ORDINANCE NO. 17627

AN ORDINANCE introduced by Mayor Joan Waggoner relating to public contracts, amending City of Topeka Code §§ 86-131, 86-133, 86-134, 86-136, and 86-137 and specifically repealing said original sections.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. City of Topeka Code § 86-131, Definitions, is hereby amended to read as follows:

Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Affirmative action program means a positive program designed to ensure that a good faith effort will be made to employ applicants and to treat employees during employment equally without regard to their race, religion, creed, color, sex, physical handicap disability which is unrelated to the ability to perform a particular job or occupation, national origin, ancestry or age. Such program shall include, where applicable, but not be limited to, the following:

1. Recruitment and recruitment advertising;
2. Employment, including upgrading, promotion, demotion, transfer, layoff or termination;
3. Rates of pay or other forms of compensation;
4. Other terms or conditions of employment; and
5. Selection for training, including apprenticeship.

The program shall include goals, methods and timetables for implementation of the
Certificate of compliance means a written certificate issued by a state or federal agency charged with administration of a governmentally recognized affirmative action program stating that the person named in the certificate is in compliance with the terms of an affirmative action program filed by the named person with the state or federal agency.

Contract means any contract, agreement, purchase order or arrangement required or permitted by the ordinances of the city to which the city shall be a contracting party and which shall hereafter be entered into or renewed, except the following:

(1) Emergency requisitions for goods, supplies and services as provided for by the purchasing-contracts and procurement division;

(2) Imprest accounts in the nature of petty cash funds;

(3) Any bona fide religious institutions with respect to any qualifications for employment when such qualifications are related to a bona fide religious purpose;

(4) Any type of employment where religious creed, national origin or ancestry would be considered an essential qualification for employment; or

(5) Contracts for goods, supplies or services, the cost of which will not exceed $15,000.00; provided, however, that if any contractor shall do a total annual business with the city in excess of $15,000.00, such contractor shall submit an affirmative action program in writing to the human-relations-commission contracts and procurement division. For the purposes of this division, total annual business shall be measured by the amount of business done by the contractor with the city during
either the current or the preceding fiscal year of the city.

Contracting agency means any department, agency, commission or authority of the city which enters into contracts.

Contractor means any individual, partnership, corporation, association or other entity, or any combination of the foregoing, which enters into a contract with the city, and which has four or more employees during the term of the contract with the city.

Disadvantaged business enterprise means small business concerns controlled by socially and economically disadvantaged individuals or women.

Minority business enterprise means a business at least 51% of which is owned and operated by a minority or by minority group members or, in the case of publicly-owned business or corporation at least 51% of the stock of which is owned by minority group members.

Performance of work means the furnishing of any personal service, labor, materials or equipment used in the fulfillment of a contractor's obligation under a city contract.

Person means any natural person, contractor, subcontractor, supplier of goods or services, or any agent, servant or employee of any of the foregoing. As used in this division, the word "person" is a generic term unless the context clearly indicates otherwise.

Rules and regulations means rules and regulations promulgated by the human relations commission and approved by the council for administration and enforcement of this division.

Subcontractor means, in a construction project, any individual, partnership, corporation, association or other entity, or any combination of the foregoing, who shall undertake, by virtue of a separate contract directly with the general contractor awarded the construction project, to fulfill all or any part of any contractor's obligation, exclusive of a
contract solely to furnish supplies, and who has four or more employees during the term
of the subcontract.

*Women business enterprise means a business at least 51% of which is owned and
operated by a woman or by women or in the case of publicly-owned business or
corporation, at least 51% of the stock of which is owned by a woman or women.*

Section 2. City of Topeka Code § 86-132, Scope, shall read as follows:

Scope.

This division shall apply to contractors doing business with the city.

Section 3. City of Topeka Code § 86-133, Affirmative action programs, is hereby
amended to read as follows:

**Affirmative action programs.**

(a) *Submission of program.* All persons seeking to enter into a contract
with the city shall submit in writing to the human-relations-commission contracts and
procurement division either an affirmative action program, a certificate of
compliance, or such other certificate as is acceptable to the human-relations
commission contracts and procurement division which evidences the adoption of an
affirmative action program. Such affirmative action program, certificate of
compliance or other certificate shall be approved and on file with the human
relations-commission contracts and procurement division, or such plan shall be
submitted with the contract bid. If no affirmative action plan is submitted with the
contract bid, the bid will be considered nonresponsive and will not be accepted. If
any person shall fail or refuse to submit an affirmative action program as required
by this division, such person shall be ineligible to enter into any city contract until the
person has so complied.
Review by human-relations-commission contracts and procurement division.

(1) Affirmative action program. The human-relations-commission contracts and procurement division shall receive and review affirmative action programs submitted to it, and shall approve any such program or shall specify in writing any modification of the program needed to make it conform to the requirements of this division; provided, that prior to final rejection of the program, the human-relations-commission contracts and procurement division shall advise and consult with the person submitting such program for the purpose of assisting the person to develop an acceptable affirmative action program.

(2) Certificates of compliance. The human-relations-commission contracts and procurement division shall receive and accept certificates of compliance as conforming with the terms of this division respecting submission of affirmative action programs.

(3) Program review committee. A program review committee shall be established for the purpose of reviewing and evaluating the city's minority business enterprise and women business enterprise and disadvantaged business enterprise utilization. The committee members shall be composed of the executive director of the human-relations-commission chairperson, the director of public works, and the purchasing officer designated by the chief administrative officer. There shall be at least three
(3) members of the committee and other members may be added by the chief administrative officer. The executive director of the human relations commission, the director of the public works department, and the director of the contracts and procurement division shall all be members of the committee.

All recommendations and determinations of the review committee may be appealed to the chief administrative officer, whose decision shall be final and binding. The committee shall have the following duties and responsibilities:

a. Establish, on an annual basis, percentage goals for the utilization of minority business enterprise (MBE), and women business enterprise (WBE) and disadvantaged business enterprise participation on city contracts. Goals shall be established upon consideration of the following factors: The number and type of contracts to be awarded, the number and type of minority, and women, and socially and economically disadvantaged contractors available, and past results of the city's MBEA/WBE minority business enterprise, women business enterprise and disadvantaged business enterprise utilization.

b. Review and analyze, on an annual quarterly basis, minority business enterprise, and women
business enterprise and disadvantaged business
enterprise requirements, to include evaluating
the methods for achieving utilization goals and
the guidelines for ascertaining contractors’
compliance with the city’s policies and
procedures.

c. Report to the city council on a quarterly basis
through the chief administrative officer, the
findings from the review and analysis of minority
business enterprise, women business enterprise
and disadvantaged business enterprise
participation and utilization. The city council shall
consider goals for the city’s minority business
take and women business enterprise and
disadvantaged business enterprise utilization in
conjunction with the annual setting of budget
priorities.

Section 4. City of Topeka Code § 86-134, Contract conditions, is hereby
amended to read as follows:

Contract conditions.

(a) Contents, posting. All contracts to be executed by the city shall contain
language therein requiring as a condition thereof that all persons contracting with the city
shall not discriminate against any person in the performance of work under the contract
because of race, sex, creed, color, physical handicap or disability which is unrelated to the
ability to perform a particular job or occupation, religion, national origin, ancestry or age, except by reason of demonstrably valid occupational disqualification. Each person will post the office of employment of its premises with notices setting forth both the above-stated provisions and that the person agrees to abide by such provisions, including implementation of the affirmative action program submitted in connection with the contract. The contractor shall be bound by both the terms of this section and the rules and regulations. In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the human relations commission contracts and procurement division.

(b) Failure to comply; breach of contract. If a contractor shall fail, refuse or neglect to comply with the terms of the contract conditions, such failure shall be deemed a total breach of the contract, and such contract may be terminated, canceled or suspended, in whole or in part, and such contractor may be declared ineligible for any further city contracts for a period of up to one year; provided, that if a contract is terminated, canceled or suspended for failure to comply with this section, the contractor shall have no claims for damages against the city on account of such termination, cancellation or suspension or declaration of ineligibility.

Section 5. City of Topeka Code § 186-135, Subcontractors, shall read as follows:

Subcontractors.

All contracts executed by a contractor with a subcontractor relating to any city contract shall contain as a condition thereof the provisions of section 86-134 relating to contract conditions, and such subcontractor shall be subject to the provisions of such section and section 86-133.

Section 6. City of Topeka Code § 186-136, Human relations commission's
access to information, is hereby amended to read as follows:

Human relations commission's access to information.

Every person subject to this division is hereby deemed to agree to permit the human relations commission chief administrative officer or duly authorized agents or employees access, at all reasonable times, to all such persons, books, papers, records, reports or accounts in the possession of or under the control of such person, as may be necessary to ascertain compliance with this division, and to furnish such further information as may be required of such person, all within ten days of the date requested in writing.

Section 7. City of Topeka Code § 186-137, Duties and authority of the human relations commission director, is hereby amended to read as follows:

Duties and authority of the human relations commission contracts and procurement director.

The human relations commission contracts and procurement division director is hereby charged with administration and enforcement of this division and is hereby authorized and empowered to do the following, subject to the approval and supervision of the director of human resources finance and Administrative Services: To adopt, promulgate, amend and enforce rules and regulations relating to any matter or thing pertaining to the administration of this division.

Section 8. Original City of Topeka Code §§ 86-131, 86-133, 86-134, 86-136, and 86-137 are hereby specifically repealed.

Section 9. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the City Council \textit{January 2, 2001}.