thereafter, a business may not be a small business subcontractor under any new procurement or new contract.

Sec. 66-238. - Appeals.

(a) *Appeal of certification denial or decertification.* Any person or firm that believes it has been wrongfully denied certification as a small business or wrongfully decertified may file an appeal in writing, signed and dated, with the director of the office of small and minority business programs—procurement official. The appeal shall be filed no later than ten days from the date of the denial letter or decertification letter.

(b) *Hearing on appeal.* If an appeal is filed, the mayor will appoint a hearing committee of three members from city administration and/or the finance department and/or the small business committee, if presently constituted, to conduct an administrative hearing. The hearing will be scheduled within 60 days of the date the appeal was received. The city will provide written notice as to the outcome of the hearing within ten working days of the date of the hearing. Any person who is a party to the proceeding before the city may appeal to the circuit court of the county in accordance with applicable state appellate rules.

SECTION 3: Chapter 66 (Procurement), Article XI (Minority/Women Business Enterprise), is hereby amended as follows:

Sec. 66-258. - Certification and recertification by city.

(a) *Certification criteria.* A business that desires to be certified by the city as an MWBE shall meet each of the following criteria:

- (1) Has a physical business address located within the geographical county limits (not a mailing address) and has continuously maintained such physical address for at least six months prior to the time of application for certification.
- (2) That is at least 51 percent owned by a minority or minorities, or a woman or women, or, in the case of a publicly-owned business, at least 51 percent of the voting stock of which is owned by minorities or women; and such ownership shall not have been via transfer from a non-minority owner within the past two years;
- (3) For which the minority ownership exercises actual day-to-day management and control of the business;
- (4) That is currently doing business;

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(5) That is legally organized and registered with the Florida Division of Corporations;

(6) That is registered with the state procurement system under MyFloridaMarketPlace;

(7) That has all licenses required by local, state and federal law necessary to conduct its business. If a license is required, it must be held by the minority/woman owner;

(8) Has a current business tax receipt issued by Palm Beach County or a municipality therein;

(9) That is for profit;

(10) That is an independent business, not an affiliate or conduit;

(11) Provides a commercially useful function and is an actual provider of work or services and is not a broker of services or conduit or pass-through; and

(12) Has identified the commodity that they supply and those commodities must be listed in the certification document.

(b) *Required documentation.* A business that desires to be certified by the city as a minority/women business enterprise must submit the city's application form and provide documentation as required by the application process evidencing that it meets each of the criteria. Applicants requesting certification shall be responsible for providing certified translations of all documents not in English.

(c) *Certification.* MWBE firms must be certified prior to submittal of a bid/proposal as an MWBE. Applicants granted certification will be notified by mail. The certification document shall indicate the commodity or commodities for which the MWBE is certified. Certified MWBEs shall be included on the city's MWBE listing.

(d) *Small business.* A firm may be certified as both an MWBE and a small business, provided it meets the requirements of each certification.

(e) *Denial of certification.* Applicants denied certification shall be notified by certified mail and informed of their right to appeal the denial pursuant to the appeal provisions of this article. An applicant denied certification may not reapply for certification for 120 days from the date of the denial letter.

(f) *Re-certifications.* Certified MWBEs are required to submit an affidavit of their continued eligibility as an MWBE every three years. The city may conduct site

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visits or review documents to ensure continued compliance as an MWBE. If there has been a change in ownership interest and/or control since the certification or last recertification, the MWBE shall make such disclosure and provide all requested information. Supporting documentation may be required for continued certification. A company that fails to submit an affidavit of continued eligibility or fails to submit documentation requested by the office of small and minority business programs will no longer be deemed certified for purposes of participation as an MWBE. The criteria for recertification shall be the same as for certification.

(g) *Misrepresentations.* Any applicant for MWBE certification or recertification that makes any willful misstatement, deceptive or fraudulent statement or representation in the MWBE certification documents may, in addition to any other penalties, have its certification revoked, or be denied certification or recertification.

(h) *Decertification.* A business shall not be eligible for continued participation in the MWBE program if the business no longer meets the criteria for certification as an MWBE as provided in this article. The city shall notify the MWBE in writing that it is decertified.

(i) *[Appeal.]* Any business that is denied certification or has its certification revoked may appeal such denial or revocation in accordance with the appeal provisions of this article.

Sec. 66-260. - Construction subcontractor goals.

(a) *Applicable procurements.* This section shall apply to all procurements for construction services, except: prime construction contracts awarded to an eligible firm under the MWBE program where the MWBE contractor will perform at least 25 percent of the work, emergency procurements, or other procurements for which MWBE program requirements have been waived in accordance with this article.

(b) *MWBE subcontractor goals.* The MWBE subcontractor goal for any construction services contract will not exceed 15 percent of the total contract value. The MWBE subcontractor goals for eligible firms shall not exceed the following: African-Americans - 11.17 percent of the total contract value; Hispanic Americans - 11.45 percent of the total contract value; Caucasian Women - 12.71 percent of the total contract value.

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(c) *Eligible firms.* The MWBE eligible to meet the MWBE subcontractor goal for construction contracts shall be owned by one or more of the following groups: African-Americans; Hispanic Americans; Caucasian Women.

(d) *Bids.* Any bid for a construction contract failing to meet the established MWBE goal shall be deemed non-responsive and shall be disqualified, except where the director of the office of small and minority business programs or the procurement official determines that such disqualification would not be in the best interests of the city under the particular circumstances. All bidders must submit, as part of their bid documentation, a subcontractor utilization plan which includes the following:

(1) Statement of MWBE participation which identifies all MWBEs which will be utilized as subcontractors by type of eligible firm; and

(2) A letter of intent signed by each MWBE subcontractor(s).

The subcontractor utilization plan included in the bid shall reflect the intent of the bidder and MWBE subcontractor(s) to establish a business relationship as well of the type of work and percentage of work that the MWBE subcontractor will perform. Failure to submit a complete subcontractor utilization plan shall be grounds for disqualification from participation in that specific procurement.

(e) *Qualified subcontractors.* Subcontractor utilization will count towards MWBE goals only for MWBE subcontractors who are certified in a specific line of work or business for which a defined scope of work is sought at the time of bid. MWBE goals may not be met by subcontractors that are conduits, pass-throughs or brokers, or do not perform a commercially useful function or that are not qualified or certified to provide the services as indicated in the bid and subcontractor utilization plan.

(f) *Self-performing.* A prime contractor is not required to subcontract out work that it has historically and consistently performed with its own work force. If an MWBE prime contractor certifies that it will self-perform 25 percent or more of the project with its own forces, it will not be required to comply with the MWBE subcontracting goals. If the MWBE prime contractor does not certify that it will self-perform at least 25 percent of the project, then the MWBE prime contractor must comply with the MWBE subcontracting goal.

(g) *Post-award subcontractor changes.* If after the contract award, the prime contractor chooses not to utilize the MWBE subcontractors identified in its bid or subcontractor utilization plan, or does not substitute the MWBE subcontractors with other MWBE subcontractors with the same overall MWBE participation rate originally proposed, the prime contractor may face penalties pursuant to [section](#)

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66-269 of this Code, unless approved in writing by the ~~procurement official~~ director of the office of small and minority business programs.

(h) *Copies of subcontracts.* Prime contractors shall submit a copy of their executed subcontract with each MWBE listed in their bid and subcontractor utilization report within 20 calendar days of execution of a contract with the city.

Sec. 66-262. - Professional services subcontractors.

(a) *Applicable procurements.* This section shall apply to all procurements for professional services, except: professional services contracts awarded to an eligible firm under the MWBE program and the MWBE will perform at least 25 percent of the professional services, emergency procurements, or other procurements for which MWBE program requirements have been waived in accordance with this article.

(b) *MWBE subcontractor goals.* The MWBE subcontractor goal for professional services will be 9.92 percent of the total contract value.

(c) *Eligible firms.* The MWBE eligible to meet the MWBE subcontractor goal for professional services contracts shall be owned by African-Americans.

(d) *Proposals.* Any proposal for a professional services contract failing to meet the established MWBE goal shall be deemed non-responsive and shall be disqualified, except where the director of the office of small and minority business programs ~~procurement official~~ determines that such disqualification would not be in the best interests of the city under the particular circumstances. All proposers must submit, as part of their bid documentation, a subcontractor utilization plan which includes the following:

- (1) Statement of MWBE participation which identifies all MWBEs which will be utilized as subcontractors by type of eligible firm; and
- (2) A letter of intent signed by each MWBE subcontractor(s).

The subcontractor utilization plan included in the proposal shall reflect the intent of the proposer and MWBE subcontractor(s) to establish a business relationship as well of the type of work and percentage of work that the MWBE subcontractor will perform. Failure to submit a complete subcontractor utilization plan shall be grounds for disqualification from participation in that specific procurement.

(e) *Qualified subcontractors.* Subcontractor utilization will count towards MWBE goals only for MWBE subcontractors who are certified in a specific line of work or business for which a defined scope of work is sought at the time of proposal.

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MWBE goals may not be met by subcontractors that do not perform a commercially useful function or that are not qualified or certified to provide the services as indicated in the proposal and subcontractor utilization plan.

(f) *Self-performing.* If an MWBE proposer certifies that it will self-perform 25 percent or more of the services with its own forces, it will not be required to comply with the MWBE subcontracting goals. If the MWBE proposer does not certify that it will self-perform at least 25 percent of the project, then the MWBE proposer must comply with the MWBE subcontracting goal.

(g) *Post-award subcontractor changes.* If after the contract award, the prime contractor chooses to subcontract work that it proposed to self-perform to a non-MWBE, or the prime contractor chooses not to utilize the MWBE subcontractors identified in its bid or subcontractor utilization plan, the prime contractor may face penalties pursuant to [section 66-269](#) of this Code, unless approved in writing by the director of the office of small and minority business programs procurement official.

(h) *Copies of subcontracts.* A copy of each executed subcontract with each MWBE listed in the proposal and subcontractor utilization report shall be submitted to the city within 20 calendar days of execution of a contract with the city.

Sec. 66-263. - Consulting and other services—Price discount.

(a) *Applicable procurements.* This section shall be applicable to procurements for other consulting services and services where the estimated contract value is \$225,000.00 or less. The price discount will not apply to emergency procurements or procurements for which MWBE requirements have been waived pursuant to this article.

(b) *Eligible firms.* The MWBE businesses eligible for the price discount provided in this section shall be owned by one or more of the following groups: African-Americans; Asian Americans; Hispanic Americans; Caucasian Women.

(c) *Price discount.* For best value price evaluation purposes only, the bid, quote or price submitted by an eligible firm shall be reduced by five percent, not to exceed a maximum discount of \$11,250.00.

(d) *Preference.* Where services are procured by request for proposals or request for qualifications, a responsive proposal, which meets the minimum qualifications, submitted by an eligible MWBE shall be assigned ten percent of the maximum evaluation points available for proposal evaluation. Where the maximum evaluation points available are 100 percent, this preference shall grant ten points to an eligible MWBE.

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(e) *Post-award subcontractor changes.* If after the contract award, the prime contractor chooses to subcontract work that it proposed to self-perform to a non-MWBE, or the prime contractor chooses not to utilize the MWBE subcontractors identified in its bid or subcontractor utilization plan, the prime contractor may face penalties pursuant to [section 66-269](#) of this Code, unless approved in writing by the director of the office of small and minority business programs procurement official.

Sec. 66-265. - MWBE sheltered market.

(a) *The city may shelter contracts for bid or solicitation only by eligible MWBEs for:* (i) construction contracts and construction management services under \$500,000.00 and there is compliance with F.S. § 255.20; (ii) professional services under \$350,000.00 to which F.S. § 287.055 does not apply; and (iii) any other contracts for goods or services under \$225,000.00. In order to shelter a contract, the ~~procurement official~~ director of the office of small and minority business programs shall determine and identify at least three eligible MWBE businesses who are available and capable of performing the type of work, services or commodity within the scope of the proposed solicitation or contract. When a procurement solicitation is sheltered, only MEBE businesses will be eligible to bid or to submit a proposal, qualifications, quote or other response.

(b) *Eligible firms.*

(1) *Construction services.* MWBEs eligible for a sheltered market construction services contract shall be owned by one or more of the following groups: African-Americans; Asian Americans; Caucasian Women.

(2) *Professional services.* MWBEs eligible for a sheltered market professional services contract shall be owned by one or more of the following groups: African-Americans; Hispanic Americans; Caucasian Women.

(3) *Consulting and other services.* The MWBE eligible for a sheltered market consulting or other services contract shall be owned by one or more of the following groups: African-Americans; Asian Americans; Hispanic Americans; Caucasian Women.

(4) *Purchase of goods.* The MWBE eligible for the sheltered market contract for the purchase of goods shall be owned by one or more of the following groups: African-Americans; Asian Americans; Hispanic Americans; Caucasian Women.

Sec. 66-266. - Prohibition on pass-through services.

It is prohibited to use a MWBE as a conduit; pass-through or broker of services, rather than an actual provider of such services or work. Accordingly, to qualify as an MWBE prime contractor or consultant, or an MWBE subcontractor, the following shall apply:

(1) Only MWBEs that perform a commercially useful function in the work of a contract may be counted towards the MWBE utilization.

(2) If a MWBE subcontracts more than 75 percent of the work of a contract, the MWBE shall be presumed not to be performing a commercially useful function. The MWBE may present evidence to rebut this presumption to the director of the office of small and minority business programs procurement official, with any decision in that regard being based upon normal industry standards.

Sec. 66-267. - Non-compliance.

(a) If a prime contractor, at any time during the term of the contract, fails to maintain the MWBE subcontractor participation percentages contained in its bid, proposal or contract, chooses to subcontract work that it proposed to self-perform to a non-MWBE, or chooses not to utilize the MWBE subcontractors identified in its proposal or subcontractor utilization plan, the director of the office of small and minority business programs procurement official shall, upon receiving knowledge of such noncompliance, provide written notice of the noncompliance to the prime contractor with copy to the contract project manager and the contractor's surety, if applicable. If the prime contractor fails to come into compliance or fails to obtain a waiver for such noncompliance from the director of the office of small and minority business programs procurement official within 30 days of notification of noncompliance, the director of the office of small and minority business programs procurement official, upon a finding of noncompliance, may then impose penalties upon the prime contractor pursuant to this [section 66-269](#) of this article.

Sec. 66-268. - Post-award contract compliance.

(a) Any changes to the participation of an MWBE from the participation level, by dollar value, presented in the bid or proposal must be provided in writing to the office of small and minority business programs procurement division and approved in writing by the office of small and minority business programs procurement division.

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(b) If after the contract award, the prime contractor chooses to subcontract work that it proposed to self-perform to a non-MWBE, or the prime contractor chooses not to utilize the MWBE subcontractors identified in its bid or subcontractor utilization plan, the prime contractor may face penalties pursuant to [section 66-269](#) of this Code, unless approved in writing by the ~~procurement official~~ director of the office of small and minority business programs.

(c) The contractor or consultant shall submit monthly reports in such form, manner and time as required by the director of the office of small and minority business programs ~~procurement official~~ summarizing the ongoing participation of all subcontractors in the contract, by dollar value of such participation.

(d) At the completion of performance of the contract, the contractor or consultant shall submit an affidavit detailing the final contract amount, all participating MWBEs and the total payments made to each MWBE. Such affidavit shall be part of the proper final invoice and final payment shall not be made until such affidavit has been submitted.

(e) At the completion of performance on the contract, the contractor or consultant shall provide a summary of all deviations in actual use of MWBEs from the proposed utilization contained in the bid or proposal. Such summary shall be part of the proper final invoice and final payment shall not be made until such summary has been submitted.

Sec. 66-269. - Penalties.

(a) Bidders, proposers, contractors, consultants, vendors, subcontractors, suppliers and MWBEs who violate the provisions of this article, or who provide fraudulent information in relation to MWBE eligibility or MWBE utilization, shall be subject to any or all of the following penalties, as determined by the director of the office of small and minority business programs ~~procurement official~~:

(1) Declaration that the bid or proposal is non-responsive and the bidder or proposer is ineligible for award of the contract;

(2) Consideration by the city of such factor in determining past performance and best value in future procurements for up to two years;

(3) Declaration of breach or default of the applicable contract;

(4) Termination of any present contract(s);

(5) Declaration that all amounts paid to the prime contractor intended for expenditure with an MWBE will be forfeited and may be recoverable by the city;

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(5) Suspension from bidding on city contracts pursuant to [section 66-123](#) of this Code;

(6) Permanent debarment from bidding on city contracts pursuant to [section 66-124](#) of this Code;

(7) Revocation of MWBE certification for up to two years, if an MWBE.

(b) The city may require such reports, information and documentation from bidders, contractors or vendors as are reasonably necessary to determine compliance with the requirements of this article.

(c) Appeal of penalties shall be pursuant to appeals procedures outlined in [section 66-270](#) of this article.

Sec. 66-270. - Appeals.

(a) *Appeals regarding certification.* The right to appeal a denial of certification is intended only to remedy factual errors related to the certification criteria which, if corrected, would result in the certification of the applicant. An applicant denied certification as an MWBE may appeal the denial by filing a written appeal with the director of the office of small and minority business programs procurement official within seven calendar days of the notice of denial of certification. The appeal shall address the factual error and provide evidence to support the certification criteria. A panel consisting of the director of the office of small and minority business programs procurement official, one city administrator and the finance director shall review the appeal and issue a written decision as soon as practicable after such review is completed. The director of the office of small and minority business programs procurement official shall deliver the written decision to the applicant by electronic mail, unless the applicant has previously notified the director of the office of small and minority business programs procurement official of a preferred alternative means of delivery. The decision of the appeal panel shall be final.

(b) *Appeals regarding penalties.* The right to appeal a penalty issued by the director of the office of small and minority business programs procurement official under this article is intended only to remedy factual errors related to the finding of noncompliance. A bidder, proposer, contractor, consultant, vendor, subcontractor or MWBE may appeal the penalty issued by the director of the office of small and minority business programs procurement official by filing a written appeal with the director of the office of small and minority business programs procurement official within seven calendar days of the notice of penalty. The appeal shall address the factual error and provide evidence to support the appeal. A panel consisting of the director of the office of small and minority business programs procurement official, one city administrator and the

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finance director shall review the appeal and issue a written decision as soon as practicable after such review is completed. The director of the office of small and minority business programs procurement official shall deliver the written decision to the applicant by electronic mail, unless the applicant has previously notified the director of the office of small and minority business programs procurement official of a preferred alternative means of delivery.

(c) *Appeal to city commission.* The decision of the panel regarding a penalty issued by the director of the office of small and minority business programs procurement official upon a finding of noncompliance under this article may be appealed by filing a written appeal with the director of the office of small and minority business programs procurement official within seven calendar days of the date of the panel's written decision. On receipt of a timely appeal, the director of the office of small and minority business programs procurement official shall schedule a hearing before the city commission. The hearing shall not be a de novo review, but rather shall be limited to the review of the record or evidence on which the director of the office of small and minority business program's procurement official finding of noncompliance was based. The city commission will either approve or reject the director of the office of small and minority business program's procurement official finding. If the director of the office of small and minority business program's procurement official finding is approved, the penalty issued by the director of the office of small and minority business programs procurement official shall stand. An appeal of the decision of the city commission shall be to the Appellate Division of the Fifteenth Judicial Circuit, Palm Beach County, Florida, and shall be filed within 30 calendar days from the date of the decision by the city commission.

Sec. 66-271. - Exceptions and waivers.

Participation goals for MWBEs shall not apply to contracts that are not subject to a procurement process, emergency contracts pursuant to [section 66-69](#) of this Code, contracts let under a sheltered market program; when all bids received are from MWBE prime contractors; sole source procurements; and other contracts for which code requirements have been waived in writing by the director of the office of small and minority business programs procurement official or the city commission. The director of the office of small and minority business programs procurement official may waive compliance with MWBE participation goals when the bidder or proposer demonstrates that there is no reasonable ability to meet such goals. Participation goals shall also be waived if prohibited by federal or state funding agencies for specific contracts, or if similar federal or state programs govern the contract.

Sec. 66-272. - Reports to commission.

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The director of the office of small and minority business programs procurement official shall prepare quarterly reports to the city commission delineating the utilization rates of MWBEs on the basis of the dollar value of utilization of eligible MWBEs and total dollars awarded, by contract type. The director of the office of small and minority business programs procurement official shall annually make a presentation to the city commission regarding the MWBE program, the utilization rates of MWBEs on the basis of the dollar value of utilization of eligible MWBEs and total dollars awarded, by contract type; analysis of the mwbe program data in relation to the disparity study findings; data as to contract goal achievement, compliance, exceptions and waivers; and recommendations for any revisions to the program.

Sec. 66-273. - Analysis.

The director of the office of small and minority business programs procurement official shall have a disparity analysis performed every five to seven years to determine program success or necessary program revisions.

SECTION 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: Should any section or provision of this Ordinance or any portion, paragraph, sentence or word thereof be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

SECTION 6: Specific authority is hereby granted to codify the provisions of this Ordinance.

SECTION 7: This Ordinance shall take effect in accordance with law.

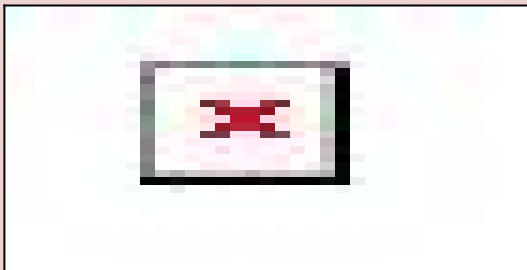
[SIGNATURES ON FOLLOWING PAGE]

FIRST READING THIS 1ST DAY OF NOVEMBER, 2021.

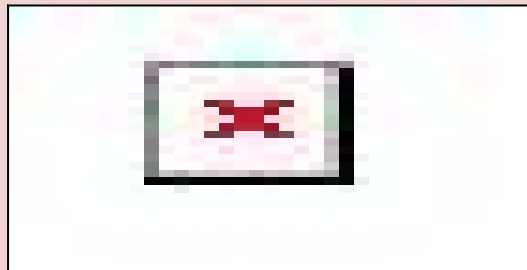
SECOND READING AND PASSAGE THIS 15TH DAY OF NOVEMBER, 2021.



ATTEST:



**CITY OF WEST PALM BEACH BY
ITS CITY COMMISSION:**



**APPROVED AS TO FORM AND
LEGALITY:**

