



Ordinance Fact Sheet

TO: City Council

DATE: June 3, 2002

FROM: City Attorney

SUBJECT: Introduction and First Reading of an Ordinance Amending Pasadena Municipal Code Chapter 4.08, Competitive Bidding and Purchasing, Repealing Pasadena Municipal Code Chapter 4.09, Affirmative Action in Contracting, and Amending Chapter 2.360, Affirmative Action in City Employment

TITLE OF PROPOSED ORDINANCE:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PASADENA AMENDING PASADENA MUNICIPAL CODE, TITLE 4, CHAPTER 4.08, COMPETITIVE BIDDING AND PURCHASING, REPEALING PASADENA MUNICIPAL CODE TITLE 4, CHAPTER 4.09, AFFIRMATIVE ACTION IN CONTRACTING, AND AMENDING PASADENA MUNICIPAL CODE TITLE 2, CHAPTER 2.360, AFFIRMATIVE ACTION IN CITY EMPLOYMENT, TO ENSURE COMPLIANCE WITH THE CONSTITUTION OF THE STATE OF CALIFORNIA

BACKGROUND:

A proposed ordinance was submitted to the City Council at its meeting of April 8, 2002. At that meeting, the City Council asked that the proposed ordinance be revised to the extent legally permissible, to include provisions regarding reporting with respect to contractors hiring Pasadena residents. Further, the desire was expressed to include reporting information regarding minorities and women, and mechanisms to ensure that contractors have broad based outreach. The attached ordinance establishes those provisions to the extent allowed by law and also modifies the Pasadena Municipal Code in the manner described to the Council previously, as described below.

PURPOSE OF ORDINANCE:

The attached Ordinance amends the Pasadena Municipal Code Chapters relating to City Employment and Contracting to eliminate provisions related to preferential treatment in City employment and contracting made unconstitutional by the enactment of Section 31 to Article 1 of the Constitution of the State of California (Proposition 209). The proposed revisions to the

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MEETING OF 6/10/2002
6/3/2002

AGENDA ITEM NO. 9-A-1-3.B.

Competitive Bidding and Purchasing Ordinance will preserve the City's commitment to equal opportunity and local contracting, as previously established in the Affirmative Action in Contracting Ordinance, and will require contractor compliance with these provisions. The ordinance revisions will also ensure that the City's employment practices conform to the requirements of the Constitution of the State of California.

The Affirmative Action in Contracting Ordinance that is being repealed provides that contracts in excess of \$25,000 that are not subject to competitive bidding are subject to a competitive selection process. Under the current Ordinance, exemptions to this requirement are subject to the approval of the City Council. The proposed revisions maintain the requirement to undertake a competitive selection process for contracts in excess of \$25,000 which are not subject to competitive bidding, by incorporating such requirement into the Competitive Bidding and Purchasing Ordinance. The City Manager would have authority to approve such contracts if they are less than \$75,000. This is consistent with Article X Section 1001 of the City Charter which exempts contracts less than \$75,000 from Council approval, and Section 4.08.030 of the Competitive Bidding and Purchasing Ordinance which authorizes the City Manager to establish procedures for procurements excluded from competitive bidding.

The proposed ordinance also clarifies that the contracting authority for the Pasadena Center Operating Company is the same as that of the Rose Bowl Operating Company.

Modifications following April 8, 2002 City Council Meeting:

As a result of various case authority and interpretations of the Privileges and Immunities Clause of the U.S. Constitution Privileges, among others, there are severe impediments to the City's ability to mandate local hiring by its contractors or provide a preference to bidders to induce such hiring. However, there appears to be no prohibition on the City's ability to ask bidders for that information. Accordingly, the Ordinance includes the requirement regarding contractors' reporting with respect to their hiring of Pasadena residents, as set forth in Section 4.08.035C. There are also other references throughout the ordinance which address contracting with local businesses (defined as those with a fixed place of business located in the City).

Proposition 209, interpreted by subsequent court decisions in 2000 and 2001, amended the California State Constitution to prohibit preferential treatment in public employment, contracting and education. Recent cases, however, have left open the option for public entities to pursue diversity in contracting and employment through broad-based outreach efforts. (*Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537). Further, the California Court of Appeal has recently held that gathering information based on race and gender in contracting is justified by a compelling government need. (*Connerly v. State Personnel Board, et. al.* (2001) 92 Cal. App.4th 16, 62). In that decision, the Court of Appeal found that "monitoring programs which collect and report data concerning the participation of women and minorities in governmental programs do not violate equal protection principles." The Court of Appeal went

on to note in that decision that a monitoring program designed to collect and report accurate and up to date information is justified by the compelling governmental need for such information. As long as such a program does not discriminate against or grant a preference to an individual or group, Proposition 209 is not implicated.

In addition, Proposition 209 itself provides an exemption from using gender and race classifications when federal law requires it. (California Constitution Article I, Section 31(e)). Section 4.08.181 sets forth special provisions for such contracts.

Accordingly, the attached Ordinance requires that contractors provide information regarding minority, women, and other businesses. The definition provided for minorities is based on federal definitions, and also includes Armenians, as that is a group which has historically been tracked in Pasadena.

The Ordinance amends the Municipal Code as required to ensure consistency with the State Constitution, and includes steps to track contractors' hiring of Pasadena residents and to ensure equal opportunity for all in public contracting and employment .

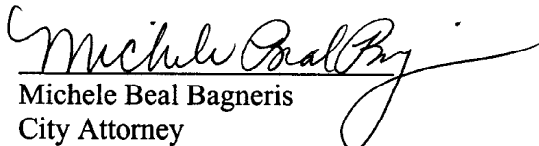
PROGRAM, DEPARTMENTS OR GROUPS AFFECTED:

The Human Resources Department will implement the proposed amendments to Chapter 2.360; the Finance Department will implement the proposed amendments to Chapter 4.08.

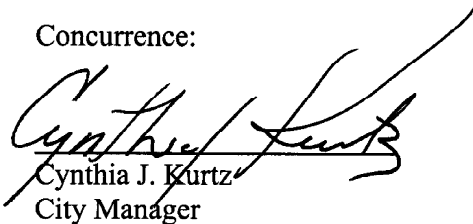
FISCAL IMPACT:

Minimal. Staff expects no change in administrative costs as a result of the proposed amendments to the Municipal Code; nor does staff anticipate any change in the participation, financial or otherwise, of members of any protected classes in either contracting or employment relationships with the City.

Respectfully Submitted,


Michele Beal Bagneris
City Attorney

Concurrence:


Cynthia J. Kurtz
City Manager

Introduced by Councilmember _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PASADENA AMENDING PASADENA MUNICIPAL CODE, TITLE 4, CHAPTER 4.08, COMPETITIVE BIDDING AND PURCHASING, REPEALING PASADENA MUNICIPAL CODE TITLE 4, CHAPTER 4.09, AFFIRMATIVE ACTION IN CONTRACTING, AND AMENDING PASADENA MUNICIPAL CODE TITLE 2, CHAPTER 2.360, AFFIRMATIVE ACTION IN CITY EMPLOYMENT, TO ENSURE COMPLIANCE WITH APPLICABLE STATE LAW

WHEREAS, the voters of the State of California passed Proposition 209 in the statewide election of November 1996, adding Section 31 to Article I of the Constitution of the State of California, prohibiting discrimination or preferential treatment to any individual or group in public employment, public education, or public contracting on the basis of race, sex, color, ethnicity, or national origin; and,

WHEREAS, the California State Supreme Court found in *Hi-Voltage Wire Works Inc. v. City of San Jose* (December 1, 2000) 24 Cal.4th 537 that a contracting regulation that provided outreach only to minority and women-owned firms violated Article I, Section 31 of the California State Constitution; *Hi-Voltage*, however did not prohibit broad-based outreach efforts that targeted women and minorities and,

WHEREAS, the California Court of Appeal for the Third Appellate District ruled in *Connerly v. State Personnel Board* (September 4, 2001) 92 Cal.App. 4th 16 that gathering information based on race and gender in contracting is justified by a compelling government interest and therefore reporting requirements do not violate Article 1, Section 31 of the California State Constitution; and,

WHEREAS, Pasadena Municipal Code Title 4, Chapter 4.09, Affirmative Action in Contracting, includes provisions for advantages for minority or women-owned firms in purchasing

and contracting processes which appear to be inconsistent with the California State Constitution, and must therefore be repealed; and,

WHEREAS, those provisions of Pasadena Municipal Code Title 4, Chapter 4.09, Affirmative Action in Contracting which are in compliance with the California State Constitution are found to apply to the provisions of Pasadena Municipal Code Title 4, Chapter 4.08, Competitive Bidding and Purchasing, and should therefore be included therein; and,

WHEREAS, the efficiency of the procurement process will be enhanced by providing for approval by the City Manager of all contracts under \$75,000; and,

WHEREAS, Pasadena Municipal Code Title 2, Chapter 2.360, Affirmative Action in City Employment, which provides for the establishment of hiring goals and timetables by the City is inconsistent with the California State Constitution, and must therefore be amended;

NOW THEREFORE, the People of the City of Pasadena ordain as follows:

SECTION 1. This ordinance due to its length and the corresponding cost of publication will be published by title and summary as permitted by Section 508 of the Charter. The approved summary of this ordinance is as follows:

“Summary

Pasadena Municipal Code, Title 4, Chapter 4.08, Competitive Bidding and Purchasing, shall be amended in its entirety to read as set forth in Exhibit A, which is on file in the City Clerk’s office of the City of Pasadena. Pasadena Municipal Code Title, 4, Chapter 4.09, Affirmative Action in Contracting, shall be repealed in its entirety. Pasadena Municipal Code Title 2, Chapter 2.360, Affirmative Action in City Employment is amended in its entirety to read as set forth in Exhibit B, which is on file in the City Clerk’s office of the City of Pasadena. The Ordinance amends Pasadena Municipal Code Chapters relating to City Employment and Contracting to eliminate provisions related

to preferential treatment in City employment and contracting made unconstitutional by the enactment of Section 31 to Article 1 of the Constitution of the State of California (Proposition 209).

The proposed revisions to the Competitive Bidding and Purchasing Ordinance (Chapter 4.08) will require contractor compliance with provisions designed to ensure equal opportunity in employment and contracting. In a manner consistent with State and Federal law, the Ordinance includes requirements regarding contractors' reporting related to Pasadena residents, minorities and women whom they hire, and establishes mechanisms to ensure that contractors have broad based outreach.

The Ordinance also provides that contracts in excess of \$25,000 that are not subject to competitive bidding are subject to a competitive selection process. The Ordinance maintains the requirement to undertake a competitive selection process for contracts in excess of \$25,000 which are not subject to competitive bidding, by incorporating such requirement into the Competitive Bidding and Purchasing Ordinance. The City Manager will have authority to approve such contracts if they are less than \$75,000, consistent with Article X Section 1001 of the City Charter which exempts contracts less than \$75,000 from Council approval, and Section 4.08.030 of the Competitive Bidding and Purchasing Ordinance which authorizes the City Manager to establish procedures for procurements excluded from competitive bidding.

The Ordinance also clarifies that the contracting authority for the Pasadena Center Operating Company is the same as that of the Rose Bowl Operating Company.

The amendments to Chapter 2.360 will ensure that the City's employment practices conform to the requirements of the Constitution of the State of California.

SECTION 2. Pasadena Municipal Code Title 4, Chapter 4.08, Competitive Bidding and Purchasing, shall be amended in its entirety to read as set forth in Exhibit A, attached hereto and

incorporated herein by this reference.

SECTION 3. Pasadena Municipal Code Title 4, Chapter 4.09, Affirmative Action in Contracting, shall be repealed in its entirety.

SECTION 4. Pasadena Municipal Code Title 2, Chapter 2.360, Affirmative Action in City Employment, shall be amended in its entirety to read as set forth in Exhibit B attached hereto and incorporated herein by this reference.

SECTION 5. The City Clerk shall certify the adoption of this Ordinance and shall cause a title and summary of the Ordinance to be published.

SECTION 6. This Ordinance shall take effect upon publication.

I HEREBY CERTIFY that the foregoing Ordinance was introduced by the City Council at its regular meeting held June 10, 2002, by the following vote:

AYES:


NOES:

ABSTAIN:

ABSENT:

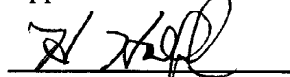
Published:

Approved as to Form


Maribel S. Medina
Assistant City Attorney

Jane Rodriguez, CMC, City Clerk

Approved as to Form:



Hugh A. Halford,
Assistant City Attorney

EXHIBIT A

“CHAPTER 4.08

COMPETITIVE BIDDING AND PURCHASING.

- 4.08.010 Short title.
- 4.08.015 Equal Opportunity and Local Contracting Policy.
- 4.08.020 Definitions.
- 4.08.025 Contracts requiring city council approval.
- 4.08.026 Contracts of the Rose Bowl Operating Company and the Pasadena Center Operating Company.
- 4.08.027 Authority of the Rose Bowl Operating Company and the Pasadena Center Operating Company.
- 4.08.030 Bidding--Not required when.
- 4.08.035 Equal Employment Opportunity – Non-Discrimination Certificate
- 4.08.040 Purchases not subject to preaudit.
- 4.08.045 Bidding--Competitive.
- 4.08.046 Local Preference for Competitively Bid Contracts
- 4.08.047 Competitive Selection
- 4.08.048 Local Preference for Competitively Selected Contracts
- 4.08.049 Exemptions from Competitive Selection
- 4.08.050 Informal Selection
- 4.08.051 Exemptions from Informal Selection
- 4.08.055 Alternate competitive financing process for bonds--Contracts to place on interest rate, currency, cash-flow and other basis.
- 4.08.060 Notice inviting bids.
- 4.08.065 Charge for specifications.
- 4.08.070 Approval of specifications.
- 4.08.075 Specifications for public works construction.
- 4.08.080 Bidding--Security requirement.
- 4.08.090 Bid opening.
- 4.08.100 Contract award.
- 4.08.110 Return of bid securities.
- 4.08.120 Rejection of bids.
- 4.08.130 Lowest and best bidder.
- 4.08.131 Bidder responsibility and debarment.
- 4.08.135 Request for qualifications.
- 4.08.140 Bonds or security required when.
- 4.08.150 Emergency purchases.
- 4.08.151 Monitoring and Reporting
- 4.08.155 Emergency purchases by Rose Bowl Operating Company and the

Pasadena Center Operating Company.

- 4.08.160 Testing of samples submitted with bids.**
- 4.08.170 Regulation by City Charter.**
- 4.08.180 Encumbrance of department funds.**
- 4.08.181 Federal Disadvantaged Business Enterprise Program**
- 4.08.182 Powers and responsibilities**
- 4.08.183 Sanctions and penalties**
- 4.08.184 Rules and regulations**

4.08.010 Short title.

This chapter shall be known as the 'competitive bidding ordinance.

4.08.015 Equal Opportunity and Local Contracting Policy.

It is the policy of the city to:

A. Promote the principles of equal opportunity in its contracting activities by assuring that those seeking to do business with the City are treated equally and are not discriminated against because of their race, religion, color, national origin, ancestry, disability, sex, age, marital status, medical condition, sexual orientation or any other protected class.

B. Promote the local economy by encouraging local business enterprises to make bids and proposals for city contracts and to provide the preferences for such firms when competing for City contracts as set forth in this Chapter.

4.08.020 DEFINITIONS.

A. 'City Council' means City Council the City of Pasadena.

B. 'City' means city of Pasadena.

~~**C. 'Contract' means a written order or agreement for labor, materials or services.**~~

C. 'Contract' means a written order for labor, material, supplies or services entered into by the city; any concession granted by the city; any license granted by the city which results

in the production of income by the licensee; and any franchise granted by the city except for franchises of gas, electric, water or telephone utilities.

D. 'Employer' means a contractor or subcontractor as the context requires.

E. 'Good Faith Efforts' include but are not limited to the following factors:

1. *Attendance at presolicitation or pre-bid meetings that were scheduled by the city to inform contractors or subcontractors of contracting and subcontracting opportunities for minority business enterprises, women business enterprises, disadvantaged business enterprises, local business enterprises, and other business enterprises.*

2. *Advertisement in minority, women, and other media concerning contracting and subcontracting opportunities.*

3. *Providing written notice to a reasonable number of minority business enterprises, women business enterprises, disadvantaged business enterprises, local business enterprises and other business enterprises soliciting their interest in contracting or subcontracting in sufficient time to allow them to participate effectively.*

4. *Following up initial solicitation of interest by contacting minority business enterprises, women business enterprises, disadvantaged business enterprises, local business enterprises and other business enterprises by telephone to determine with certainty whether they are interested in participating.*

5. *Selecting portions of the work to be performed by minority business enterprises, women business enterprises, disadvantaged business enterprises, local business enterprises and other business enterprises.*

6. *Providing interested minority business enterprises, women business enterprises, disadvantaged business enterprises, local business enterprises and other enterprises with adequate information about the plans, specifications and requirements of contracts and subcontracts.*

7. *Negotiating in good faith with interested minority business enterprises, women business enterprises, disadvantaged business enterprises, local business enterprises and other business enterprises. Not rejecting as unqualified without documented reasons based on a thorough investigation of the business enterprises' capabilities.*

8. *Making efforts to assist interested minority business enterprises, women business enterprises, disadvantaged business enterprises, local business enterprises and other business enterprises in obtaining necessary sources of supply, lines of credit or insurance.*

F. *Local business' means a business with a fixed place of business located in the City.*

G. 'Material' means supplies, equipment, stores, provisions and other personal property.

H. 'Minority' means African Americans; Hispanic Americans; Native Americans (including American Indians, Eskimos, Aleuts, and Native Hawaiians; Asian Pacific (including persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas); Asian Indians (including persons whose origins are from India, Pakistan and Bangladesh); and Armenian (including persons whose origins are from the territory east of Asia Minor, known as Armenia and people of the Aryan race that migrated from Europe into that area).

I. *'MWOBE' means a business owned and controlled by a woman, minority or a group of women or minorities or other individual or group.*

J. **'Owned or Controlled' means owning at least 51 percent of the business and having management control of the business.**

K. **'Public works' means all fixed works constructed for public use or protection, including but not limited to, bridges, waterworks, sewers, electric works, public buildings and street improvements.**

L. **'Purchase order' means a written authorization by the issuing party for the recipient to provide labor, materials or services, for which the issuing party agrees to pay.**

M. **'Services' means, but is not limited to, rental, repair and maintenance of equipment, machinery and other personal property, and professional services, but does not include public works.**

4.08.025 Contracts requiring city council approval.

All contracts shall be approved by the city council except contracts under \$75,000, ~~and except~~ contracts of the Rose Bowl Operating Company **and the Pasadena Center Operating Company** as set forth in Section 4.08.026, **and contracts that have been exempted from this Chapter by resolution of the City Council.**

4.08.026 Contracts of the Rose Bowl Operating Company and the Pasadena Center Operating Company.

All contracts of the Rose Bowl Operating Company shall be signed on behalf of the city by the general manager of the Rose Bowl and approved as to form by the city attorney. All contracts of the

Pasadena Center Operating Company shall be signed on behalf of the city by the chief executive officer of the Pasadena Center and approved as to form by the city attorney. The Rose Bowl Operating Company and the Pasadena Center Operating Company may award contracts under \$75,000 which conform to the requirements of this chapter and which are reflected in any budget approved by the city council. The city council shall approve all contracts in excess of \$75,000. The following contracts are deemed approved by the city council without respect to amount:

A. Contracts for advertising rights which conform substantially to standard terms and conditions set forth in a resolution of the city council adopted and/or reconfirmed from time to time and a schedule of charges specified in a resolution of city council adopted and/or reconfirmed from time to time.

B. Licenses for luxury suites in the Rose Bowl Press Box which conform substantially to standard terms and conditions set forth in a resolution of the city council adopted and/or reconfirmed from time to time and a schedule of charges specified in a resolution of city council adopted and/or reconfirmed from time to time.

C. Licenses for event uses which conform to the requirements of the Arroyo Seco Ordinance, which conform substantially to standard terms and conditions set forth in a resolution of the city council adopted and/or reconfirmed from time to time and a schedule of charges specified in a resolution of city council adopted and/or reconfirmed from time to time.

D. Contracts for construction, services, labor and materials or supplies which conform substantially to standard terms and conditions set forth in a resolution of the city council adopted and/or reconfirmed from time to time and which are reflected in any budget approved by the city council.

E. Contracts for employment which conform substantially to the standard terms and conditions set forth in a resolution of the city council adopted and/or reconfirmed from time to time and which are reflected in any budget approved by the city council.

F. **Licenses for event uses which conform to the requirements of Chapter 3.04 which conform substantially to standard terms and conditions set forth in a resolution of the city council adopted and/or reconfirmed from time to time and a schedule of charges specified in a resolution of city council adopted and/or reconfirmed from time to time.**

4.08.027 Authority of the Rose Bowl Operating Company and the Pasadena Center Operating Company.

For all competitive bidding and purchasing processes which it undertakes pursuant to this chapter, the **Rose Bowl Operating Company and the Pasadena Center Operating Company** shall have all authority granted to the city council under this chapter except as explicitly reserved to the city council in Sections 4.08.025, 4.08.026 and 4.08.155 or otherwise reserved by the City Charter. The **Rose Bowl general manager and the Pasadena Center Operating Company chief executive officer** shall have all authority granted to the city manager and director of finance under this chapter, except as explicitly reserved in Section 4.08.180.

4.08.030 Bidding--Not required when.

The city manager shall establish procedures for procurements excluded from competitive bidding requirements under Section 1002 of the City Charter. When the material or service is in fact a single purchase, it shall not be divided into parts for the purpose of reducing the amount of the contract below the sum of the \$25,000.

4.08.035 Equal Employment Opportunity – Non-Discrimination Certificate

A. Every contract shall contain the following provisions, which shall be designated as the "equal employment opportunity practices provisions":

1. Contractor certifies and represents that, during the performance of this contract, the contractor and any other parties with whom it may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, religion, color, national origin, ancestry, disability, sex, age, medical condition, marital status. Contractor further certifies that it will not maintain any segregated facilities.

2. Contractor shall, in all solicitations or advertisements for applicants for employment placed by or on behalf of this contract, state that it is an "equal opportunity employer" or that all qualified applicants will receive consideration for employment without regard to their race, religious creed, color, national origin, ancestry, disability, sex, age, medical condition or marital status.

3. Contractor shall, if requested to so do by the city, certify that it has not, in the performance of this contract, discriminated against applicants or employees because of their race, religious creed, color, national origin, ancestry, disability, sex, age, medical condition or marital status.

4. *If requested to do so by the city, contractor shall provide the city with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.*

5. *Contractor agrees to recruit Pasadena residents initially and to give them preference, if all other factors are equal, for any new positions which result from the performance of this contract and which are performed within the city.*

6. *Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.*

7. *The contractor shall include the provisions set forth in paragraphs numbered 1 through 7 of subsection A of this section, inclusive, in each of its subcontracts.*

B. *Every contractor shall submit a nondiscrimination certificate in a form acceptable to the city. No contract shall be awarded until the contractor has submitted to the city or has on file with the city a nondiscrimination certificate acceptable to the city.*

C. *For contracts in excess of \$25,000 involving the provision of labor or services, the contractor shall submit information requested on a form provided by the city which, among other requested information, specifies the number of minority, women, and City of Pasadena residents who are employed by contractor and the number of minority owned, women owned, and local business subcontractors.*

4.08.040 Purchases not subject to preaudit.

Where the amount of any purchase is less than the amount specified in Section 1004 of the Charter, the director of finance or his authorized representative may, without preaudit, submit to the vendor or supplier the city's check, completed except for amount, and may authorize the vendor or supplier to write in the amount thereof.

4.08.045 Bidding--Competitive.

The bidding procedure specified in this chapter shall be required for all contracts of \$25,000 or more for supplies, materials, labor or other valuable consideration, to be furnished to the city, except for contracts otherwise excluded from competitive bidding requirements by the City Council; or by a provision of the City Charter or state law. Where not otherwise provided by this chapter, the city manager shall establish procedures for bid openings and for the preparation and execution of bids, purchase orders and contracts.

4.08.046 *Local Preference for Competitively Bid Contracts*

For contracts for the purchase of goods and materials of \$25,000 or more where it has been determined that the City will receive a return of sales tax, a preference to local businesses equal to the amount the City will receive in sales tax revenue shall be provided.

4.08.047 *Competitive Selection*

For contracts of \$25,000 or more that are not required to be competitively bid, a competitive selection process shall be provided which will be open to all persons qualified to perform such service. Competitive selection is a process where factors in addition to cost are weighed, where a contract can be awarded to other than the proposer with the lowest price and

shall be based upon a written Request for Proposals or Qualifications approved by the City Attorney and the Director of Finance. Competitive selection of professional service firms shall be evaluated and determined on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

4.08.048 *Local Preference for Competitively Selected Contracts*

For contracts of \$25,000 or more that are subject to Competitive Selection, local businesses shall receive a preference equal to 5% of the overall evaluation.

4.08.049 *Exemptions from Competitive Selection*

A. *The City Council may grant an exemption from the Competitive Selection process by resolution or by motion. The following contracts are exempt from the Competitive Selection process upon a determination by the Director of Finance that the facts support the exemption:*

- 1. *Contracts for labor or services rendered by any City officer or employee.***
- 2. *Contracts for labor, material, supplies or services furnished by one city department to another department.***
- 3. *Contracts with other governmental entities.***
- 4. *Contracts for legislative liaison and lobbying services.***
- 5. *Contracts relating to the acquisition, disposal or lease of real property.***
- 6. *Contracts for labor, material, supplies or services for actual emergency work.***

B. *Contracts may be exempted from the Competitive Selection process where a determination is made that the best interests of the City are served by a direct award of a*

contract without a competitive selection process. The City Manager shall have the authority to make such an exemption for all contracts of less than \$75,000, and the City Council shall have the authority for all contracts of \$75,000 or more.

4.08.050 *Informal Selection*

For contracts less than \$25,000 an informal selection process shall be provided which will be open to all persons qualified to provide the required labor, material, supplies or services. Where appropriate the selection process may consider factors other than cost. The informal selection process for purchases in excess of \$3,000 shall include the solicitation of no fewer than 3 vendor quotes unless otherwise exempted by this chapter.

4.08.051 *Exemptions from Informal Selection*

Exemptions from the Informal Selection process shall be the same as those stated in Section 4.08.049. The Director of Finance may approve all exemptions under \$25,000.

4.08.055 *Alternate competitive financing process for bonds--Contracts to place on interest rate, currency, cash-flow and other basis.*

In lieu of the competitive bidding process specified in this chapter, the city council may direct a competitive financing process for any contract authorized under Sections 5920 et seq. of the California Government Code and any successor provisions thereof. The competitive financing process shall include, at a minimum, the following elements: (i) a notice of request for such contract shall be published at least once, no fewer than 10 days prior to the date of receipt of quotations for the contract in a financial publication generally circulated throughout the state of California reasonably designed to reach potential providers; (ii) no fewer than three qualified providers shall be issued a request for the contract; (iii) firm price quotations shall be requested in the time frame and manner

reasonably designed to foster competition, to prevent fraud and collision and to secure the most favorable price for the city; (iv) the contract shall be awarded to the qualified provider quoting the lowest and best quote to the city as reasonably determined in accordance with the criteria specified by the city; and (v) the results of the competitive financing process shall be reported to the finance committee of the city council following the award of the contract. All other administrative procedures governing any particular financing and the award of any particular contract may be set forth in a resolution adopted by the city council otherwise consistent with state law, the city Charter and this code.

4.08.060 Notice inviting bids.

A notice inviting bids shall be published for at least 1 day in a newspaper of general circulation in the city, and shall fix a period during which such bids will be received, which shall be for at least 10 calendar days after the first publication of the notice. The notice shall include a general description of the material, services or public works to be purchased or contracted for, and shall state where bid forms and specifications may be obtained and shall specify the time and place for receiving and opening of bids.

4.08.065 Charge for specifications.

The city council, by resolution, may establish a schedule of fees to be charged for the provisions of plans and specifications authorized by this chapter or elsewhere in this code.

4.08.070 Approval of specifications.

Specifications shall be approved by the city attorney prior to publication.

4.08.075 Specifications for public works construction.

Except as may otherwise be provided herein, the provisions of the then current edition of the 'Standard Specifications for Public Works Construction,' prepared and promulgated by the Southern California Chapter of the American Public Works Association and the Southern California Districts of the Associated General Contractors of California and any supplements thereto issued or approved by the city engineer, are adopted and applicable to all public works construction undertaken after the effective date of the ordinance codified in this chapter.

4.08.080 Bidding--Security requirement.

When deemed necessary by the director of finance, bidder's security shall be required by the notice inviting bids. All bids submitted pursuant thereto shall be accompanied by cash or its equivalent, in an amount equal to 5 percent of the bid. If the bidder to whom the contract is awarded shall for 15 days after the award fail or neglect to enter into the contract and file the required bond, the city may deposit in its treasury the bid security. When so deposited, under no circumstances shall it be returned to the defaulting bidder. In lieu of the foregoing, any bid may be accompanied by a surety bond in said amount furnished by a surety authorized to do a surety business in the state guaranteeing that the bidder will enter into the contract and file the required bond or bonds within said period. Any person may file with the city an annual bid bond, which shall be a surety bond in the amount of 5 percent of the highest amount bid during the period of the bond.

4.08.090 Bid opening.

All bids shall be placed in a sealed envelope and delivered to the city as specified in the notice inviting bids. Bids shall be opened at the time stated in said notice. Any bid that does not conform to the requirements of this chapter, the specifications, or notice inviting bids shall be rejected.

4.08.100 Contract award.

The contract shall be awarded by the board city council to the lowest and best bidder. The board city council may authorize any contract to be memorialized by purchase order rather than by contract, where appropriate.

4.08.110 Return of bid securities.

The city shall promptly return to the unsuccessful bidders their bid security. The city shall retain the bid security of the successful bidder until after execution of the contract and approval of the bonds or other security furnished by the bidder for the faithful performance of the contract or purchase order, and then shall return such bid security to the successful bidder.

4.08.120 Rejection of bids.

The city council may reject any and all bids. If a successful bidder fails to enter into a contract awarded to him, or if a contract is not commenced by the contractor or his surety, the board city council may abandon the matter or may readvertise the original proposal or a modification thereof, or the unfinished portion thereof as herein provided, or may award the contract to the next lowest and best bidder with the consent of such bidder.

4.08.130 Lowest and best bidder.

In determining the lowest and best bidder, the following shall be considered, in addition to price:

- A. The quality of the material offered;
- B. The ability, capacity and skill of the bidder to perform the contract or provide the material or services;
- C. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- D. The sufficiency of the bidder's financial resources and the effect thereof on his ability to perform the contract or provide the material or services;
- E. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- F. The quality and timeliness of the bidder's performance on previous orders or contracts for the city;
- G. Litigation by the bidder on previous orders or contracts with the city;
- H. The ability of the bidder to provide future maintenance and service where such maintenance and service is essential;
- I. Certification by bidder of compliance with the Equal Employment Opportunity – Non-discrimination requirements. ~~Evidence submitted by the bidder of his commitment to comply with the city's affirmative action program, where applicable under the approved specifications;~~

J. Certification by bidder of compliance with the Pasadena living wage ordinance, where applicable.

4.08.131 Bidder responsibility and debarment.

A. For the purposes of this section, bidder responsibility includes those factors listed in subsections B, D, E, F, G, I and J of Section 4.08.130.

B. Prior to any contract award, the city council may find any bidder to be nonresponsible to perform the specific contract to be awarded. The city council may do so on its own motion or on recommendation of the city manager.

C. In conjunction with any contract award or with any action on a contract, the city council may debar a contractor from bidding on future contracts by finding, upon substantial evidence, nonresponsibility which arises from any one of the following: (1) commission of fraud or a criminal offense in connection with soliciting, obtaining or preparing a public contract; (2) violation of federal or state antitrust statutes in relation to a bid on a public contract; (3) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (4) commission of any other offense that indicates a lack of business integrity or business honesty; (5) present debarment by another public entity; (6) breach of a statutory or contract provision which specifies or requires debarment as a remedy; or (7) any other cause so serious it substantially affects the contractor's present responsibility.

D. Before a finding of nonresponsibility is made, and before a contract requiring competitive bidding is awarded to other than the lowest bidder, a bidder must have been notified of any evidence of its nonresponsibility, must have been afforded an opportunity to rebut such evidence and must have been permitted the opportunity to present evidence of responsibility to perform the

contract. Any finding of nonresponsibility shall focus on present non-responsibility, shall be for the purpose of protecting the interests of the public and is not intended to punish a bidder.

E. A quasi-judicial proceeding shall not be required for the council to take action under this section.

F. The duration of any debarment shall be the period of time the city council finds shall best protect the interests of the public but shall not exceed two years. However, in the event of a debarment for breach of a statutory or contract provision which specifies or requires debarment as a remedy, the duration shall be the period specified in said statutory or contract provision, and, if none, then as the city council finds in accord with this subsection.

G. The provisions of this section are in addition to and not in place of measures set forth as sanctions ~~either the affirmative action in contracting ordinance or in the Pasadena living wage ordinance.~~

4.08.135 Request for qualifications.

A. Competitive bidding for a project may be completed in a two-part bidding process, including a request for qualifications element, when approved by the city manager and the city attorney prior to publication.

B. The first part of the two-part bidding process shall include a notice of a request for qualifications for a specific project which shall meet the publication requirements of Section 4.08.060, which shall include a general description of the material, services or public works to be purchased or contracted for, which shall state where request for qualifications forms may be obtained and which shall specify the time and place for receiving responses. The request for qualifications shall include

criteria for determining responsive and responsible bidders under those factors specified in subsections A through I of Section 4.08.130 and under any other requirements for the project. A list of responsive and responsible bidders will be mailed to all bidders responding to the request for qualifications within 5 calendar days of determination of the full list.

C. The second part of the two-part bidding process shall consist of a sealed price bid on the detailed specifications for the project by all responsive and responsible bidders as determined in the first part of the bidding process. The price bid opening shall conform with all the requirements of Section 4.08.090, except that bids shall be opened at the time stated in the detailed specifications which may be no sooner than the tenth calendar day after transmittal of the detailed specifications; contract award shall conform with Section 4.08.100, and rejection of price bids shall conform with Section 4.08.120.

4.08.140 Bonds or security required when.

All such contracts or purchase orders shall require adequate security for the faithful performance of the contract in a form approved by the city attorney. In addition to a faithful performance bond or other security, contractors who furnish both labor and material shall furnish a contractor's bond satisfactory to the city in an amount not less than 50 percent of the value of the contract. The director of finance may waive the requirement of a faithful performance bond when in his opinion such waiver will not be detrimental to the city.

4.08.150 Emergency purchases.

In case of actual emergency which requires immediate purchase of material or services, the director of finance or his authorized representative with the approval of the city manager may secure, without competitive bidding, at the lowest obtainable price, any material or services regardless of the amount of the expenditure. A full report of the circumstances of any such emergency purchase shall be filed with the city manager, and, where the expenditure exceeds \$25,000.00, with the city council.

4.08.151 *Monitoring and reporting.*

A. The City Manager shall report annually on the past calendar year's procurement activity. Such annual report shall include a statistical report on all procurements awarded to minority business enterprises, women business enterprises, and local businesses.

4.08.155 *Emergency purchases by Rose Bowl Operating Company and the Pasadena Center Operating Company.*

In case of actual emergency which requires immediate purchase of materials or services, the Rose Bowl general manager, or his representative authorized by resolution of the Rose Bowl Operating Company, with the approval of the President of the Rose Bowl Operating Company *and the chief executive officer of the Pasadena Center, or his representative authorized by resolution of the Pasadena Center Operating Company and with approval of the President of the Pasadena Center Operating Company*, may secure, without competitive bidding, at the lowest obtainable price, any material or service regardless of the amount of the expenditure. A full report of the circumstances of any such emergency purchase shall be filed with the Rose Bowl Operating Company board of directors and the *Pasadena Center Operating Company board of directors*, and, where the

expenditure exceeds \$5,000, with the city council and the Rose Bowl Operating Company board of directors *and the Pasadena Center Operating Company board of directors.*

4.08.160 Testing of samples submitted with bids.

The city may require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications.

4.08.170 Regulation by City Charter.

Notwithstanding any other provision of this chapter to the contrary, any public work or other work on city property may be accomplished by city personnel pursuant to Section 1002 of the Charter.

4.08.180 Encumbrance of department funds.

Except for emergency purchases and except where the amount of the purchase is under the amount specified in Section 1004 of the Charter, no contract shall be awarded and no purchase order issued until the director of finance or his authorized representative shall have certified after preaudit that there is to the credit of the department concerned a sufficient unencumbered appropriated balance, in excess of all unpaid obligations, to defray the amount of the proposed expenditure.”

4.08.181 Federal Disadvantaged Business Enterprise Program.

For contracts requiring the contractor to establish participation goals for disadvantaged business enterprises, the City Manager shall develop rules and regulations to administer a disadvantaged business enterprise program. Participation rates for utilization of disadvantaged business enterprises will be based on relevant data of available disadvantaged business enterprises in the city's general contracting area as required by federal regulations. The rules and regulations shall include implementation guidelines, including definitions and criteria for

what constitutes a disadvantaged business enterprise, consistent with both state and federal disadvantaged business program criteria and other applicable law.

4.08.182 Powers and responsibilities.

A. The city council shall approve all policies and regulations related to broad outreach efforts and data reporting requirements for MWOBE.

B. The city manager shall be responsible for the administration of the MWOBE program and assuring its implementation by city agencies and departments.

C. Agency directors and city department heads shall be accountable for performing the provisions of this chapter regarding contracting with minority, women, local and other business enterprises, as applicable, and establishing and meeting the goals required by this chapter.

D. The purchasing administrator shall establish a monitoring system for all contracts covered by this chapter and produce annual reports of contracting activity.

E. The city manager shall develop rules and regulations to implement the provisions of this chapter, shall function as the MWOBE contract compliance officer for purposes of enforcing the provisions of this chapter and its accompanying rules and regulations, and shall monitor program compliance and produce the required audits and reports required under this chapter and its rules and regulations.

F. General responsibilities of city departments and agencies are as follows:

1. When appropriate, city departments and agencies shall advertise contracting opportunities in media directed toward minority, women, local and other businesses

enterprises. Appropriateness to be determined jointly by the contracting department or agency and the city manager.

2. City departments and agencies shall provide minority, women, local and other businesses with assistance in complying with city contracting requirements including but not limited to assistance with the preparation of plans and the obtaining of necessary bonds and insurance. Such assistance to be provided by the city manager with the cooperation of the contracting department or agency.

3. City departments and agencies may waive, when prudent to do so, city insurance and bonding requirements that impede the ability of such businesses to compete for city contracting opportunities. All such waivers must be made prior to the release of the request for proposals or invitation for bids and the waiver shall be noted therein. Such waivers may be granted by the risk manager for insurance requirements and by the director of finance for bonding requirements considering the advice of the contracting department or agency and the city manager.

4.08.183 Sanctions and penalties.

A. The failure of any contractor to comply with the nondiscrimination requirements of its contract shall be a breach of its contract and shall be deemed to be a material breach. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the City Manager. No such finding shall be made except after notice of the alleged violation and an opportunity to be heard has been given to the contractor. The contractor may be given an opportunity to remedy such breach.

B. A contractor aggrieved by a finding of such breach by the awarding authority may appeal such finding to binding arbitration in accordance with rules and regulations promulgated by the city manager. No penalties shall be imposed pending disposition of such appeal.

C. Upon a finding duly made that the contractor has failed to comply with the nondiscrimination requirements of its contract, its contract may be canceled, terminated or suspended, in whole or in part, by the awarding authority, and all moneys due or to come due under the contract may be retained by the city. Further, the city may sue to recover any moneys paid to a noncomplying contractor by the city and shall be entitled to court costs and attorneys' fees if it is the prevailing party.

In addition thereto, a finding of such breach may be the basis for a determination by the awarding authority that the contractor is an irresponsible contractor. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the city for a period of 2 years from the date of finding, unless, prior to the end of the 2 years, it can establish that it is ready, willing and able to comply with the provisions of this chapter.

D. This chapter creates no private cause of action within or for the public and may only be enforced by the city.

4.08.184 Rules and regulations.

The city manager shall promulgate rules and regulations to carry out the provisions of this chapter and shall generate or collect statistics on the representation of women and minorities identified by race, color, national origin or sex within the relevant labor market for various job classification groupings. Such rules and regulations shall be reviewed and approved

by the city attorney prior to submission to the city council, to assure that they are compatible with the city's contracting practices, this chapter and local, state and federal law. Such rules and regulations shall be submitted to the city council and shall not become operative or effective until approved and ordered filed by the city council.

EXHIBIT B

Chapter 2.360

AFFIRMATIVE ACTION

EQUAL OPPORTUNITY IN CITY EMPLOYMENT

- 2.360.010 Short title.
- 2.360.020 Scope.
- 2.360.030 Policy statement of city.
- 2.360.040 Definitions.
- ~~2.360.050 Affirmative action plan.~~
- ~~2.360.060 Elements of the plan.~~
- ~~2.360.070 Policy statement.~~
- ~~2.360.080~~ **2.360.050** Utilization analyses.
- ~~2.360.090 Goals and timetables.~~
- ~~2.360.100~~ **2.360.060** Employment practices.
- ~~2.360.110~~ **2.360.070** Internal and external dissemination and reporting.
- ~~2.360.120~~ **2.360.080** Internal auditing and monitoring.
- ~~2.360.130~~ **2.360.090** Enforcement.
- ~~2.360.140~~ **2.360.100** Rules and regulations.

2.360.010 Short title.

This chapter shall be known as the "~~Affirmative Action~~ **Equal Opportunity in City Employment Ordinance.**"

2.360.020 Scope.

The principles of equal opportunity in employment are applicable to all city employment, through Section 802 of the city Charter. In addition, the following equal opportunity employment laws apply, by their terms, **as they may be amended** from time to time, to city employment:

- A. California Fair Employment and Housing Act, Government Code Section 12900 et seq.
- B. Title VII, Equal Employment Opportunity, of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq.
- C. Age discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 621 et seq.
- D. Section 504 of the Vocational Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 et seq.

E. Other such Federal, State or Local law or regulation applicable to public agency employment practices that are or may be enacted.

This chapter sets forth specific procedures for all city employment and employees. ~~In addition, this chapter provides a specific mandate for the development of affirmative action plans to cover all city employment.~~

2.360.030 Policy statement of city.

~~This chapter, together with the rules and regulations promulgated thereunder and the affirmative action plans generated, is a restatement of and supersedes the Affirmative Action Program of the city, dated May 1973, and adopted by Resolution No. 1812 on June 19, 1973, and reaffirmed by the board by oral motion on October 10, 1978.~~

The policy of the city shall be to provide equal opportunity employment to all persons and not to discriminate against any applicant or employee because of race, **religious-creed religion**, color, national origin, ancestry, **handicap disability**, sex, or age, **marital status, medical condition, sexual orientation, or any other protected class**. In the awareness that the intent of this policy is not necessarily fulfilled with the mere prohibition of discriminatory practices, the city will continue to ~~take affirmative action~~ to review all of its employment practices to assure the fulfillment of its stated commitment.

2.360.040 Definitions.

Whenever used in this chapter the following words shall have the meanings indicated:

~~A. "Affirmative action" means the taking of a positive action by an employer, the goal of which is to see that protected classes are represented in its work force to the same extent that they are represented in the relevant labor market. It is an extension of the concept of equal opportunity employment.~~

~~B. "Affirmative action employer" means an employer that practices affirmative action.~~

~~C. "Affirmative action officer" means a person designated by the city manager to administer, monitor and enforce the provisions of this chapter.~~

~~D. "Affirmative action plan" means a written plan documenting an employer's affirmative action program.~~

~~E. "Affirmative action program" means the aggregate of the actions taken by an employer to achieve affirmative action.~~

~~F. A. "Age" means over the age of 40.~~

~~G. B. "Discrimination" means disparate treatment, policies or practices which perpetuate in the present the effects of past discrimination, policies or practices having disparate impact not justified by business necessity or bona fide occupational qualifications, and failure to make reasonable accommodation to an applicant's or employee's religious observances or practices.~~

~~H. C. "Employer" means the city.~~

~~I. D. "Employment practices" means any solicitation of, or advertisement for employees or employment; any action resulting in changes in grade or work assignment in the place or location of work; any determinations affecting the layoff, suspension or termination of employees, the rate of pay or other form of compensation including vacation, sick leave and compensatory time; any decisions affecting the selection for training including apprenticeship programs, the grant of employee benefits and participatory activities and promotions; any actions taken to discipline employees for infractions of work rules or employer requirements; functional reorganization; and any other actions which affect the terms and conditions of employment. The term "functional reorganization" includes the employment decisions with respect to increases or decreases in staff brought about by changes in management organization but shall not include the actions or consideration giving rise to such changes or the alteration or modification of the duties, responsibilities, or authority of existing staff.~~

~~J. E. "Equal Opportunity Employer" means an employer who practices equal opportunity~~

employment.

~~K. F. "Equal Opportunity Employment" means the utilization of employment practices by an employer that do not discriminate against any protected class.~~

~~L. "Goals" means numerical objectives established by an employer with respect to the employer's hiring and promotion goals, the purpose of which is to correct any statistically significant underutilization of a protected class as identified by the employer's utilization analyses.~~

~~M. G. "Disabled individual" means a person who (1) has a physical or mental impairment which limits one or more of such person's major life activities, (2) has a record of such impairment, or (3) is regarded as having such an impairment.~~

~~N. H. "Medical condition" means any health impairment for which a person has been rehabilitated or cured, based on competent medical evidence.~~

~~O. I. "Protected class" means a group of persons identified with respect to the race, religious creed religion, color, ancestry, sex, age, marital status, medical condition, or sexual orientation of its members.~~

~~P. J. "Relevant labor market" means that pool of workers, for each position that an employer maintains, that is ready, willing, and possesses the requisite skills to perform the tasks, functions, and duties of the position. The relevant labor market varies as a function of the skills required for the positions and the salary and benefits associated with the position.~~

~~Q. "Timetables" means the scheduled times for implementing goals.~~

~~2.360.050 Affirmative action plan:~~

~~A. The affirmative action officer, in conjunction with all department and agency heads, shall develop an affirmative action plan covering all city employment in accordance with the provisions of this chapter and the rules and regulations promulgated thereunder.~~

~~B. The ability and success of management personnel in meeting their affirmative action and equal employment commitments shall be an important factor in determining the amount of their management merit benefit which is provided for in the salary resolution. For department and agency heads, the affirmative action and equal employment commitments include the goals and timetables established under Section 2.360.090 for that portion of the city's work force under their control. The city manager may provide for further sanctions under the personnel rules and regulations the city manager establishes under Section 2.360.090. Failure to achieve the goals and timetables shall be determinative unless a good-faith effort to achieve the goals and timetables has been documented.~~

~~The affirmative action plans developed pursuant to this chapter shall contain the following elements:~~

~~A. Policy statement;~~

~~B. Utilization analyses;~~

~~C. Goals and timetables;~~

~~D. Employment practices;~~

~~E. Internal and external dissemination and reporting;~~

~~F. Internal auditing and monitoring.~~

~~2.360.070 Policy statement:~~

~~The policy statement shall be the same as the second paragraph of Section 2.360.030.~~

~~2.360.080~~ **2.360.050** Utilization analyses.

Utilization analyses of the work force of the city shall be conducted annually by the ~~affirmative action officer~~ **director of human resources**, in accordance with rules and regulations promulgated by the ~~affirmative action officer~~ **director of human resources** but shall, in general, include the following for each analysis:

A. An analysis of the work force in question by job classification groupings using the EEO-4 or similar categories, to determine the extent to which those protected classes identified by race, color, national origin, or sex are represented therein.

B. A comparison of the work force statistics developed in subsection A of this section with the equivalent statistics for the relevant labor market for the same job classification groupings to determine any statistically significant underutilization.

~~2.360.090~~ ~~Goals and timetables:~~

~~A. Goals and timetables for the work force of the city shall be established annually by the affirmative action officer, in conjunction with each department or agency head with respect to that portion of the city's work force under their control, to correct any statistically significant underutilizations identified by the utilization analysis described in Section 2.360.080.~~

~~B. Goals and timetables shall be established in accordance with rules and regulations promulgated by the affirmative action officer and shall be based on projected turnover rate, evidence of which is historical turnover rate.~~

~~2.360.100~~ **2.360.060** Employment practices.

A. The director of ~~personnel and employee relations~~ **human resources**, in conjunction with each department and agency head of the city's work force under his/her control, shall continually review the city's employment practices to assure that practices do not discriminate against any protected class.

~~B. The director of personnel and employee relations shall take positive action to assure that vacant positions which will be opened to the public are advertised in media directed towards protected classes. Affirmative action principles, upward mobility, career service concepts and morale of current city employees shall be considered when deciding whether to open a position to the public.~~

C. The director of ~~personnel and employee relations~~ **human resources**, in conjunction with each department and agency head of the city's work force, shall take positive action to assure that the selection process for filling vacant positions does not have an adverse impact on a protected class, except to the extent that the limiting criteria are job related. Oral examination boards should include persons who are members of protected classes.

D. The director of ~~personnel and employee relations~~ **human resources**, in conjunction with each department and agency head of the city's work force under his/her control, shall take positive action to assure discipline is uniformly applied to employees without respect to the employee's membership in a protected class. ~~The affirmative action officer or the officer's designee shall participate in the disciplinary process, except for advisory arbitration to the city manager, of any employee who requests such participation and who alleges by way of defense that the disciplinary action proposed is a result of, or is excessive because of the employee's membership in a protected class; the management person imposing discipline shall, in such cases, confer with the affirmative action officer or the officer's designee prior to making a final decision.~~

~~_____ E. The director of personnel and employee relations and the affirmative action officer, in conjunction with each department and agency head of the city's work force under his/her control shall, to the extent that funds have been budgeted therefor, provide such training for city employees as is necessary to upgrade the employees' potential for promotion. Such training should emphasize the needs of the various protected classes.~~

~~2.360.110~~ **2.360.070** Internal and external dissemination and reporting.

A. ~~The affirmative action officer and the director of personnel and employee relations~~ **director of human resources**, in conjunction with each department and agency head of the city's work force under his/her control, shall take positive action to assure that applicants to and employees of the city are fully informed on the city's commitment to ~~affirmative action and equal opportunity employment and the city's affirmative action plan.~~

B. All management personnel shall be instructed in the principles and practices of ~~affirmative action and equal opportunity employment and their responsibilities thereunder.~~

C. All solicitations or advertisements for applicants for employment placed by or on behalf of the city shall include the following statement: "Equal Opportunity ~~-- Affirmative Action Employer.~~"

D. ~~The affirmative action officer~~ **director of human resources** shall prepare an annual report ~~on the progress achieved under the city's affirmative action plan~~ which shall be presented to the city council at ~~† of its~~ a regular meetings; the presentation shall include a provision for public comment. Such report shall include the utilization analyses, ~~the goals and timetables, the progress made in achieving the goals and timetables, and suggested corrective actions, if any.~~

~~2.360.120~~ **2.360.080** Internal auditing and monitoring.

The ~~affirmative action officer~~ **director of human resources** shall establish internal auditing and monitoring mechanisms to assure that the city's ~~affirmative action plan employment practices~~ meets the requirements of this chapter and the rules and regulations promulgated thereunder, ~~and to assure that the commitments set forth in the plan are met.~~

~~2.360.130~~ **2.360.090** Enforcement.

This chapter may only be enforced by the city. This provision creates no private cause of action within the public. Enforcement of this chapter by the city will not diminish the private enforcement measures currently available under applicable state and federal statutes.

~~2.360.140~~ **2.360.100** Rules and regulations.

The ~~affirmative action officer~~ **director of human resources** shall promulgate rules and regulations to carry out the provisions of this chapter and shall generate or collect statistics on the representation of those protected classes identified by race, color, ~~national origin, or and~~ sex within the relevant labor market for various job classification groupings using EEO-4 or similar categories. Such rules and regulations shall be reviewed by ~~the director of personnel and employee relations,~~ the city attorney and the city manager, ~~prior to submission to the city council,~~ to assure that they are compatible with the city's personnel practices, the rules and regulations established by the city manager pursuant to Section 2.40.050, and applicable local, state and federal law. ~~Such rules and regulations shall be submitted to the city council, within 90 days after the adoption of the ordinance codified in this chapter, and shall not become effective until approved and ordered filed by the~~

council. Such rules and regulations shall be included in the personnel manual, and shall be issued to all employees upon employment.