

ORDINANCE NO. 1097 AC CMS

AN ORDINANCE ESTABLISHING AN EQUAL EMPLOYMENT
OPPORTUNITY REVIEW PROCEDURE FOR CONSTRUCTION
PROJECTS WITHIN THE CITY OF OBERLIN

WHEREAS, the City of Oberlin has committed itself by legislative action to provide equal employment opportunity on public contracts and prohibits discrimination based on race, religion, color, sex, or national origin; and

WHEREAS, since its inception the City of Oberlin has been dedicated to the premise that human dignity and mutual respect among its citizens transcend differences in race, religion, color, creed, age, sex, ancestry, and national origin, and therefore, the City has a vital and compelling interest in initiating positive practices in the expenditure of public funds and private funds to promote the general welfare of the City and to make possible the achievement of these laudable purposes; and

WHEREAS, the enactment of programs calling for affirmative action to assure equality of opportunity is essential to promote the full realization of the rights of all citizens, consistent with ability, to participate in the economic life of the City; and

WHEREAS, by providing for local monitoring and enforcement wherever possible, the City can contribute to the implementation of existing federal and state laws which define and prohibit discriminatory employment practices; therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OBERLIN, a majority of all members elected thereto concurring:

SECTION 1. Definitions.

(a) The word "discriminate," whenever used in this ordinance is hereby defined as distinguish, differentiate, separate, or segregate solely on the basis of race, religion, color, creed, age, sex, ancestry, or national origin, except where such a distinction is required by law or is proved to be a bona fide occupational requirement.

(b) The "construction contractor" wherever used in this ordinance is hereby defined as any person, firm, corporation, partnership, or any combination thereof who engages for hire in construction in those trade categories identified in Ordinance No. 1078, and who have four or more full-time employees, and who have been awarded a construction contract, and includes every subcontractor on such a contract.

(c) The word "Subcontractor" wherever used in this ordinance is hereby defined as any person, partnership, corporation, association or joint venture which supplied any of the work, labor, services, supplies, equipment, materials, or any combination of the foregoing under a contract with the construction contractor, and who have four or more full-time employees.

(d) The words "construction contract" wherever used in this ordinance are hereby defined as any contract awarded or agreement made to perform a construction project within the City, when it is financed by non-public funds.

(e) The term "construction project" wherever used in this ordinance means any work or job requiring four or more employees for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, streets, or other improvements to real property.

SECTION 2. Prohibited Acts.

It shall be an unlawful employment practice:

(a) For any construction contractor to discriminate against any person in hiring or refusing to hire, or with respect to placement, tenure, advancement, rate of pay, termination, or any other terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

(b) For any labor organization to discriminate in limiting or classifying its membership, or otherwise to discriminate against any person in limiting his employment opportunities or affecting his status as an employee, or his wages, hours, or employment conditions.

(c) For any construction contractor, subcontractor, labor organization, or joint labor-management committee controlling apprentice training programs to discriminate against any person in admission to, or employment in any program established to provide apprentice training.

SECTION 3. Equal Employment Opportunity Compliance.

There shall be and there is hereby created the function of Equal Employment Opportunity Compliance Review. The City Code Administrator shall administer and enforce the City's Equal Employment Opportunity Program established by Section 4, establish procedures to effectuate such section, make all determinations as to compliance with the program, and shall meet with said contracting parties for said purposes. He shall have at his disposal, if needed, the resources of all Oberlin City Departments and the Human Relations Commission.

SECTION 4. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM.

All construction contractors hereafter engaged in construction projects in the City of Oberlin shall adhere to an Equal Employment Opportunity Program, which shall be as follows:

(a) The construction contractor shall ensure that applicants are considered for employment, and that employees are treated during employment without discrimination. As used herein, the word "treated" shall mean and include, without limitation, the following: recruited, whether through advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. The construction contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Code Administrator setting forth the provisions of this nondiscrimination clause.

(b) The construction contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that he is an Equal Employment Opportunity employer.

(c) The construction contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or worker's representative of the contractor's commitments under the Equal Employment Opportunity Program of the City of Oberlin and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) As part of the application for any City license or registration or renewal of same, the construction contractor shall submit an Equal Employment Opportunity report. This report shall be in such form as the Code Administrator may prescribe, and shall include information as to the employer's employment practices, policies, procedures, and statistics, and a written guarantee by the construction contractor not to discriminate against any employee or applicant for employment.

(e) The construction contractor shall furnish all information and reports required at any time by the Code administrator pursuant to this ordinance, and shall permit access by the Code Administrator to his employee payroll records and other personnel records as necessary for purposes of investigation to ascertain compliance with the program.

(f) The Code Administrator shall make a preliminary determination on the basis of all the information and data submitted by the construction contractor as to whether the contractor engages in any unlawful employment practice as defined in Section 2 of this ordinance. A criterion for making this determination shall be whether the proportions of minorities and women employed by the construction contractor reflect those proportions in the available labor force within the normal geographical area of recruiting for each category of employment.

(g) If the Code Administrator determines that it is likely that discrimination has occurred, whether intentionally or not, he shall meet with the construction contractor to discuss the situation and methods for eliminating possible discriminatory practices. Furthermore, if the Code Administrator deems it necessary or desirable, the construction contractor may be required to take affirmative action to ensure that Equal Employment Opportunity is provided, as follows:

- (1) Set specific goals and time-tables for the employment of minorities and/or women. To be considered in the goal-setting process are
 - a., the composition of the present work force and anticipated turnover, expansion, contraction, and promotion; and b., the external availability of trained or trainable women and minorities.
- (2) Make a clear statement regarding:
 - a. Procedures for recruitment of employees (including through direct advertising, subcontractors, labor unions, or other workers' representatives).
 - b. Criteria for employment, termination of employment, and other personnel actions.
 - c. Training programs available for developing related skills.
 - d. Provisions for the notification of current staff and prospective applicants of the Equal Employment Opportunity policies of the employer.
- (3) Keep accurate employment records concerning all employees or applicants for employment, the form of these records to be set by the Code Administrator.
- (4) File such reports concerning employment and at such intervals as are deemed necessary or desirable by the Code Administrator.

(h) A construction contractor shall not be required to hire unqualified applicants in order to comply with the affirmative action program of Section 4(g). A construction contractor will not be evaluated solely on the basis of whether goals and time-tables are met but also on the extent to which he attempts, in good faith, to meet its goals and objectives.

(i) The construction contractor shall take such action with respect to any subcontractor as the City may direct as a means of enforcing the provisions of paragraphs (a) through (i) herein, including penalties and sanctions for non-compliance. However, in the event the construction contractor becomes involved in or is threatened with litigation as the result of such direction by the City, the City will enter into such litigation as is necessary to protect the interests of the City and to effectuate the City's Equal Employment Opportunity program.

SECTION 5. Enforcement

Refusal by the construction contractor or subcontractor to comply with any portion of this program as herein stated and described will subject the offending party to any or all of the following penalties:

- (1) Denial or cancellation of any existing license, permit, or registration to perform work in the City and a refusal to issue future licenses registration, or project permits until such time as the construction contractor or subcontractor demonstrates that he has established and shall carry out the policies of the program as herein outlined.
- (2) Refusal of all future bids for any public contracts with the City of Oberlin or any of its departments or divisions until such time as the construction contractor or subcontractor demonstrated that he has established and shall carry out the policies of the program as herein outlined.

- (3) In cases in which there is substantial or material violation or threat of substantial or material violation of the compliance procedures, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable law, of contractors, subcontractors, or other organizations, individuals or groups who prevent directly, indirectly, or seek to prevent directly or indirectly, compliance with the policy, as herein outlined.

SECTION 6. Appeal

An appeal of the Code Administrator's decision to suspend the registration of a construction contractor may be made to the Housing Renewal Commission as provided by Ordinance No. 1078. However, before the Housing Renewal Commission can hear an appeal of an action taken by the Code Administrator under the provisions of this ordinance, it must receive and consider a written recommendation on the case from the Human Relations Commission. The Human Relations Commission will submit its recommendation within three (3) working days after receiving written notice from the Code Administrator that an appeal has been filed.

SECTION 7. Project Site Reports.

Where a construction contract exceeds \$10,000., a project site report shall be completed and submitted to the Code Administrator by the construction contractor and any subcontractor not more than 90 days after the beginning of work on the site. Such project site report shall include such information as to employment practices and statistics of the contractor and each subcontractor, and shall be in such form as the Code Administrator may prescribe. Where the term of the contract exceeds 90 days, such project site report shall be submitted once each 90 days, or more frequently if the Code Administrator determined that such submittal is necessary for a continuing evaluation of the work force composition. Subcontractors shall complete and submit such project site reports to the contractor for transmittal to the City.

SECTION 8. Severability Clause.

Sections 1 to 7 inclusive, and each part of such sections are hereby declared to be independent sections and parts of sections and notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of said sections, or the application thereof to any person or circumstance, is held invalid, the remaining sections or parts of sections, and the application of such provision to any person or circumstances, other than those as to which it is held invalid, shall not be affected thereby, and it is hereby declared that this ordinance would have been passed independently of such section, sections, or parts of a section so held to be invalid.

SECTION 9.

That this ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st reading- *January 19, 1976 (Failed) 9/4*
2nd reading-
3rd reading-

ATTEST:

CLERK OF COUNCIL

CHAIRMAN OF COUNCIL

POSTED: