

ORDINANCE NO. 00-81 AC CMS

AN ORDINANCE TEMPORARILY SUSPENDING THE CITY OF OBERLIN MINORITY BUSINESS ENTERPRISE PROGRAM AS SET FORTH IN CHAPTER 158 OF THE CODIFIED ORDINANCES AND DECLARING AN EMERGENCY

WHEREAS, in 1986 the City of Oberlin implemented a Minority Business Enterprise Program to ensure fair and equal contracting opportunities in regard to City of Oberlin governmental contracts and procurement; and,

WHEREAS, since the implementation of that program, which is codified in Chapter 158 of the Codified Ordinances of the City, there have been several Federal Court decisions, including the recent decision of the United States Sixth Circuit Court of Appeals in the case of Associated General Contractors of Ohio, Inc. v. Drabik, which have raised doubts as to the Constitutionality of such programs; and,

WHEREAS, as a result of said Court decisions the City Council of the City of Oberlin feels that it is in the best interests of the City to temporarily suspend said Minority Business Enterprise Program in order to allow the City Administration to fully assess the impact of said court decisions on the City of Oberlin Minority Business Enterprise Program, and to explore possible alternatives to such a program.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the City of Oberlin Minority Business Enterprise Program, as set forth in Chapter 158 of the Codified Ordinances of the City and as most recently enacted by Ordinance 96-54 AC, is hereby indefinitely suspended, and the provisions of said Ordinance shall not be hereinafter enforced until authorized by Ordinance of this Council.

SECTION 2. That the City Manager, in concert with the members of the City of Oberlin Minority Business Enterprise Advisory Committee, is hereby directed to investigate alternatives and/or options available to the City of Oberlin to ensure fairness and equity in municipal contracting and procurement opportunities, and to report back in writing to this City Council not later than the end of January, 2001.

SECTION 3. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.


SECTION 4. That this ordinance is hereby declared an emergency measure necessary for the preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio, to wit:

"to proceed with an investigation of means to ensure fair and equitable municipal contracting and procurement as soon as possible"

and shall take effect immediately upon passage.

PASSED: 1st Reading - July 1, 2000 (E)
2nd Reading -
3rd Reading -

ATTEST:


CLERK OF COUNCIL


CHAIR OF COUNCIL

POSTED: 7/1/00

EFFECTIVE DATE: 7/1/00

a:/ORD00-81MBE

City of *Oberlin*

85 South Main Street, Oberlin, Ohio 44074
(440) 775-1531

February 15, 2001

The Honorable Frances Baumann, Chairperson
and Members of Oberlin City Council
Oberlin City Hall
85 South Main St.
Oberlin, Ohio 44074

Dear Chairperson Baumann,

As you are aware on July 1, 2000, the Oberlin City Council accepted Ordinance No. 00-81 AC CMS, which temporarily suspended the City of Oberlin's Minority Business Enterprise Program as set forth in Chapter 158, of the codified ordinance. In so doing, the ordinance provided: "Section 2. That the City Manager, in concert with the members of the City of Oberlin Minority Business Enterprise Advisory Committee, is hereby directed to investigate alternatives and/or options available to the City of Oberlin to ensure fairness and equity in municipal contracting and procurement opportunities, and to report back in writing to this City Council." Further in Section 4: "to proceed with an investigation of means to ensure fair and equitable municipal contracting and procurement as soon as possible".

The purpose of suspending the existing MBE Ordinance was to allow in a narrowly defined time frame, the development and adoption of a new program which will comply with the rapid evolution of laws that impact the MBE ordinance. In this connection, the Committee in concert with the City Manager and other staff solicited information from experts about the development of these kinds of programs, as a means of researching other programs of this nature which might better suit the needs of both the City and program beneficiaries. As a result of this effort, the committee concluded that a race-neutral program be implemented which would replace the existing MBE Ordinance, while meeting the standards of new laws.

The existing MBE ordinance is a program which utilizes race or ethnic criteria as a basis for decision making. This does not comply with new laws unless there is a "sustainable compelling government interest" to support the use of race, and any such program must be "narrowly tailored" to meet that interest. The Oberlin ordinance does not meet that standard.

A race-neutral program is aimed at classes of businesses using criteria other than race, gender, or ethnicity, e.g. age, size, and disadvantage status. They are designed to benefit all eligible persons, regardless of race, and are directed toward smaller disadvantaged businesses. Many MBE's are included in these designations and can benefit from this kind of program. Race is not relied upon as the sole factor in determining eligibility, however, it may be used as one

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factor. Also, the courts have held that a municipality need not exhaust all possible race-neutral options before implementing race-conscious ones.

The use of a race-neutral program does not preclude the use of race-conscious remedies, where there are statistically valid disparities shown in the use of specific classes of MBEs that remain after the race-neutral program has been carried out for a certain period of time.

The ingredients of a Small Disadvantage Business (SDB) program measures up favorably with the standards required in a race-neutral program. Therefore, the Minority Business Enterprise Advisory Committee recommends that the City of Oberlin implement a Small Disadvantaged Business program which would replace the existing ordinance; and direct the City Manager to take all necessary steps to develop such program for implementation. Thank you for your support in this matter.

Sincerely,


MBE Advisory Committee
George Abram, Chairperson

City of *Oberlin*

85 South Main Street, Oberlin, Ohio 44074
(440) 775-1531

January 12, 2001

The Honorable Frances Baumann, Chairperson
and Members of Oberlin City Council
Oberlin City Hall
85 South Main Street
Oberlin, Ohio 44074

Dear Chairperson Baumann,

Please accept this letter as the report required by Section 2, Ordinance No. 00-81 AC CMS:

**AN ORDINANCE TEMPORARILY SUSPENDING THE CITY OF OBERLIN
MINORITY BUSINESS ENTERPRISE PROGRAM AS SET FORTH IN CHAPTER 158
OF THE CODIFIED ORDINANCES AND DECLARING AN EMERGENCY**

"...and to report back in writing to this City Council not later than the end of January, 2001."

The Minority Business Enterprise (MBE) Advisory Committee has begun the investigative process in regards to suspended Ordinance 85-65 AC CMS (MBE Ordinance.)


To date, the following has been accomplished:

- a) possible consultants have been identified and contacted (see attachment A, Request for Qualifications)
- b) development of scope of services for a race neutral program is in process

City Council may remember from the June 30, 2000 letter from the MBE Advisory Committee (see attached) that "we anticipate the purpose of a new program and the policy of the City to be more inclusive of all small and disadvantaged businesses, while retaining the standards set forth" in suspended Ordinance 85-65 AC CMS.

In order to continue with our directive, the MBE Advisory Committee recommends that City Council revise Ordinance 00-81 AC CMS, to reflect an extension of the deadline in Section 2, to "not later than the end of September 2001." In this way, Oberlin will continue to be proactive.

Best regards,


George Abram, Chairperson
MBE Advisory Committee

/skp

cc: MBE Advisory Committee
Robert DiSpirito, City Manager
Marshall Whitehead, Contract Compliance Officer
Sharon Pearson, MBE Coordinator

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WHEREAS, as a result of said Court decisions the City Council of the City of Oberlin feels that it is in the best interests of the City to temporarily suspend said Minority Business Enterprise Program in order to allow the City Administration to fully assess the impact of said court decisions on the City of Oberlin Minority Business Enterprise Program, and to explore possible alternatives to such a program.

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PASSED: 1st Reading - July 1, 2000 (E)
2nd Reading -
3rd Reading -

ATTEST:

Eugene F. Simon
CLERK OF COUNCIL

James M. Brunner
CHAIR OF COUNCIL

POSTED: 7/1/00

EFFECTIVE DATE: 7/1/00

a:/ORD00-81MBE

City of Oberlin

85 South Main Street, Oberlin, Ohio 44074

REQUEST FOR QUALIFICATIONS

The City of Oberlin, Ohio, intends to contract for professional services for the development of a small and disadvantaged business program. Individuals or firms interested in being considered for a contract to provide the required services should reply with a statement of qualifications no later than 5:00 p.m., Monday, November 27, 2000.

Statement of qualifications should include information regarding the firm's history; education and experience of owners and key technical personnel; expertise of the firm's current staff; the firm's experience in similar projects; availability of staff; references; and any previous work performed for the City of Oberlin.

Firms will be evaluated and ranked in order of their qualifications. Following this evaluation, the City will enter into negotiations with the most highly-qualified firm.

The project description is as follows:

Name of Project: Small and Disadvantaged Business Program

Location: City of Oberlin, Lorain County, Ohio

Description of Services: Due to the rapid evolution of laws impacting Minority Business Enterprise (MBE) programs, the City of Oberlin suspended the existing MBE Ordinance (Ordinance 00-81) until January 31, 2001. The MBE Program was established in 1986 under the Oberlin City Codified Ordinance 85-65 AC CMS. A Disparity Study was conducted in 1993 to support the ordinance. The MBE Advisory Committee had recommended that City Council suspend the City's MBE ordinance in order to allow for the development and adoption of a new program. The Committee anticipates the purpose of a new program and the policy of the City will be more inclusive of all small and disadvantaged businesses. This new program will be compatible with the evolution of new laws governing these kinds of programs and allow such businesses to participate in procurement activities in the City of Oberlin, while retaining the standards of the suspended MBE Ordinance.

Statement of qualifications should be transmitted to Marshall Whitehead, Contract Compliance Officer, 85 South Main Street, Oberlin, Ohio 44074. Questions in regards to the description of services can be directed to Mr. Whitehead at (440) 775-7205, or Sharon Pearson, Secretary to MBE Advisory Committee.

Accounts Payable/Income Tax	775-7213	Finance/Utility Billing	775-7211	775-7212	Public Works Office	775-7217
Cemetery	775-7252	Fire Department		774-3211	Recreation Department	775-7254
City Manager	775-1531	Municipal Court		775-1751	Street Department	775-7270
Clerk of Council	775-7203	Municipal Light & Power		775-7260	Wastewater Department	775-7280
Code Administrator	775-1531	Planning Commission		775-7250	Water Department	775-7291
Community Services Department	775-7251	Police Department		774-1061	City Hall Fax	775-7208
Economic Development Office	775-7257	Prosecutor's Office		775-7298	Municipal Light & Power Fax	775-1546
					100.	775-7244

City of *Oberlin*

85 South Main Street, Oberlin, Ohio 44074
(440) 775-1531

June 30, 2000

The Honorable Frances Baumann, Chairperson
and Members of Oberlin City Council
Oberlin City Hall
85 South Main Street
Oberlin, Ohio 44074

Dear Chairperson Baumann,

The Minority Business Enterprise (MBE) Advisory Committee met on June 27, 2000, with all members in attendance.

With regard to our agenda item referencing the Municipal Court Expansion procurement, the following motion was approved by the committee by a vote of 5 - 0:

Recommend to City Council to reject all bids for the Oberlin Municipal Court Expansion and Renovation project; temporarily suspend the existing MBE Ordinance; and rebid the project, and future procurements, without MBE requirements during the period of suspension.

The MBE Advisory committee has been discussing for the past few years, as evidenced by previous correspondence to Council, the rapid evolution of laws that impact the MBE Ordinance. The Committee solicited information concerning the estimated cost of professional services to review and update Oberlin's current MBE Disparity Study. We have also been researching other programs of this nature which might better suit the needs of both the City and program beneficiaries.

The purpose of suspending the existing MBE Ordinance is to allow in a narrowly defined time frame, the development and adoption of a new program. We anticipate and encourage the support of Council in this endeavor and will keep Council informed in a timely manner on a regular basis.

According to the existing MBE Ordinance 85-65 AC CMS as amended:

The purpose of this Minority Business Enterprise (MBE) Program is to aggressively seek participation of minority business enterprises in the City's procurement activities. The City of Oberlin accepts the premise

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that special efforts must be made to include minority business enterprises in the nation's economic system, and, further, the City is committed to ensuring minority firms of an equitable opportunity by undertaking every reasonable effort to attain the goals set forth in this Minority Business Enterprise Program.

Additionally:

It is the policy of the City of Oberlin to support the fullest possible participation by firms owned and controlled by minority persons in the performance of contracts and subcontracts and procurements financed in whole or in part with funds under the control of the City of Oberlin.

Generally speaking, minority owned and operated businesses are small and disadvantaged firms. We anticipate the purpose of a new program and the policy of the City to be more inclusive of all small and disadvantaged businesses, while retaining the standards set forth above.

We believe it to be in the City's best interest to make known to the public, our commitment to providing an equal opportunity to all small and disadvantaged businesses, to participate in procurement activities in the City of Oberlin.

As always, we are available to address any questions or concerns you may have with regard to this issue. We look forward to hearing from you.

Sincerely,


George Abram, Chair
MBE Advisory Committee

/skp