

9/26/81

ORDINANCE No. 114082

*Law Department*

COUNCIL BILL No. 106820

The City of

AN ORDINANCE relating to utilization of women's and minority business enterprises by the City and by City contractors; amending Seattle Municipal Code Chapter 20.46 (Women's and Minority Business Utilization Ordinance 109113, as last amended by Ordinance 112334).

Honorable President:

Your Committee on Finance

to which was referred the within report that we have considered the

COMPTROLLER FILE No. \_\_\_\_\_

|   |                                      |
|---|--------------------------------------|
| Introduced:<br><b>JUL 18 1988</b>             | By:<br><b>GALLE</b>                  |
| Referred:<br><b>JUL 18 1988</b>               | To:<br><i>Personnel</i>              |
| Referred:                                     | To:                                  |
| Referred:                                     | To:                                  |
| Reported:<br><b>AUG 8 1988</b>                | Second Reading:<br><b>AUG 8 1988</b> |
| Third Reading:<br><b>AUG 8 1988</b>           | Signed:<br><b>AUG 8 1988</b>         |
| Presented to Mayor:<br><b>AUG 9 1988</b>      | Approved:<br><b>AUG 12 1988</b>      |
| Returned to City Clerk:<br><b>AUG 15 1988</b> | Published:                           |
| Vetoed by Mayor:                              | Veto Published:                      |
| Passed over Veto:                             | Veto Sustained: <b>OK</b>            |

*8-9-88-6-8*

*Pass As*

*vote 5-*

*Urgent*

Department

# The City of Seattle--Legislative Department

Date Reported  
and Adopted

## REPORT OF COMMITTEE

President:

Committee on

Finance and Personnel

was referred the within Council Bill No.

106820

that we have considered the same and respectfully recommend that the same:

Pass As Amended

3/4/88

vote 5-0

*Virginia Galle*

Committee Chair

ORDINANCE 114082

1  
2  
3 AN ORDINANCE relating to utilization of women's and minority  
4 business enterprises by the city and by City contractors;  
5 amending Seattle Municipal Code Chapter 20.46 (Women's and  
6 Minority Business Utilization Ordinance 109113, as last  
7 amended by Ordinance 112334).

8 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

9 Section 1. Section 20.46.050 of the Seattle Municipal  
10 Code (Ordinance 109113, § 5) is amended as follows:

11 20.46.050 Definitions.

12 A. "Bidder" means any business which submits a bid or  
13 proposal to provide goods or services to the City.

14 B. "Combination women's and minority business enterprise"  
15 means ((an independent and continuing business for profit  
16 which performs a commercially useful function, and which is  
17 owned and controlled by a combination of women and  
18 minorities.)) a business which has been certified by the  
19 Washington State Office of Minority and Women's Business  
20 Enterprises as a bona fide combination women's and minority  
21 business enterprise.

22 C. "Contract awarding authority" means the City officer,  
23 department, commission, employee, or board authorized to enter  
24 into or to administer contracts on behalf of the City.

25 ((D. "Controlled," for purposes of determining whether a  
26 business is a minority business enterprise, women's business  
27 enterprise, or combination women's and minority business  
28 enterprise, means that the minorities, women or combination of  
minorities and women, as the context requires, shall:))

((1. Possess legal authority and power to manage business  
assets, good will and daily operations of the business, and))

1 ((2. Actively and continuously exercise such authority  
2 and power in determining the policies and directing the opera-  
3 tions of the business.))

4 D. ((E.)) "Director" means the Director of the  
5 Department of Human Rights.

6 ((F. "Minority," "minorities," or "minority person" means  
7 ethnic persons of color, including but not limited to American  
8 Indians, Asians (including, but not limited to, Chinese,  
9 Filipinos, Japanese, Koreans, Pacific Islanders and Samoans),  
Blacks, Hispanics, and Native Alaskans.))

10 E. ((G.)) "Minority business enterprise" means ((an inde-  
11 pendent and continuing business for profit which performs a  
12 commercially useful function and which is owned and controlled  
13 by one (1) or more minority persons residing in the United  
14 States or its territories.)) a business which has been cer-  
15 tified by the Washington State Office of Minority and Women's  
16 Business Enterprises as a bona fide minority business  
enterprise.

17 ((H. "Owned," for purposes of determining whether a busi-  
18 ness is a minority business enterprise, women's business  
19 enterprise or combination women's and minority business  
20 enterprise, means that the minorities, women, or combination  
21 of both, as the context requires, shall possess an ownership  
22 interest of at least fifty-one percent (51%) of the business,  
and shall.))

23 ((1. Possess incidents of ownership, such as an interest  
24 in profit and loss, equal to at least the required ownership  
25 interest percentage; and))

26 ((2. Contribute to capital, equipment and/or expertise to  
27 the business equal to at least the required ownership  
28 percentage.))

1 ((Ownership shall be measured as though not subject to the  
2 community property interest of a spouse, if both spouses cer-  
3 tify that:))

4 ((a. Only one (1) spouse participates in the  
5 management of the business, and))

6 ((b. The nonparticipating spouse relinquishes  
7 control over his/her community property interest in the  
8 subject business.))

9 F. "Office" means the Washington State Office of  
10 Minority and Women's Business Enterprises.

11 G. ((I.)) "Person" includes one (1) or more indivi-  
12 duals, partnerships, associations, organizations, trade or  
13 professional associations, corporations, cooperatives, legal  
14 representatives, trustees, trustees in bankruptcy, receivers,  
15 or any group of persons, including any official, agent or  
16 employee of the City.

17 H. ((J.)) "Public agency" means any agency, political  
18 subdivision, or unit of local government of this state,  
19 including, but not limited to, special purpose and local ser-  
20 vice districts, any agency of the state government and any  
21 agency of the United States.

22 I. ((K.)) "Subcontractor" means any business providing  
23 goods or services to a contractor for profit, if such goods or  
24 services are procured or used in fulfillment of the contrac-  
25 tor's obligations arising from a contract with the City, but  
26 shall not include businesses providing goods to a contractor  
27 whose contract with the City is for the provision of  
28 materials, equipment or supplies.

J. ((L.)) "Women's business enterprise" means ((an  
independent and continuing business for profit which performs

1 a commercially useful function and which is owned and  
2 controlled by one (1) or more women residing in the United  
3 States or its territories.)) a business which has been cer-  
4 tified by the Washington State Office of Minority and Women's  
5 Business Enterprises as a bona fide women's business  
6 enterprise.

7 Section 2. Section 20.46.060 of the Seattle Municipal  
8 Code (Ordinance 109113 § 6) is amended as follows:

9 20.46.060 Powers and duties of Director of  
10 Department of Human Rights.

11 A. In addition to duties and powers given to the  
12 Director elsewhere, the Director shall:

13 1. Provide information and other assistance to  
14 women's business enterprises and minority business enterprises  
15 to increase their ability to effectively compete for the award  
16 of City contracts;

17 2. Assist City and community agencies to increase  
18 women's business enterprise and minority business enterprise  
19 participation on City contracts;

20 3. Adopt rules and regulations, consistent with  
21 Chapter 328, Washington Laws of 1987, this chapter and the  
22 Administrative Code of The City of Seattle (Ordinance 102228,  
23 as amended), establishing standards and procedures for effec-  
24 tively carrying out this chapter;

25 4. ((Certify businesses as bona fide women's busi-  
26 ness enterprises and minority business enterprises, accept))  
27 A((a))ccept certifications as bona fide women's, minority,  
28 ((or)) combination women's and minority or disadvantaged busi-  
ness enterprises made by the Washington State Office of  
Minority and Women's Business Enterprises and those deemed  
certified by that Office pursuant to Washington Laws of 1987,

1 Chapter 328; and (~~other public agencies pursuant to inter-~~  
2 ~~local agreements authorized by RCW Chapter 39.34 and~~  
3 ~~maintain~~)) provide access to a listing of such bona fide busi-  
4 nesses for use by contract awarding (~~and~~) authorities and  
5 contractors;

6 5. Recommend to the Mayor appropriate goals for  
7 minority and women's business enterprise utilization;

8 6. Recommend to the Mayor appropriate goals for  
9 "disadvantaged businesses" utilization in federally funded,  
10 City-administered projects where utilization of such busi-  
11 nesses is required by state or federal law; (~~and~~)

12 7. Adopt rules and regulations consistent with the  
13 Administrative Code of The City of Seattle (SMC Chapter 3.02,  
14 Ordinance 102228, as amended) establishing practices and pro-  
15 cedures for effectively implementing 49 CFR Part 23, subpart  
16 D; and

17 8. Recommend to contract awarding authorities such  
18 sanctions as may be appropriate pursuant to SMC 20.46.080(4).

19 B. The requirements of this chapter are in addition to  
20 those imposed by the United States or the state as a condition  
21 of financial assistance or otherwise; therefore, the Director  
22 may authorize the substitution of such state or federal  
23 women's business enterprise and minority business enterprise  
24 requirements for the requirements of this chapter whenever  
25 such state or federal requirements are substantially the same  
26 as those of this chapter.

27 C. The Director may enter into cooperative agreements  
28 with other public agencies concerned with increasing the uti-  
lization of women's or minority business enterprise in govern-  
ment contracting, subject to the approval of the legislative  
authority of the City.

1 D. In order to enhance the successful achievement of the  
2 policy and goals of this chapter with respect to women's busi-  
3 ness enterprises, the Office for Women's Rights shall:

4 1. Provide information and other assistance to  
5 women business enterprises to increase their ability to com-  
6 pete effectively for the award of City contracts;

7 2. Assist City and community agencies to increase  
8 women and business enterprise participation on City contracts;

9 3. Provide advice and assistance to HRD regarding  
10 the adoption of rules and regulations consistent with this  
11 ordinance and the Administrative Code of The City of Seattle  
12 (Ordinance 102228, as amended) establishing standards and  
13 procedures for effectively carrying out this chapter;

14 4. Develop educational programs and otherwise  
15 assist women business enterprises to compete effectively for  
16 City contracts;

17 5. Review the progress of departments and awarding  
18 authorities toward achievement of their annual goals for the  
19 utilization of women business enterprises;

20 6. Make recommendations to the Director of HRD,  
21 departments, and awarding authorities to further the policies  
22 and goals of this chapter; and

23 7. Recommend to the Mayor appropriate goals for  
24 women's business utilization.

25 Section 3. Section 20.46.070 of the Seattle Municipal  
26 Code (Ordinance 109113, § 7) is amended as follows:

27 20.46.070 Utilization Goals.

28 A. ((Except as provided in subsection C of this section,  
the)) T((t))he Mayor, with the advice of the Director, the  
Director of the Office for Women's Rights, and contract award-  
ing authorities, shall establish separate City-wide annual

1 goals for the utilization of women's business enterprises and  
2 for the utilization of minority business enterprises. These  
3 goals shall be expressed in terms of a percentage of the total  
4 dollar value of all contracts to be awarded by the City, and  
5 may be established separately for categories of contracting  
6 such as public works, consultant, concession and purchasing  
7 contracts. Goals shall be reason-ably achievable, and shall  
8 be based upon factors such as:

9 1. The level of participation of women's business  
10 enterprises and minority business enterprises on past  
11 contracts awarded by the City which have contained women and  
12 minority business enterprise requirements:

13 2. The level of participation of women's business  
14 enterprises and minority business enterprises on contracts  
15 awarded by other governmental agencies in the Seattle area  
16 which have utilized women's business enterprise and minority  
17 business enterprise requirements;

18 3. The availability of women's business enterprises  
19 and minority business enterprises which are capable of pro-  
20 viding goods and services to the City; and

21 4. The degree to which such annual goals will  
22 contribute to the achievement of the ultimate goal as set  
23 forth in Section 20.46.030.

24 The City-wide annual goal shall be not less than fifteen  
25 percent (15%) for minority business enterprises and not less  
26 than three percent (3%) for women's business enterprises.

27 B. ((Except as provided in subsection C of this section,  
28 the)) T((t))he Mayor, with the advice of the Director, the  
Director of the Office for Women's Rights, and each contract  
awarding authority, shall establish separate annual  
goals for utilization of women's business enterprises and  
minority business enterprises by that awarding authority;

1 these goals shall be expressed as a percentage of the total  
2 dollar value of all contracts to be awarded by the contract  
3 awarding authority, and may be established separately by  
4 contract category; they shall equal or exceed the City-wide  
5 annual goals.

6 ((C. Because of the insufficiency of current information  
7 regarding the availability of women's business enterprises,  
8 and where necessary to ensure, that goals for the utilization  
9 of such businesses are reasonably achievable, the Mayor, with  
10 the advice of the Office of Women's Rights and the Director,  
11 may study the availability of women's business enterprises for  
12 City contracting prior to establishing the utilization goals  
13 required by this section. Such goals shall be established in  
14 any event no later than one (1) year following the effective  
15 date of the ordinance codified in this chapter.))

16 Section 4. Section 20.46.080 of the Seattle Municipal  
17 Code (Ordinance 109113, § 8) is amended as follows:

18 20.46.080 Utilization Requirements-Generally.

19 A. Contract awarding authorities shall:

20 1. Make every effort to solicit bids and proposals  
21 from women's business enterprises and minority business  
22 enterprises;

23 2. To the maximum extent feasible and consistent  
24 with state law, arrange contracting by size and type of work  
25 to be performed to most effectively enhance the opportunity  
26 for participation by women's business enterprises and minority  
27 business enterprises;

28 3. When advisable, waive bid bonding requirements  
for and/or make advance payments to women's business enter-  
prises and minority business enterprises whenever such waivers

1 or advances are permitted by the Constitution and the laws of  
2 the state and are appropriate and necessary to achieve the  
3 declared policy of this chapter; and

4 4. Impose such sanctions or take such other actions  
5 as are designed to ensure compliance with the provisions of  
6 this chapter, which shall include, but are not limited to:

7 a. Refusal to award a contract,  
8 b. Suspension of a contract,  
9 c. Withholding of funds,  
10 d. Rescission of a contract based upon a  
11 material breach of a contract provisions((s)) pertaining to  
12 women's business enterprise and minority business enterprise  
13 utilization.

14 e. Disqualification of a bidder, contractor,  
15 subcontractor, or other business from eligibility for pro-  
16 viding goods or services to the City for a period not to  
17 exceed two (2) years; no contract shall be awarded to any per-  
18 son or business which is disqualified from doing business with  
19 the City under the provisions of this chapter or Ordinance  
20 101432, nor shall any contract be awarded to any person or  
21 business which is disqualified from doing business with any  
22 governmental agency based on failure to comply with women's or  
23 minority business or contract compliance requirements which  
24 are substantially the same as those of this chapter or  
25 Ordinance 101432.

26 B. In addition to such other requirements as may be set  
27 forth elsewhere, the following shall apply to all contracts  
28 awarded by the City:

1. Bid conditions, requests for proposals and all  
other specifications for contracts awarded by the City shall

1 require that where subcontracting is utilized in performing  
2 the contract, the bidder or proposer, prior to the submission  
3 of bids or proposals, must make every effort to subcontract to  
4 or purchase from women's business enterprises and minority  
5 business enterprises. Such specifications shall require the  
6 bidder to keep records of such efforts adequate to permit a  
determination of compliance with the specifications;

7 2. Contracts shall incorporate by reference this  
8 chapter and shall provide that the failure of any bidder,  
9 contractor or subcontractor to comply with any of its require-  
10 ments shall be a material breach of contract;

11 3. Work subcontracted by a women's business  
12 enterprise, minority business enterprise or combination  
13 women's and minority business enterprise to a business not  
14 certified as a women's business enterprise, minority business  
15 enterprise or combination women's and minority business  
16 enterprise shall not be counted towards women's business  
17 enterprise or minority business enterprise utilization  
requirements.

18 4. ((3-)) Contracts shall require that during the term  
19 of the contract, the contractor shall:

20 a. Fulfill the women's business enterprise and  
21 minority business enterprise participation commitments sub-  
mitted with their bid or proposal ((7))<sub>i</sub>

22 b. Continue to make every effort to utilize women's  
23 business enterprises and minority business enterprises ((7  
24 and))<sub>i</sub>

25 c. Require that their subcontractors make every  
26 effort to utilize women's business enterprises and minority  
27 business enterprises ((7))<sub>i</sub> and

1           d. Maintain records reasonably necessary for moni-  
2           toring their compliance with the provisions of this chapter  
3           (~~(4)~~).

4           5. (~~(4)~~) As required by RCW 35.22.650, and in addition  
5           to the requirements of this chapter, the following clause  
6           shall be contained in all public works contracts exceeding the  
7           sum of Ten Thousand Dollars (\$10,000.00), or Fifteen Thousand  
8           Dollars (\$15,000.00) for construction of water mains:

9           Contractor agrees that he shall actively solicit the  
10          employment of minority group members. Contractor further  
11          agrees that he shall actively solicit bids for the sub-  
12          contracting of goods or services from qualified minority busi-  
13          nesses. Contractor shall furnish evidence of his compliance  
14          with these requirements of minority employment and sollicita-  
15          tion. Contractor further agrees to consider the grant of sub-  
16          contracts to said minority bidders on the basis of  
17          substantially equal proposals in the light most favorable to  
18          said minority businesses. The contractor shall be required to  
19          submit evidence of compliance with this section as part of the  
20          bid. As used in this clause, the term "minority business"  
21          means a business at least fifty-one percent (51%) of which is  
22          owned by minority group members. Minority group members  
23          include, but are not limited to, Blacks, women, Native  
24          Americans, Asians, Eskimos, Aleuts, and Hispanics.

25          6. (~~(5)~~) Whenever contract supplements, amendments or  
26          change orders are made which increase the total dollar value  
27          of the contract by (~~more than~~) ten percent (10%) or more of  
28          the dollar value of the original contract, the contractor  
            shall comply with those provisions of this chapter which  
            applied to the original contract with respect to the

1 supplement, amendment or change order; provided that the  
2 subcontracting requirements of section 20.46.090 may be  
3 waived by the Director for a supplement, amendment or change  
4 order pursuant to Section 20.46.090 B.2.

5 7. (~~6.~~) All contracts or other agreements between the  
6 City and other governmental or quasi-governmental agencies, or  
7 public corporations, whereby such agencies receive money from  
8 or through the City for the purpose of contracting with busi-  
9 nesses to perform public improvements shall require such agen-  
10 cies to comply with the provisions of this chapter in awarding  
11 and administering such contracts.

12 C. For the purpose of determining women's and minority  
13 business enterprise participation:

14 1. Contracts or subcontracts awarded to joint ventures  
15 in which one (1) or more women's business enterprises or  
16 minority business enterprises are combined with one (1) or  
17 more businesses which are not women's or minority business  
18 enterprises shall be deemed to be awarded to women's or  
19 minority business enterprises only to the extent of the  
20 women's or minority business participation in the joint  
21 venture;

22 (~~2. One half (1/2) the dollar value of any contracts or~~  
23 ~~subcontracts awarded to partnership in which a woman is a~~  
24 ~~fifty percent (50%) partner with a non-minority male not her~~  
25 ~~husband, or in which a minority is a fifty percent (50%)~~  
26 ~~partner with a non-minority, shall be deemed to be awarded to~~  
27 ~~a women's business enterprise or minority business enterprise;~~  
28 ~~and))~~

29 2. (~~3.~~) Contracts or subcontracts awarded combination  
30 women's and minority business enterprises shall be deemed to  
31 be awarded fifty percent to a women's business enterprise ((to

1 the extent of women's ownership)) and fifty percent to a  
2 minority business enterprise ((~~to the extent of minority~~  
3 ownership)); provided that for those combination businesses  
4 that are other than a 50-50 percentage, the contract shall be  
5 deemed to be awarded to the women's business enterprise and  
6 the minority business enterprise based upon the extent of  
7 women's ownership and the extent of minority ownership.

8 D. To the extent permissible under applicable law, and  
9 where a contract awarding authority does not appear able to  
10 achieve its utilization goals by another available alter-  
11 native, then a contract awarded authority may limit com-  
12 petition for certain negotiated contracts to women's business  
13 enterprises or minority business enterprises, or both.

14 Section 5. Section 20.46.090 of the Seattle Municipal  
15 Code (Ordinance 109113, § 9) is amended as follows:

16 20.46.090 Utilization Requirements-Public works,  
17 consultant and other service contracts.

18 A. For all contracts for public works and contracts for  
19 consultant or other services, the estimated cost of which  
20 equals or exceeds Five Thousand Dollars (\$5,000.00), the  
21 contract awarding authority shall furnish the Director with an  
22 informational copy of all bid conditions and requests for pro-  
23 posals, if any, along with a statement identifying all funds  
24 provided by any other governmental agency which will be used  
25 in payment of the contract, prior to solicitation of bids or  
26 proposals, and the Director may make recommendations to the  
27 contract awarding authority with respect to provisions per-  
28 taining to women's business enterprise and minority business  
enterprise utilization.

1           B.    Contracts for public works, the estimated cost of  
2    which equals or exceeds Ten Thousand Dollars (\$10,000.00), and  
3    contracts for consultant or other services, the estimated cost  
4    of which equals or exceeds Fifteen Thousand Dollars (\$15,000.00),  
5    shall be awarded and administered in accordance with the  
6    following standards and procedures:

7           1.    In addition to the requirements set forth in  
8    subsection B of Section 20.46.080 and elsewhere, bid con-  
9    ditions and requests for proposals shall require bidders and  
10   proposers to include in their bid or proposal both minority  
11   business enterprise and women's business enterprise par-  
12   ticipation in the contract in a percentage which equals or  
13   exceeds the awarding authority's annual goals. Except as pro-  
14   vided in (~~subsection C of Section 20.46.070 and~~) subsection  
15   B2 of this section, bids or proposals not including both  
16   minority business enterprise and women's business enterprise  
17   participation in an amount which equals or exceeds that  
18   required by the bid conditions or request for proposals shall  
19   be declared nonresponsive.

20           a.    Bids and proposals shall identify the par-  
21   ticular minority business enterprises and women's business  
22   enterprises to be utilized in performing the contract, spe-  
23   cifying for each the dollar value of the participation, the  
24   type of work to be performed and such information as may  
25   reasonably be required to determine the responsiveness of the  
26   bid or proposal.

27           b.    During the term of the contract any failure  
28   to comply with the levels of minority business enterprise or

1 women's business enterprise participation identified in the  
2 bid or proposal shall be considered a material breach of  
3 contract.

4 2. A contract awarding authority or a department  
5 may request the Director to waive the set aside requirements  
6 of this subsection, or to reduce the amount of the set aside,  
7 for either or both minority business enterprises or women's  
8 business enterprises, by submitting the reasons therefor in  
9 writing to the Director prior to solicitation of bids or  
10 proposals(~~(-)~~) or prior to the award of a contract supplement  
or amendment, or the issuance of a change order.

11 a. The Director may grant such a waiver or  
12 reduction upon determination that:

13 i. The reasonable and necessary require-  
14 ments of the contract, contract supplement, amendment or  
15 change order render subcontracting or other participation of  
16 businesses other than the bidder, (~~(e)~~) proposer or  
contractor infeasible; or

17 ii. Sufficient qualified minority and  
18 women's business enterprises capable of providing the goods or  
19 services required by the contract, are unavailable in the  
20 market area of the project, despite every feasible attempt to  
21 locate appropriate minority and women's business  
enterprises(~~(-)~~); or

22 iii. The contract, contract supplement,  
23 amendment or change order for which a waiver or reduction is  
24 sought is part of a planned series of related contracts,  
25 contract supplements, amendments or change orders which, when  
26  
27  
28

1 considered together, shall include women's and minority busi-  
2 ness utilization sufficient to meet the applicable utilization  
3 goals.

4 b. Only the requirements of subsection B1 of  
5 this section are waived by a waiver under this paragraph.

6 c. Any reductions in set aside amount granted  
7 by the Director shall specify the amount to which the set  
8 aside has been reduced.

9 d. Whenever the Director denies a request to  
10 waive or reduce a set aside, the contract awarding authority  
11 may appeal that denial to the Mayor, whose decision on the  
12 request shall be final.

13 C. All bid conditions and requests for proposals for  
14 consultant and other service contracts the value of which does  
15 not exceed Fifteen Thousand Dollars (\$15,000.00), shall  
16 require bidders and proposers to make every effort to utilize  
17 women's business enterprises and minority business enterprises  
18 as subcontractors and suppliers. All bids and proposals shall  
19 identify projected women's business enterprise and minority  
20 business enterprise participation, and the efforts made to  
21 utilize women's business enterprises and minority business  
22 enterprises.

23 D. For all consultant and other service contracts the  
24 value of which equals or exceeds One Thousand Dollars,  
25 (\$1,000.00), the contract awarding authority shall solicit  
26 proposals from qualified minority and women's business  
27 enterprises. The contract awarding authority shall notify the  
28 Director prior to solicitation of bids or proposals whenever  
such qualified businesses cannot be identified, unless the

1 Director has waived such notification requirement based on the  
2 known unavailability of such businesses. The Director shall  
3 attempt to identify such businesses, and if successful, shall  
4 notify the awarding authority, who shall provide such women's  
5 business enterprise or minority business enterprise every  
6 practical opportunity to submit bids or proposals.

7 E. All consultant selection panels and the Seattle  
8 Design Commission shall give appropriate consideration to the  
9 utilization goals of the contract awarding authority in eva-  
10 luating, recommending and selecting contractors. The Director  
11 may assist such panels and the Design Commission in evaluating  
12 the impact of their recommendation or selection on achievement  
13 of the contract awarding authority's utilization goals.

14 Section 6. Section 20.46.110 of the Seattle Municipal  
15 Code (Ordinance 109113 § 11) is amended as follows:

16 20.46.110 Utilization requirements-Lease concession  
17 and other contracts.

18 All leases in which the City is the lessee and all  
19 contracts for concessions shall be awarded and administered in  
20 accordance with the following standards and procedures:

21 A. City departments shall solicit proposals from women's  
22 business enterprises and minority business enterprises  
23 qualified to enter into leases or concession contracts.

24 Whenever a department, after investigation, determines that no  
25 such qualified enterprises are available, the Director shall  
26 be so notified prior to signing of the lease or award of the  
27 concession contract, unless the Director waives such notifica-  
28 tion based on the known unavailability of such qualified busi-  
nesses to perform a particular contract. The Director may

1 attempt to identify such qualified businesses, and if success-  
2 ful, shall notify the contract awarding authority of their  
3 availability. The contract awarding authority shall provide  
4 such women's business enterprises and minority business  
5 enterprises every practical opportunity to submit bids or  
6 proposals.

7 B. All requests for concession proposals shall require  
8 concessionaires to make every good faith effort to utilize  
9 women's business enterprises and minority business enterprises  
10 as subcontractors if subcontractors are used. Concession pro-  
11 posers shall be required to submit their projected utilization  
12 of women's business enterprises and minority business  
13 enterprises along with a description of the efforts made to  
14 utilize such businesses.

15 C. All City departments, commissions, boards, officers  
16 and employees, in the deposit of City funds and performance of  
17 their other official duties, shall make every good faith  
18 effort to equitably utilize the services of women's business  
19 enterprises and minority business enterprises. Such services  
20 shall include, but are not limited to, the financial services  
21 of banks, savings and loan companies and other commercial  
22 financial institutions, arrangement of travel and accom-  
23 modations when traveling on official City business, and legal  
24 services, ~~((to))~~ City departments, commissions and boards  
25 shall submit to the Director on an annual basis a written  
26 report on the efforts made pursuant to this subsection. The  
27 City Treasurer, City Comptroller and Retirement Board shall  
28 report annually to the Mayor on their utilization of financial

1 institutions which are women's business enterprises and  
2 minority business enterprises.

3 Section 7. Section 20.46.120 of the Seattle Municipal  
4 Code (Ordinance 109113, § 12) is amended as follows:

5 20.46.120 Exceptions and waivers.

6 A. A contract awarding authority may waive the utiliza-  
7 tion requirements of this chapter ((~~except for those of sub-~~  
8 ~~section B of Section 20.46.090,~~) for a specific contract  
under the following circumstances:

9 1. Whenever the contract awarding authority finds  
10 with the advice of the Director that needed goods or services  
11 are available only from a sole source, and the prospective  
12 contractor is not currently disqualified from doing business  
13 with the City under the provisions of subsection B5 of Section  
14 20.46.080, Ordinance 101432, or from doing business with any  
15 governmental agency based on a failure to comply with women's  
16 or minority business enterprise or contract compliance  
requirements; or

17 2. If the contract awarding authority certifies in  
18 writing to the Director prior to contract award;

19 a. That an emergency exists which requires  
20 goods or services to be provided with such immediacy that they  
21 are unable to comply with the requirements of this chapter,  
and

22 b. That the prospective contractor is a  
23 women's business enterprise or minority business enterprise,  
24 or if not, that the prospective contractor will make every  
25 good faith effort to subcontract to women's business enterpri-

1 ses and/or minority business enterprises should subcontracting  
2 be utilized; or

3 3. If the contract awarding authority certifies in  
4 writing to the Director that the contract is necessary to  
5 respond to an emergency which endangers the public health or  
6 safety; provided that such certification shall be made within  
seven (7) days after the contract award.

7 B. The Mayor may waive the utilization requirements of  
8 this chapter whenever he or she finds that compliance with the  
9 requirements of this chapter would impose an unwarranted eco-  
10 nomic burden or risk on the City when compared to the degree  
11 to which the purpose and policy of this chapter would be  
12 furthered by requiring compliance.

13 C. The requirements of this chapter shall not apply to  
14 contracts with private, nonprofit organizations for the deli-  
very of social services.

15 Section 8. Section 20.46.140 of the Seattle Municipal  
16 Code (Ordinance 112043 § 1) is hereby repealed.

17 Section 9. This ordinance shall take effect and be in  
18 force thirty days from and after its passage and approval, if  
19 approved by the Mayor; otherwise it shall take effect at the  
20 time it shall become a law under the provisions of the City  
Charter.

21  
22 Passed by the City Council the 8th day  
23 of August, 19 88, and signed by  
24 me in open session in authentication of its passage this  
25 8th day of August, 19 88.

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*[Handwritten Signature]*

President \_\_\_\_\_ of the City Council.

Approved by me this 12<sup>th</sup> day of August,  
19 88.

*[Handwritten Signature: Charles Royer]*

Charles Royer, Mayor.

Filed by me this 12<sup>th</sup> day of August,  
19 88.

*[Handwritten Signature: Norward J. Brooks]*

Attest:

Norward Brooks, City  
Comptroller and City Clerk.

(SEAL)

Published \_\_\_\_\_

By

*[Handwritten Signature: Margaret Carter]*  
Deputy Clerk.

Publish  Do Not Publish

City Attorney \_\_\_\_\_

#17  
C.B. 106820

Finance and Personnel Committee  
C.B. 106820

The City's WMBE Utilization ordinance was first enacted in 1980 and last amended in 1985. In 1987 the State Legislature passed SB 5529, removing the certification of WMBEs from local jurisdictions and vesting that authority with the State Office of Minority and Women's Business Enterprises. This is now commonly referred to as "one stop certification."

The majority of changes recommended in proposed C.B. 106820 are made to bring the City's WMBE ordinance into compliance with current State law. Proposed changes are recommended by the Human Rights Commission and the Board of Public Works.

In addition to bringing SMC Chapter 20.46 into conformance with State law, the other significant recommendation of this bill provides that WMBE utilization requirements may be waived or reduced by the Human Rights Director for contract supplements, amendments and change orders in cases where no WMBE certified contractors exist because of the specialized nature of the work to be done.

Finally, Councilmembers will note that the amendments propose to eliminate Section 3-C (page 8) dealing with the establishment of utilization goals for women's business enterprises. In order to preserve the intent of this statement, and to build on the cooperative relationships that have developed, staff recommends the following wording be included at Section 3-A (page 6 line 26) and at Section 3-B (page 7 line 24):

"...with the advice of the Director, the Director of the Office for Women's Rights, and contract awarding authorities..."

Committee Recommendation: PASS AS AMENDED.

Your  
Seattle  
Human Rights Department

Bill W. Hilliard, Director  
Charles Royer, Mayor

DC  
RECEIVED



July 6, 1988

MAY 4 1988

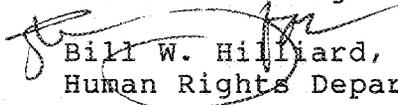
MAY 4 1988

838842

To: Seattle City Council

Via: Mayor Charles Royer

Attention: Jim Ritch, Director  
Office of Management and Budget

From:  Bill W. Hilliard, Director  
Human Rights Department

Re: Proposed ordinance relating to the utilization of women's and minority business enterprises by the City and by City contractors and amending S.M.C. 20.46 (Women's and Minority Business Utilization Ordinance)

The City of Seattle's Women's and Minority Business Utilization Ordinance 109113 was enacted in 1980 and last amended in 1985. The passage of SB 5529, CH.328, Laws of 1987 by the Washington State Legislature has removed the certification of women and minority business enterprises from local jurisdictions and vested that authority with the State Office of Minority and Women's Business Enterprises. This legislation is commonly referred to as the "one stop certification" bill.

The majority of the changes in the proposed ordinance to S.M.C. 20.46 are made because of the enactment of SB 5529. Areas affected include the sections on definitions, powers and duties of the Director, utilization requirements for partnerships and combination WMBEs and appeals from decertification. Other changes were suggested and reviewed by the Contract Compliance Advisory Committee to HRD and the Human Rights Commission. Of these, one of the most important is a change in the waiver and reduction requirements for WMBE utilization. This provision allows for waivers and reductions to be granted for contract supplements, amendments and change orders.

The proposed amendment to S.M.C. 20.46 will bring the City's Women's and Minority Business Utilization Ordinance into compliance with state law. It will additionally address implementation problems encountered in the application of the ordinance.

BWH:vr

# City of Seattle

Executive Department-Office of Management and Budget

James P. Ritch, Director  
Charles Royer, Mayor



May 3, 1988

**COPY RECEIVED**

MAY 4 1988

The Honorable Douglas Jewett  
City Attorney  
City of Seattle

Douglas N. Jewett  
CITY ATTORNEY

Dear Mr. Jewett:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING  
DEPARTMENT: Human Rights

SUBJECT: An ordinance relating to utilization of women's and minority business enterprises by the City and by City contractors

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMB. Any specific questions regarding the legislation can be directed to Jo Cochran.

Sincerely,

Charles Royer  
Mayor

by

JAMES P. RITCH  
Budget Director

JR/jc/lc

Enclosure

cc: Director, Human Rights



TIME / DATE STAMP

**SPONSORSHIP**

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

*Virginia Gale*

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**FOR CITY COUNCIL PRESIDENT USE ONLY**

COMMITTEE(S) REFERRED TO: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
PRESIDENT'S SIGNATURE

# City of Seattle

ORDINANCE 114082

AN ORDINANCE relating to utilization of women's and minority business enterprises by the city and by city contractors, amending Seattle Municipal Code Chapter 20.46 (Women's and Minority Business Utilization Ordinance 109113, as last amended by Ordinance 112344).

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 20.46.050 of the Seattle Municipal Code (Ordinance 109113, §5) is amended as follows:

#### 20.46.050 Definitions.

A. "Bidder" means any business which submits a bid or proposal to provide goods or services to the City.

B. "Combination women's and minority business enterprise" means (an independent and continuing business for profit which performs a commercially useful function, and which is owned and controlled by a combination of women and minorities.) A BUSINESS WHICH HAS BEEN CERTIFIED BY THE WASHINGTON STATE OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES AS A BONA FIDE COMBINATION WOMEN'S AND MINORITY BUSINESS ENTERPRISE.

C. "Contract awarding authority" means the City officer, department, commission, employee, or board authorized to enter into OR TO ADMINISTER contracts on behalf of the City.

(D. "Controlled," for the purposes of determining whether a business is a minority business enterprise, women's business enterprise, or combination women's and minority business enterprise, means that the minorities, women or combination of minorities and women, as the context requires, shall:)

(1. Possess legal authority and power to manage business assets, good will and daily operations of the business, and)

(2. Actively and continuously exercise such authority and power in determining the policies and directing the operations of the business.)

D. (E.) "Director" means the Director of the Department of Human Rights.

(F. "Minority," "minorities," or "minority person" means ethnic persons of color, including but not limited to American Indians, Asians (including but not limited to, Chinese, Filipinos, Japanese, Koreans, Pacific Islanders and Samoans), Blacks, Hispanics, and Native Alaskans.)

E. (G.) "Minority business enterprise" means (an independent and continuing business for profit which performs a commercially useful function and which is owned and controlled by one (1) or more minority persons residing in the United States or its territories.) A BUSINESS WHICH HAS BEEN CERTIFIED BY THE WASHINGTON STATE OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES AS A BONA FIDE MINORITY BUSINESS ENTERPRISE.

(H. "Owned" for purposes of determining whether a business is a minority business enterprise, women's business enterprise or combination women's and minority business enterprise, means that the minorities, women, or combination of both, as the context requires, shall possess an ownership interest of at least fifty percent (51% of the business, and shall:)

(1. Possess incidents of ownership, such as an interest in profit and loss, equal to at least the required ownership interest percentage; and)

(2. Contribute to capital, equipment and/or expertise to the business equal to at least the required ownership percentage.) (Ownership shall be measured as though not subject to the community property interest of a spouse, if both spouses certify that:)

(a. Only one (1) spouse participates in the management of the business, and)

(b. The nonparticipating spouse relinquishes control over his/her community property interest in the subject business.)

F. "OFFICE" MEANS THE WASHINGTON STATE OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES.

G. (I.) "Person" includes one (1) or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, or any group or persons, including any official, agent or employee of the City.

H. (J.) "Public agency" means any agency, political subdivision, or unit of local government of this state, including but not limited to, essential services, and

chapter with respect to women's business enterprises, the Office of Women's Rights shall:

1. Provide information and other assistance to women business enterprises to increase their ability to compete effectively for the award of City contracts.

2. Assist City and community agencies to increase women and business enterprise participation on City contracts.

3. Provide advice and assistance to HRD regarding the adoption of rules and regulations consistent with this ordinance and the Administrative Code of the City of Seattle (Ordinance 102238, as amended), establishing standards and procedures for effectively carrying out this chapter;

4. Develop educational programs and otherwise assist women business enterprises to compete effectively for City contracts.

5. Review the progress of departments and awarding authorities toward achievement of their annual goals for the utilization of women business enterprises;

6. Make recommendations to the Director of HRD, departments, and awarding authorities to further the policies and goals of this chapter; and

7. Recommend to the Mayor appropriate goals for women's business utilization.

Section 3. Section 20.46.070 of the Seattle Municipal Code (Ordinance 109113, §7) is amended as follows:

#### 20.46.070 Utilization Goals.

A. (Except as provided in subsection C of this section, the) T (4) he Mayor, with the advice of the Director, THE DIRECTOR OF THE OFFICE FOR WOMEN'S RIGHTS, and contract awarding authorities, shall establish separate City-wide annual goals for the utilization of women's business enterprises and for the utilization of minority business enterprises. These goals shall be expressed in terms of a percentage of the total dollar value of all contracts to be awarded by the City, and may be established separately for categories of contracting such as public works, consultant, concession and purchasing contracts. Goals shall be reasonably achievable, and shall be based upon factors such as:

1. The level of participation of women's business enterprises and minority business enterprises on past contracts awarded by the City which have contained WOMEN AND minority business enterprise requirements.

2. The level of participation of women's business enterprises and minority business enterprises on contracts awarded by other governmental agencies in the Seattle area which have utilized women's business enterprise and minority business enterprise requirements.

3. The availability of women's business enterprises and minority business enterprises, which are capable of providing goods and services to the City; and

4. The degree to which such annual goals will contribute to the achievement of the ultimate goal as set forth in Section 20.46.030.

The City-wide annual goal shall be not less than fifteen percent (15%) for minority business enterprises and not less than three percent (3%) for women's business enterprises.

B. (Except as provided in subsection C of this section, the) T (4) he Mayor, with the advice of the Director, THE DIRECTOR OF THE OFFICE FOR WOMEN'S RIGHTS, and each contract awarding authority shall establish separate annual goals for utilization of women's business enterprises and minority business enterprises by that awarding authority; these goals shall be expressed as a percentage of the total dollar value of all contracts to be awarded by the contract awarding authority, and may be established separately by contract category; they shall equal or exceed the City-wide annual goals.

(C. Because of the insufficiency of current information regarding the availability of women's business enterprises, and where necessary to ensure that goals for the utilization of such businesses are reasonably achievable, the Mayor, with the advice of the Office of Women's Rights and the Director, may study the availability of women's business enterprises for City contracting prior to establishing the utilization goals required by this section. Such goals shall be established in any event no later than one (1) year following the effective date of the ordinance codified in this chapter.)

Section 4. Section 20.46.080 of the Seattle Municipal Code (Ordinance 109113, §8) is

d. Maintain records reasonably necessary for monitoring their compliance with the provisions of this chapter(2).

5. (4.) As required by RCW 35.22.650, and in addition to the requirements of this chapter, the following clause shall be contained in all public works contracts exceeding the sum of Ten Thousand Dollars (\$10,000.00), or Fifteen Thousand Dollars (\$15,000.00) for construction of water mains:

Contractor agrees that he shall actively solicit the employment of minority group members. Contractor further agrees that he shall actively solicit bids for the subcontracting of goods or services from qualified minority businesses. Contractor shall furnish evidence of his compliance with these requirements of minority employment and solicitation. Contractor further agrees to consider the grant of subcontractors to said minority and women's business enterprises. The contractor shall be required to submit equal proposals in the light most favorable to said minority businesses. The contractor shall be required to submit evidence of compliance with this section as part of the bid. As used in this clause, the term "minority business" means a business at least fifty-one percent (51%) of which is owned by minority group members. Minority group members include, but are not limited to, Blacks, women, Native Americans, ASIANS, Eskimos, Aleuts, and HISPANICS.

5. (5.) Whenever contract supplements, amendments or change orders are made which increase the total dollar value of the contract by (more than) ten percent (10%) OR MORE of the dollar value of the original contract, the contractor shall comply with those provisions of this chapter which applied to the original contract with respect to the supplement, amendment or change order. PROVIDED THAT THE SUBCONTRACTING REQUIREMENTS OF SECTION 20.46.090 MAY BE WAIVED BY THE DIRECTOR FOR A SUPPLEMENT, AMENDMENT OR CHANGE ORDER PURSUANT TO SECTION 20.46.092 B 2.

7. (6.) All contracts or other agreements between the City and other governmental or quasi-governmental agencies, or public corporations, whereby such agencies receive money from or through the City for the purpose of contracting with businesses to perform public improvements shall require such agencies to comply with the provisions of this chapter in awarding and administering such contracts.

C. For the purpose of determining women's and minority business enterprise participation:

1. Contracts or subcontracts awarded to joint ventures in which one (1) or more women's business enterprises or minority business enterprises are combined with one (1) or more businesses which are not women's or minority business enterprises shall be deemed to be awarded to women's or minority business enterprises only to the extent of the women's or minority business participation in the joint venture.

(2. One half (50) percent of the dollar value of any contracts or subcontracts awarded to partnership in which a woman is a fifty percent (50%) partner, with a non-minority male not her husband, or in which a minority is a fifty percent (50%) partner, with a non-minority, shall be deemed to be awarded to a woman's business enterprise or minority business enterprise; and)

7. (3.) Contracts or subcontracts awarded combination women's and minority business enterprises shall be deemed to be awarded FIFTY PERCENT to a woman's business enterprise (to the extent of women's ownership) and FIFTY PERCENT to a minority business enterprise (to the extent of minority ownership); PROVIDED THAT FOR THOSE COMBINATION BUSINESSES THAT ARE OTHER THAN A 50-50 PERCENTAGE, THE CONTRACT SHALL BE DEEMED TO BE AWARDED TO THE WOMEN'S BUSINESS ENTERPRISE AND THE MINORITY BUSINESS ENTERPRISE BASED UPON THE EXTENT OF WOMEN'S OWNERSHIP AND THE EXTENT OF MINORITY OWNERSHIP.

D. To the extent permissible under applicable law, and where a contract awarding authority does not appear able to achieve its utilization goals by another available alternative, then a contract awarded authority may limit competition for certain negotiated contracts to women's business enterprises or minority business enterprises, or both.

Section 5. Section 20.46.090 of the Seattle Municipal Code (Ordinance 109113, §9) is amended as follows:

20.46.090 Utilization Requirements. Public works, consultant and other service contracts.

quest to waive or reduce a set aside, the contract awarding authority may appeal that denial to the Mayor, whose decision on the request shall be final.

C. All bid conditions and requests for proposals for consultant and other service contracts the value of which does not exceed Fifteen Thousand Dollars (\$15,000.00), shall require bidders and proposers to make every effort to utilize women's business enterprises and minority business enterprises as subcontractors and suppliers. All bids and proposals shall identify projected women's business enterprise and minority business enterprise participation, and the efforts made to utilize women's business enterprises and minority business enterprises.

D. For all consultant and other service contracts the value of which EQUALS OR exceeds One Thousand Dollars (\$1,000.00), the contract awarding authority shall solicit proposals from qualified minority and women's business enterprises. The contract awarding authority shall notify the Director prior to solicitation of bids or proposals, whenever such qualified business cannot be identified, unless the Director has waived such notification requirement based on the known unavailability of such businesses. The Director shall attempt to identify such businesses, and if successful, shall notify the awarding authority, who shall provide such women's business enterprise or minority business enterprise every practical opportunity to submit bids or proposals.

E. All consultant selection panels and the Seattle Design Commission shall give appropriate consideration to the utilization goals of the contract awarding authority in evaluating, recommending and selecting contractors. The Director may assist such panels and the Design Commission in evaluating the impact of their recommendation or selection on achievement of the contract awarding authority's utilization goals.

Section 6. Section 20.46.110 of the Seattle Municipal Code (Ordinance 109113, §11) is amended as follows:

20.46.110 Utilization requirements. Lease concession and other contracts.

All leases in which the City is the lessee and all contracts for concessions shall be awarded and administered in accordance with the following standards and procedures.

A. City departments shall solicit proposals from women's business enterprises and minority business enterprises qualified to enter into leases or concession contracts. Whenever a department, after investigation, determines that no such qualified enterprises are available, the Director shall be so notified prior to signing of the lease or award of the concession contract, unless the Director waives such notification based on the known unavailability of such qualified businesses to perform a particular contract. The Director may attempt to identify such qualified businesses, and if successful, shall notify the contract awarding authority of their availability. The contract awarding authority shall provide such women's business enterprises and minority business enterprises every practical opportunity to submit bids or proposals.

B. All requests for concession proposals shall require concessionaires to make every good faith effort to utilize women's business enterprises and minority business enterprises as subcontractors if subcontractors are used. Concession proposers shall be required to submit their projected utilization of women's business enterprises and minority business enterprises along with a description of the efforts made to utilize such businesses.

C. All City departments, commissions, boards, officers and employees, in the deposit of City funds and performance of their other official duties, shall make every good faith effort to equitably utilize the services of women's business enterprises and minority business enterprises. Such services shall include, but are not limited to, the financial services of banks, savings and loan companies and other commercial financial institutions, arrangement of travel and accommodations when traveling on official City business, and legal services. (6e) City departments, commissions and boards shall submit to the Director on an annual basis a written report on the efforts made pursuant to this subsection. The City Treasurer, City Comptroller and Retirement Board shall report annually to the Mayor on their utilization of financial institutions which are women's business enterprises and minority business enterprises.

Section 7. Section 20.46.120 of the Seattle Municipal Code (Ordinance 109113, §12) is amended as follows:

#### 20.46.120 Exceptions and waivers.

A. A contract awarding authority may waive the utilization requirements of this section (except for those of subsection B of Section 20.46.094) for a specific con-