

ORDINANCE NO. _____, SERIES 2022

AN ORDINANCE AMENDING CHAPTER 37 OF THE LOUISVILLE/ JEFFERSON COUNTY METRO CODE OF ORDINANCES TO SUPPORT BUSINESSES WHICH HIRE PERSONS CONVICTED OF A CRIME BY REQUIRING A GOOD FAITH EFFORT TO INCREASE PROCUREMENT FROM THOSE SECOND CHANCE BUSINESSES.

SPONSORED BY: COUNCIL MEMBERS DORSEY, CHAMBERS ARMSTONG, SHANKLIN, ARTHUR, BOWENS, AND PURVIS

WHEREAS, the Prison Policy Initiative estimates that, as of 2020, there were 2.3 million Americans who were incarcerated; and

WHEREAS, the Brennan Center estimates that nearly half of Black men will be arrested by the time they turn 23; and

WHEREAS, that same organization states that the same number of Americans have a criminal record as have a four-year college degree; and

WHEREAS, one study estimates that having a felony conviction on one's record is correlated with a 22 percent decrease in annual earnings (Terry-Ann Craigie, *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality* (Sep. 15, 2020) <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>); and

WHEREAS, that same study shows that white people who have been incarcerated see their income trend upward after their incarceration, whereas Black and brown people do not; and

WHEREAS, studies suggest that even a misdemeanor conviction is associated with a 16% decrease in annual wages (Terry-Ann Craigie, *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*

(Sep. 15, 2020) <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>); and

WHEREAS, numerous studies show that Black individuals are more likely to be charged with a serious crime and more likely to face a longer sentence than are white people (*An Unjust Burden*, Vera: Institute of Justice (May, 2018). <https://www.vera.org/publications/for-the-record-unjust-burden>); and

WHEREAS, a recent report by the Brennan Center explained that the fact those who are disproportionately poor and Black means that these groups also disproportionately face economic barriers like hiring discrimination and lost job opportunities (Terry-Ann Craigie, *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality* (Sep. 15, 2020) <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>); and

WHEREAS, data from the Bureau of Labor Statistics shows that Kentucky has the seventh-lowest workforce participation rate in the country; and

WHEREAS, many employers are in need of workers; and

WHEREAS, Metro Council believes it is in the public interest to address barriers to employment and help people with criminal records to have a fair chance at obtaining employment.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I: The Louisville/Jefferson County Metro Code of Ordinances (“LMCO”) Section 37.65 is hereby amended to amend and add the following definitions:

MINORITY. Any person having ethnic origin in the black racial groups of Africa or a person who identifies as an American Descendant of Slavery; a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures; a person having ethnic origin in any of the original peoples of the Far East, Middle East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, Korea, China, the Philippines, Malaysia, Hawaii, and Samoa; a person having origins in any of the original peoples of North America and who is an enrolled member of an Indian tribe recognized as such by the government of the United States or Canada; or a person having origins in the Eskimo or Aleut peoples and who is recognized as such by either a tribe, tribal council, or a suitable authority in the community, which authority may be an educational institution, religious organization, or a federal or state agency.

SECOND CHANCE SUPPORTING BUSINESS. A business whose work force, on average, is composed at least 10% of people who have been convicted of a felony or Class A misdemeanor.

SECTION II: LMCO Section 37.66 is hereby amended as follows:

(A) The Executive Director of the Louisville and Jefferson County Human Relations Commission, or his or her designee, shall develop and implement an eligibility process to identify and certify those minority, female, disabled, second chance supporting, and LGBT business enterprises as are defined in this subchapter. Any business applying for certification shall have the burden of providing sufficient information and documentation to the Director to demonstrate it is eligible for certification. Failure of the business to provide the information requested by the Director will result in denial or revocation of certification.

(B) The Director may establish policies and procedures for accepting certifications from agencies, whether local, regional, or national, which certify minority, female, disabled, second chance supporting, and LGBT business enterprises, if the Director finds such agencies certification standards to be no less rigorous than the Director's own standards. The Director may recognize business certifications granted by legitimate certifying organizations, provided such organizations have been in the business of certifying LGBT businesses for a period of not less than five years.

(C) The Louisville/Jefferson County Human Relations Commission-Enforcement Board shall act as an Advisory Board to the Director in connection with the policies, procedures, and determinations to be made in this subchapter. Any recommendation of the Advisory Board to the Director may be by vote or unanimous written consent.

SECTION III: LMCO Section 37.67 is hereby amended to read as follows:

The Metro Government, by and through its agencies and individual departments, adopts the following minimum goals for the utilization of certified minority, certified female, and certified disabled owned businesses: 15%, certified minority owned businesses; 5%, certified female owned businesses; 5%, certified second chance supporting businesses; 0.5%, certified disabled owned businesses, of its annual procurement expenditures.

SECTION IV: LMCO Section 37.68 is hereby amended to read as follows:

(A) In any procurement by or on behalf of the Metro Government, where such procurement activity is required to be advertised pursuant to this chapter, all such advertisements shall include, in addition to all other necessary information, the following language: Participation by certified female owned, certified disabled owned, certified minority owned, certified second chance supporting, and certified LGBT owned business

entities or utilization by contractors of certified female, certified disabled, certified minority, certified second chance supporting, and certified LGBT owned business enterprises as subcontractors, if the instant contract requires or warrants the use of subcontractors, is strongly encouraged and will be a consideration in determining the award of this contract.

(B) (1) In any procurement by or on behalf of the Metro Government, where such procurement activity is required to be advertised pursuant to this chapter, the Chief Procurement Officer, or a designee, shall advise, in writing, all contractors or participants in such procurement that they are to utilize their best good faith efforts to utilize subcontractors, certified female owned, certified disabled owned, certified minority owned, certified second chance supporting, and certified LGBT owned businesses if the procurement situation requires or warrants the use of subcontractors. Good faith efforts by contractors shall be made to reach the goals established by § 37.67.

(2) While the foregoing guidelines on the utilization of certified female, certified disabled, certified minority, certified second chance supporting, and certified LGBT owned businesses as subcontractors are recommended goals, failure to meet such goals will not result in disqualification from participation in the particular procurement process. Contractors, however, will be expected to provide written explanations to the Executive Director of the Human Relations Commission and Chief Procurement Officer of efforts they have made to utilize as subcontractors from certified minority, female disabled, and LGBT owned businesses. Good faith efforts of a potential bidder include, but are not limited to the following:

(a) Attendance at pre-bid meetings, if any, scheduled to inform minority, female, disabled, second chance supporting, and LGBT owned businesses enterprises of prime and subcontracting opportunities;

(b) Advertisement in general circulation media, trade association publications, minority, LGBT, second chance supporting, and female business enterprise media to provide notice of subcontracting opportunities;

(c) Communication with the Human Relations Commission Office seeking assistance and identifying available qualified minority, female, disabled, second chance supporting, and LGBT owned businesses enterprises;

(d) Efforts made to select portions of work for minority, female, disabled, second chance supporting, and LGBT owned businesses enterprises subcontracting in areas with established availability or minority, female, disabled, second chance supporting, and LGBT owned businesses enterprises subcontractors;

(e) Providing a minimum of ten days written notice to known qualified minority, female, disabled, second chance supporting, and LGBT owned businesses enterprises that their interest in prime and subcontracting opportunities or furnishing supplies is solicited;

(f) Efforts to negotiate with qualified minority, female, disabled, second chance supporting, and LGBT owned businesses enterprises for specific sub-bids, including reasons for rejection of any such sub-bids offered;

(g) Efforts made to assist qualified minority, female, disabled, second chance supporting, and LGBT owned businesses enterprises meet bonding, insurance, or other governmental contracting requirements; and

(h) As to each minority, female, disabled, second chance supporting, and LGBT owned businesses enterprises contacted which the bidder, contractor or vendor, considered not to be qualified, a statement of the reasons for the conclusion.

(C) The exercise of these good faith efforts shall establish a rebuttable presumption that a potential bidder has complied with this good faith provision.

(D) In any procurements by the Metro Government not required to be advertised pursuant to this chapter, every effort shall be made by the Chief Procurement Officer, or his or her designee, to ensure that certified female owned, certified disabled owned, certified minority owned, certified second chance supporting, and certified LGBT owned businesses are included in the pool of persons or business entities otherwise qualified and considered for the particular procurement.

SECTION V: LMCO Section 37.69 is hereby amended to read as follows:

The Mayor or his or her designee shall confer on a continuing basis with the Chief Procurement Officer and Executive Director of the Human Relations Commission to ascertain how best to assist certified female owned, certified minority owned, certified disabled owned, certified second chance supporting, and certified LGBT owned businesses in learning how to participate in the procurement process of the Metro Government. With the assistance of the Chief Procurement Officer and the Executive director of the Human Relations Commission, the Mayor or his or her designee may:

(A) Produce brochures or other written materials designed to help female, minority, disabled, second chance supporting, and LGBT owned business enterprises to learn the procurement process of the Metro Government;

(B) Develop a list of certified female owned, certified disabled owned, certified minority owned, certified second chance supporting, and certified LGBT owned businesses which list may be utilized to solicit the participation of certified female owned, certified disabled owned, certified minority owned, certified second chance supporting, and certified LGBT owned businesses in procurements for which such businesses may be qualified;

(C) Initiate training sessions to assist female, minority, disabled, second chance supporting, and LGBT owned business enterprises in learning how to effectively participate in the procurement process of the Metro Government;

(D) Partner with organizations in the Louisville Metro community that focus organizational efforts to increase the procurement opportunities of minority owned, female owned, disabled, second chance supporting, and LGBT owned businesses; and

(E) Initiate such programs as may be beneficial to the purposes of this subchapter.

SECTION VI: LMCO Section 37.71 is hereby amended to read as follows:

(A) The provisions and policies of this subchapter shall be reviewed annually by the Mayor and the Metro Council in conjunction with the establishment of goals. Reports by the Director shall be submitted to the Mayor and each Metro Council member on a quarterly basis within 30 days of the end of each quarter. At a minimum, the report shall include the following:

(1) The total number of Louisville Metro contracts by type;

(2) The total number of certified minority, female, disabled, second chance supporting, and LGBT owned businesses enterprises available within Louisville Metro to provide work, by type;

(3) The percentage of contracts awarded to certified minority, female, disabled, second chance supporting, and LGBT owned businesses enterprises; and

(4) The percentage of contracts awarded to certified minority, female, disabled, second chance supporting, and LGBT owned businesses enterprises in Louisville Metro regional competitive cities.

(B) Rules and regulations governing the implementation of this subchapter shall be established by the Mayor. The Mayor shall provide those rules and regulations to the Metro Council.

SECTION VII. This Ordinance shall take effect upon passage and approval or otherwise becoming law.

Sonya Harward
Metro Council Clerk

David James
President of the Metro Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____