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Title: Repealing Ordinance 838-91 and enacting a new Toledo Municipal Code (“TMC”) Chapter 188 to establish a City goal-oriented minority and woman business enterprise subcontractor participation program and small business initiatives based on findings and recommendations from the City’s 2022 Disparity Study; and enacting a new TMC Section 125.04.

Sponsors: Eileen Granata

Indexes:

Code sections:

Attachments: 1. EXHIBIT A - Ord. 838-91, 2. City Council 5/30/2023

Date	Ver.	Action By	Action	Result
5/30/2023	1	City Council	relieve of Committee	Pass
5/30/2023	1	City Council	Passage	Pass
5/2/2023	1	City Council	Referred To:	Pass

Enacting MBE, WBE and SBE procurement programs
Diversity, Equity and Inclusion / Law
L. DeBerry (x1198) / E. Granata (x1034)

Repealing Ordinance 838-91 and enacting a new Toledo Municipal Code (“TMC”) Chapter 188 to establish a City goal-oriented minority and woman business enterprise subcontractor participation program and small business initiatives based on findings and recommendations from the City’s 2022 Disparity Study; and enacting a new TMC Section 125.04.

SUMMARY & BACKGROUND:

The City of Toledo has had long-standing goals to award construction, goods and services contracts and subcontracts to minority-owned businesses. However, to be enforceable under the US Constitution’s equal protection clause, Courts have required the demonstration of an evidence-based ‘compelling interest’ to support the establishment of minority and women owned business programs. In August, 2020, the City competitively solicited a disparity study request for proposals and subsequently awarded the Disparity Study to Griffin & Strong, P.C. with a local certified MBE sub-contractor N-Sync, LLC, to perform PR/Community Engagement. The Disparity Study was completed and submitted to Council on October 18, 2022.

The study results were utilized to develop procurement goals, policies and procedures with the goal of awarding contracts and subcontracts to minority and women owned businesses in a percentage reflective of their availability in marketplace that is legally defensible and develop race and gender neutral polices that would also be likely to help address disparities.

This Ordinance modifies the Toledo Municipal Code to incorporate recommendations from the Disparity Study, including the adoption of targeted contract by contract-based subcontract goals for minority-owned and woman

-owned business and the creation of a race and gender-neutral small business reserve program. Some recommendations included in the Study are being addressed through administrative policy and procedural changes and by a separate companion ordinance to address negative participation impacts of bonding requirements and prompt payment concerns.

NOW, THEREFORE, Be it ordained by the Council of the City of Toledo:

SECTION 1. That Ordinance 838-91 as attached hereto as Exhibit A is repealed.

SECTION 2. That Council finds and determines that the provisions of this Ordinance are supported and recommended by the Disparity Study Report issued in June 2022 and are designed to address the Study finding that minority business enterprise and women business enterprise status continues to have an adverse impact on a firm's ability to secure contracting opportunities with the City; and further that it is in the City's interest to advance the economic prosperity, job opportunities and growth of small businesses within the Toledo area as necessary to the economic vitality of the community.

SECTION 3. That a new Toledo Municipal Code Chapter 188, Diversity and Inclusion in City Procurement, is enacted to read as follows:

188.01 Definitions. For the purposes of this Chapter 188, the following words, terms, phrases and abbreviations shall have the following meanings:

(1) "Certification" shall mean official recognition and approval by City that a business meets the qualification criteria of an eligible MBE/WBE or LSBE, as set forth in this Chapter. Certification and/or Recertification relates to qualifications regarding ownership and control, not the quality of the service or product.

(2) "Controlled" for purposes of determining whether a business is minority-owned or women owned means the owner(s) shall:

A) Possess and exercise the legal authority and power to manage business assets, Possess goodwill and daily operations of the business; and

B) Actively and continuously exercise such managerial authority and power in determining the policies and directing the operations of the business.

(3) "Goal" or "Contract-by-Contract Goal" means race or gender-conscious corrective measures administered on a contract-by-contract or project-by-project basis which measure sets a percentage-based minimum participation level for MBE/WBE subcontractors based on the available subcontracting opportunities for that project and the available MBE/WBE firms.

(4) "Minority-Owned Business Enterprise (MBE)" shall mean a business which is not a subsidiary of another business and is an independent and continuing for profit operation, performing a commercially useful function, and is independently owned, operated, and controlled by one or more eligible minority persons as defined by this Chapter and is certified as an MBE by the Department of Diversity, Equity and Inclusion under this Chapter.

(5) "Minority Persons" shall mean Black, or African Americans, Asian Americans, Hispanic Americans and Native Americans, that are citizens (*or lawful permanent residents*) of the United States.

A) "Asian American" means persons having origins in any of the original people of the Far East,

Southeast Asia, the Indian subcontinent or the Pacific Islands.

B) “Black or African American” means all persons having origins in any of the black racial groups of Africa. It includes people who indicate their race as "Black” or “African American”, or provide written entries such as African American, Afro American, Kenyan, Nigerian, or Haitian or other Caribbean nationality having African origins.

C) “Hispanic American” means people who identify with the terms "Hispanic" or "Latino" and who classify themselves in a specific Hispanic or Latino category such as "Mexican," "Puerto Rican," "Cuban," or "other Spanish, Hispanic, or Latino."

D) “Native American” means all persons who maintain culture and have origins in a federally recognized Indian tribe as listed in the current "Federal Register Notice of Indian Entities Recognized by and eligible to receive services from the U.S. Bureau of Indian Affairs.

(6) "Owned" shall constitute ownership meeting all of the following:

A) At least fifty-one percent (51%) of the business is independently owned, operated, and controlled by individuals born or naturalized of the United States;

B) The ownership shall be real and continuing, and shall go beyond the mere indicia of ownership of the business reflected in the ownership document; and

C) The owner(s) shall enjoy the customary incidence of ownership and shall share in the risks and profits commensurate with their ownership interest, as demonstrated by an examination of the substance, rather than the form of ownership arrangements.

(7) “Participant” means an individual or entity that enters into a contract with the City to provide goods or services within the scope of the MBE/WBE or SBE Program, or a subcontractor or supplier under City a to such an individual or entity.

(8) "Small Local Business Enterprise (SLBE)" means an independently owned, operated, and controlled for-profit business concern, which is not a subsidiary for another business that has been certified by the Department of Diversity, Equity and Inclusion as having met the SLBE eligibility requirements as provided in this Chapter.

(9) “Toledo Market Area” means the counties of Lucas, Wood, Fulton and Ottawa, Ohio

(10) "Women-Owned Business Enterprise” or “WBE" means a business which is not a subsidiary of another business and is an independent and continuing for profit operation, performing a commercially useful function, and is independently owned, operated, and controlled by one or more non-minority women that are citizens of the United States and is certified as a WBE by the Department of Diversity, Equity and Inclusion under this Chapter.

188.02 MBE/WBE Participation Policy

It is the policy of the City of Toledo that business concerns independently owned, operated, and controlled by MBE/WBEs shall have the maximum practicable opportunity to participate in the performance of contracts awarded by the City.

188.03 - Non-Discrimination in Purchasing

(1) It is the policy of the City not to enter into a contract or engage in business relationship with business entities that have discriminated in the solicitation, selection ,hiring or commercial treatment of vendors,

suppliers, subcontractors or commercial customers on the basis race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, military status, or on the basis of disability or other unlawful forms of discrimination

(2) The contracting agencies of the City are directed to include the following equal opportunity provision in all contracts. The inclusion of this clause may be waived by the Office of Diversity and Inclusion Director or the Department of Law where state or federal law requires a substantially similar clause in the contract.

(A) Equal Opportunity Provision:

“As a condition of entering into the Agreement, the company (or contractor) represents and warrants that it shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, military status, or on the basis of disability or other unlawful forms of discrimination in employment or the provision of services or in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors and suppliers or commercial customers, nor shall the company (or contractor) retaliate against any person for reporting instances of discrimination. The company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of it public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this provision shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination. The company understands and agrees that a material violation of this provision shall be considered a material breach of this agreement, and may result in termination of this agreement, disqualification of the company from participating in City contracts, or other sanctions. This provision is not enforceable by or for the benefit of, and creates no obligation to, any third party.”

B) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that the contractor is an equal opportunity employer.

C) The contractor and each subcontractor will include a summary of the Equal Opportunity Clause in every subcontract. The contractor will take such action with respect to any subcontractor as is necessary as a means of enforcing the provisions of the Equal Opportunity Provision.

4) A City contractor shall provide access to relevant and pertinent reports and documents by the Department of Diversity, Equity and Inclusion Director for the sole purpose of verifying compliance with this Section.

5) Failure or refusal of a contractor or subcontractor to comply with the provisions of this Section may result in cancellation of the contract, disqualification from participating in City contracts, or other sanctions authorized under this Chapter or other applicable law.

188.04. MBE and WBE Subcontracting Goals.

(1) The Director of the Department of Diversity, Equity and Inclusion, in consultation with the Commissioner of Purchases and Supplies, will set specific, separate percentage-based MBE and WBE subcontracting goals on a contract-by contract basis for prime contracts in Construction, Architecture & Engineering, Professional Services, and Other Services valued in excess of seventy-five thousand dollars (\$75,000).

A) The City shall establish such goals based upon the type of contract, the type of subcontracting work that will be required, and the availability of MBE/WBE firms to perform the work for that specific contract.

B) A contract goal will only be set to include the MBE/WBE groups or categories for which significant underutilization was demonstrated in the City’s most recent Disparity Study.

C) Contract goals shall be based upon careful analysis of the availability of commercially useful subcontracting opportunities within a given contract and the relative, reasonable availability of MBE/WBE firms to perform required tasks on such subcontract opportunities, based on available data for such firms in the

Toledo Market Area.

D) The City shall not establish Subcontracting Goals on contracts where (a) there are no subcontracting opportunities identified for the contract; or (b) there are not at least three MBE and/or WBE firms that are available and capable to perform a Commercially Useful Function (as defined in the City's "Procedures and Guidelines for Minority Business Enterprise (MBE)") for the overall subcontracting opportunities on the contract.

(2) Bidders must submit all information related to subcontracting opportunities with MBE and WBE firms as required in the City's bid request or request for proposals.

(3) Bidders agree to seek meaningful subcontracting opportunities with MBE and WBE firms to meet the MBE or WBE goals set for a contract. Bidders shall submit information as part of their bid response demonstrating a good faith effort evidencing meaningful search and solicitation commitments to include MBE and WBE firms for subcontracting work in conformance with bid request. The City reserves the right to consult with the winning Bidder to firm and improve the MBE and WBE subcontracting goals before contract execution, which mutually agreed upon goals shall become a material part of the contract.

188.05 - Good Faith Efforts.

Good Faith Efforts are those steps taken by a bidder/proposer to achieve the MBE/WBE subcontract goal as determined in accord with the provisions of this Chapter and as provided in bid materials, including the submission of documentation demonstrating a contractor's efforts to meet the MBE/WBE subcontract goal.

(1) Bidders should use selection methods and strategies sufficiently effective for successful MBE and WBE participation, including but not limited to:

- A) Forming an outreach strategy for meeting MBE/WBE aspirational goals
- B) Building an internal subcontractor connection and project team
- C) Strengthening business relationships with potential MBE/WBE subcontractors
- D) Improving the lines of communication
- E) Establishing business development support activities for MBE/WBE firms
- F) Developing approaches to resolving disputes
- G) Creating avenues to build capacity, including possible mentorship opportunities.

(2) At the City's request, Bidders shall furnish evidence of good faith efforts, such as statements of interested vendors or subcontractors, selected subcontractors, bid proposals or price quotations and copies of agreements with MBE and/or WBE subcontractors, either before contract execution or during contract performance.

(3) All terminations, substitutions, and reduction in scope of work to be subcontracted to MBEs/WBEs by the prime contractor must be approved in writing by the Department of Diversity, Equity and Inclusion. The prime contractor shall demonstrate good faith efforts to replace a committed MBE/WBE firm that does not perform as intended with another committed MBE/WBE firm to perform at least the same amount of work under the contract as the MBE that was terminated or replaced, to the extent needed to meet the contracted goal.

188.06. Certification of MBE/WBEs.

(1) The Director of the Department of Diversity, Equity and Inclusion shall determine and make publicly available guidelines, instructions and/or forms for the certification of qualifying MBE/WBE firms.

(2) *Eligibility Criteria for MBE/WBE Certification.* A business enterprise that wishes to make application to the Department of Diversity, Equity and Inclusion to be certified as an MBE/WBE shall submit a completed

MBE/WBE Certification Application, and supporting documentation affirming that the MBE/WBE meets all of the following minimum eligibility criteria:

A) Is a for-profit business concern performing a commercially useful function that is not a subsidiary of another business and is either:

B) For an MBE is: at least 51% independently owned, operated, and controlled by a United States citizen who is an African American, Asian American, Hispanic American, or Native American;

C) For an WBE: at least 51% independently owned, operated, and controlled by a United States citizen) who is female.

E) Has been established for at least one year;

F) Possesses all licenses and permits required by law to perform the scope of work within the classification requested for certification.

(3) *Reciprocity.* A business entity that is registered and certified as an MBE or WBE with a governmental subdivision in the states of Ohio, Indiana, or Michigan and has an office and business operations within the Toledo Market Area shall be entitled to reciprocity upon proof of certification and completion of a short form application with the Department of Diversity, Equity and Inclusion for recognition of its MBE or WBE certification.

(4) *Ineligible Businesses.* A business enterprise is ineligible for consideration for MBE/WBE Certification if:

A) The business enterprise or one of its owners having an ownership interest greater than 10 percent has been convicted of a wage theft violation under Toledo Municipal Code Section 545.22 within the past three years.

B) A representative of the business enterprise previously made a materially deceptive or fraudulent statement or omission or otherwise intentionally misrepresented any fact that may have been considered in making a certification determination during any certification process provided for under this Chapter within the prior three years.

C) The business enterprise has been or is currently facing suspension or debarment as a vendor of the state of Ohio or Indiana or Michigan in accordance with provisions of each respective state's law and/or regulations.

D) The business enterprise is non-compliant or delinquent in payment of income tax or payroll taxes to the City of Toledo and has not entered into a payment agreement or is noncompliant under an existing payment agreement.

5) *MBE or WBE Certification Process.*

A) Upon receipt of a submitted MBE/WBE Certification Application, the Department of Diversity, Equity and Inclusion will review and evaluate applications based upon the following criteria:

a) the applicant meets the MBE/WBE eligibility criteria; and

b) the application contains accurate and complete information of required in making a certification determination during the certification process.

B) Once it is determined that a business enterprise meets the minimum eligibility requirements and is not otherwise ineligible for certification as an MBE/WBE, the Office of Diversity and Inclusion will determine the scope of the MBE/WBE's certification.

a) Certification will be granted for only the specific areas of work in which the MBE/WBE has been found by the Office of Diversity and Inclusion to have the requisite skills, knowledge, and ability to perform in the field of endeavor in which certification is sought, as defined by normal industry practices, including licensure where required.

b) Certification does not constitute a finding that the MBE/WBE meets the requirements that the City may have for any given contract award.

C) *Timing.* The Director will make a final certification determination within 90 days after the date the Department of Diversity, Equity and Inclusion receives a satisfactorily completed application from the applicant. If certification is denied, the Director will notify the applicant in writing and specify the reason(s) for the denial. Unless the applicant is successful in a timely appeal of the denial of certification, the applicant may not reapply for the same type of certification for a period of one year from the date of the notice of denial.

E) *Certification Term.* Certification as an MBE/WBE expires three years from the date of certification. MBE/WBEs have a continuing, affirmative obligation to notify the Office of Diversity and Inclusion of any change in its circumstances affecting its continued eligibility for the MBE/WBE program.

(4) Re-Certification, De-Certification, and Suspension.

A) Re-Certification.

a) MBE/WBEs seeking re-certification shall submit a completed MBE/WBE re-certification application to the Department of Diversity, Equity and Inclusion no sooner than 90 days prior to the expiration of their MBE/WBE certificate.

b) Failure of an MBE or WBE to seek re-certification by filing the necessary recertification application with the Department of Diversity, Equity and Inclusion within 60 days following the expiration of its certificate shall result in automatic decertification.

B) An MBE or WBE may be decertified upon a finding by the Director that the MBE/WBE:

a) Ceases to meet the eligibility and/or certification requirements for their MBE/WBE Certificate; or

b) Has provided materially false or misleading information to the City in seeking certification or re-certification; or

c) Has failed to perform a Commercially Useful Function under a contract, or

d) Has allowed its MBE/WBE status to be fraudulently used for the benefit of a non-MBE/WBE firm or the owners of a non-MBE/WBE firm so as to provide the non-MBE/WBE firm or firm owners benefits from the Program for which the non-MBE/WBE firm and its owners would not otherwise be entitled; or

e) Has exhibited gross negligence, incompetence, financial irresponsibility, or misconduct in the performance of a City contract.

C). Where, based upon information obtained by the Department of Diversity, Equity and Inclusion, the Director reasonably makes a finding under the immediately preceding subsection B, or as a result of automatic decertification under the subsection A(b) above for failure to recertify, the Director shall provide the MBE/WBE with written notice of de-certification. Upon notice of the de-certification, the business enterprise shall be prohibited from bidding upon or entering into City contracts as a certified MBE/WBE.

(5) The Director of the Department of Diversity, Equity and Inclusion may determine processes, rules or regulations regarding MBE and WBE certification and decertification in keeping with the provisions of this Chapter.

188.07 Small Business Reserve Program

(1) *Purpose.* The City is committed to ensuring opportunities for local Small Business Enterprises (“SBEs”) located within the Toledo Market Area to contract with the City for the provision of construction services, professional services, goods and other services. The Small Business Reserve Program is intended to further the City’s compelling interest in stimulating economic development through the growth and development of SBEs,

and to ensure that the City is neither an active or passive participant in marketplace discrimination, and to promote equal opportunity for all segments of the contracting community.

(2) The Director of Diversity, Equity and Inclusion and the Commissioner of Purchases and Supplies in consultation with Department Directors may designate certain City procurements as small business reserve procurement opportunities for competitive bidding restricted to Small SBEs certified under this Chapter.

A) Eligible procurements for the Reserve Program may include proposed solicitation of construction, architecture & engineering, or professional services, and other services or goods that are estimated to be contracted at a cost of between ten thousand dollars (\$10,000) and seventy-five thousand dollars (\$75,000), and where such inclusion in the Reserve Program would not be in conflict with applicable state or federal law or grant funding restrictions.

B) Reserve Program designation may be made only when there is a reasonable expectation that bids will be obtained from at least three responsible SBEs and that the award will be made at a fair market price.

C) The Reserve Program is not intended to break down into component elements individual purchases or projects that are important to be bid as a single project for purposes of coordination and effective implementation or delivery.

D) The Commissioner of Purchases and Supplies and the Director of Diversity, Equity and Inclusion may agree to exclude any procurement from the Reserve Program at their joint discretion given these parameters and the best interests of the City.

(3) To be eligible for award of a Reserve Program procurement contract, a certified SBE must directly perform a certain percentage of work under the contract. The Commissioner of Purchases and Supplies and the Director of Diversity, Equity and Inclusion may determine the minimum percentage of the work to be completed directly and include such in the terms of the bid request or request for proposals.

A) Minimums may not be less than the following:

(a) At least fifty (50) percent of a services contract cost for personnel must be performed by the SBE prime contractor's employees.

(b) At least fifteen (15) percent of the cost of the general or heavy construction contract, not including cost of materials shall be performed by the SBE prime contractor with its employees. For special trade construction, such as plumbing, electrical or tile work, this requirement is twenty-five (25) percent.

(c) At least fifty (50) percent of the cost of manufacturing, not including the cost of materials shall be performed by the SBE prime contractor.

188.08. SBE Certification

(1) The Director of the Department of Diversity, Equity and Inclusion shall determine and make publicly available guidelines, instructions and/or forms for the certification of qualifying Small Business Enterprises (SBEs).

(2) *Eligibility Criteria for SBE Certification.* A business enterprise that wishes to make application to the Department of Diversity, Equity and Inclusion to be certified as an SBE shall submit a completed SBE Certification Application, and supporting documentation affirming that the business meets all of the following minimum eligibility criteria:

A) Is a for-profit business concern with three years average annual revenues of less than two million dollars (\$2,000,000) performing a commercially useful function that is not a subsidiary of another business and is either:

B) Is independently owned, operated, controlled and managed by one or more United States citizens whose individual adjusted gross incomes do not exceed \$250,000. All persons with controlling influence shall be included for the purpose of compliance with the income limits.

C) Has been established for at least three years;

D) Possesses all licenses and permits required by law to perform the scope of work within the classification requested for certification.

E) Is a business headquartered and has its primary location in the Toledo Market Area.

(3) Certified MBEs and WBEs that meet the criteria in paragraph 2 above may also certify as SBE.

(4) *Ineligible Businesses.* A business enterprise is ineligible for consideration for SBE Certification if:

A) The business enterprise or one of its owners having an ownership interest greater than 10 percent has been convicted of a wage theft violation under Toledo Municipal Code Section 545.22 within the past three years.

B) A representative of the business enterprise previously made a materially deceptive or fraudulent statement or omission or otherwise intentionally misrepresented any fact that may have been considered in making a certification determination during any certification process provided for under this Chapter within the prior three years.

C) The business enterprise has been or is currently facing suspension or debarment as a vendor of the state of Ohio in accordance with provisions of each respective state's law and/or regulations.

D) The business enterprise is non-compliant or delinquent in payment of income tax or payroll taxes to the City of Toledo and has not entered into a payment agreement or is noncompliant under an existing payment agreement.

(5) *SBE Certification Process.*

A) Upon receipt of a submitted SBE Certification Application, the Department of Diversity, Equity and Inclusion will review and evaluate applications based upon the following criteria:

a) the applicant meets the SBE eligibility criteria; and

b) the application contains accurate and complete information of required in making a certification determination during the certification process.

B) Once it is determined that a business enterprise meets the minimum eligibility requirements and is not otherwise ineligible for certification as an SBE, the Office of Diversity and Inclusion will determine the scope of the SBE's certification.

a) Certification will be granted for only the specific areas of work in which the SBE has been found by the Office of Diversity and Inclusion to have the requisite skills, knowledge, and ability to perform in the field of endeavor in which certification is sought, as defined by normal industry practices, including licensure where required.

b) Certification does not constitute a finding that the SBE meets the requirements that the City may have for any given contract award.

C) *Timing.* The Director will make a final certification determination within 90 days after the date the Department of Diversity, Equity and Inclusion receives a satisfactorily completed application from the applicant. If certification is denied, the Director will notify the applicant in writing and specify the reason(s) for the denial. Unless the applicant is successful in a timely appeal of the denial of certification, the applicant may not reapply for the same type of certification for a period of one year from the date of the notice of denial.

E) *Certification Term.* Certification as an SBE expires three years from the date of certification. SLBEs have a continuing, affirmative obligation to notify the Office of Diversity and Inclusion of any change

in its circumstances affecting its continued eligibility for the SBE program.

(4) Re-Certification, De-Certification, and Suspension.

A) Re-Certification.

a) SBEs seeking re-certification shall submit a completed SBE re-certification application to the Department of Diversity, Equity and Inclusion no sooner than 90 days prior to the expiration of their SBE certificate.

b) Failure of an SBE to seek re-certification by filing the necessary recertification application with the Department of Diversity, Equity and Inclusion within 60 days following the expiration of its certificate shall result in automatic decertification.

B) An SBE may be decertified upon a finding by the Director that the SBE:

a) Ceases to meet the eligibility and/or certification requirements for their SBE Certificate; or

b) Has provided materially false or misleading information to the City in seeking certification or re-certification; or

c) Has failed to perform a Commercially Useful Function under a contract, or

d) Has allowed its SBE status to be fraudulently used for the benefit of a non-SBE firm or the owners of a non-SBE firm so as to provide the non-SBE firm or firm owners benefits from the Program for which the non-SBE firm and its owners would not otherwise be entitled; or

e) Has exhibited gross negligence, incompetence, financial irresponsibility, or misconduct in the performance of a City contract.

C) Where, based upon information obtained by the Department of Diversity, Equity and Inclusion, the Director reasonably makes a finding under the immediately preceding subsection B, or as a result of automatic decertification under the subsection A(b) above for failure to recertify, the Director shall provide the SBE with written notice of de-certification. Upon notice of the de-certification, the business enterprise shall be prohibited from bidding upon or entering into City contracts as a certified SBE.

(5) The Director of the Department of Diversity, Equity and Inclusion may determine processes, rules or regulations regarding SBE certification and decertification in keeping with the provisions of this Chapter.

188.09 Application of Local Preference

In order to support procurement opportunities for SBEs, including MBEs/WBEs that are also certified SBEs, the City shall:

(1) Apply local preference as specified in TMC 187.34 in awarding a contract under the Small Business Reserve Program.

(2) Apply local preference percentages as specified in TMC 187.34 to the costs directly pertaining to subcontracts for Certified SBEs for purposes of evaluating bids.

188.10 - Bid specifications review.

City departments shall be encouraged by the Department of Diversity, Equity and Inclusion to eliminate any unnecessarily restrictive bid specifications that may adversely affect MBE/WBE/SBE participation. A bid specification review process may be developed and coordinated by the Office.

188.11 - Bonding/insurance assistance.

A Bonding/insurance Assistance program for certified SBEs may be developed and coordinated by the Commissioner of Purchases and Supplies in conjunction with the Department of Diversity, Equity and

Inclusion. The program may include, but is not limited to, the following:

- (1) Reduction or waiver of certain bid guarantees and/or bonds for selected contracts to the extent permitted by federal, state and local law for contracts issued under the Small Business Reserve Program to the extent permitted under applicable provisions in Chapter 187. Criteria for this bonding waiver shall be developed by the Commissioner of Purchases and Supplies in coordination with the Director of Diversity, Equity and Inclusion and the City's Risk Manager, and shall include an assessment of the associated risks, liability and exposure to the City;
- (2) Partnering with other organizations to provide resources to assist MBE/WBEs and SBEs with procuring bonding or insurance.
- (3) Provision of other assistance under this section as may be authorized by an ordinance of Council.

188.12 Department/agency reporting responsibilities.

Each City department has a vested interest in ensuring that the City is a diverse and inclusive city. Therefore, each department will have the following responsibilities:

- (1) Department directors or designees shall participate in preparing annual forecasts of anticipated contracts presenting opportunities for MBE, WBE or SBE participation.
- (2) Cooperating with, and providing requested information to, the Department of Diversity, Equity and Inclusion for the purpose of monitoring compliance with the provisions of Chapter 188.
- (3) Notifying the Director of the Department of Diversity Equity and Inclusion of any proposed subcontracting changes or contract issues that impact MBE/WBEs or SBEs during the term of a contract.

188.13 - Compliance, Investigation and Enforcement.

(1) *Complaint.* In the event that a Bidder or Participant submits a written complaint of discrimination, the Department of Diversity, Equity and Inclusion is authorized to investigate the complaint. An investigation may also be initiated based solely on a finding of a significant statistical disparity from the established contract-by-contract MBE/WBE subcontractor goal(s).

A) The Director of Diversity, Equity and Inclusion or the Director's designee may conduct an on-site inspection or desk audit of the project to determine whether the prime contractor has been utilizing the subcontractor in accordance with the contractual agreement for services.

(2) *Determination of Compliance or Non-compliance.*

A) The Department of Diversity, Equity and Inclusion, along with the contracting staff of each City department, shall monitor contractor compliance with the provisions of this Chapter. If it is determined that there is cause to believe that a prime contractor or subcontractor has failed to comply with applicable requirements of this Chapter, the Department of Diversity, Equity and Inclusion shall so notify the originating department and the contractor. The Director, or designee, may require such reports, information and documentation from contractors, respondents and the head of any City department, division or office as are reasonably necessary to determine compliance.

B) If the Director of Diversity, Equity and Inclusion makes a final determination that the contractor has violated or has failed to comply with its requirement under the contract and this Chapter, and the contractor has been given reasonable time to correct such situation and/or where negotiations have failed to result in an agreement on corrective actions, the Director shall make finding of noncompliance.

(3) *Enforcement.* In the event of a there is finding of a substantial or material noncompliance, the City, upon consultation with the Department managing the contractor, the Director of Diversity, Equity and Inclusion, the Commissioner of Purchasing, the Mayor office and the Law Department, may take such action as permitted under the contract or the Toledo Municipal Code, including termination of the contract, disqualification of the

contractor from participating in City contract or such other action provided under law.

SECTION 4. That a new Toledo Municipal Code Section 125.04 is enacted to read as follows:

125.04 Periodic Review and Reporting Requirements.

The Department of Diversity, Equity and Inclusion Director shall be responsible for the compilation, review and analysis of the following reports related to administration of the MBE, WBE and SBE programs under Chapter 188 of this Code:

- (A) Quarterly utilization reports based upon city contract awards, contract payments, and vendor registration data to include an analysis of contracts by industry, dollar amounts and race, national origin and gender and small business participation;
- (B) Annual reports to city council and the mayor summarizing the progress made toward inclusion of certified businesses; recommendations for future action; and such other information as is requested to include a summary of contracts and subcontracts placed with MBEs/WBEs and SBEs, broken down by race, gender, national origin and industry category, dollar volume and percentage of total contract expenditures for the same time period;
- (C) Annual review and evaluation of the effectiveness of the programs and provisions under Chapter 188 this Code, as well as the need for modification of such program. To accomplish this evaluation, the Director may, in addition to the above stated reports, provide for studies and surveys as needed.
- (D) Subject to necessary Council appropriation and authorization, no later than August 1, 2027 and every five years thereafter, the Director shall prepare a Request for Proposals for completion of an update of the Disparity Study. The complete Study shall be presented to the Mayor and Council along with any recommendation for changes to programs and practices for the MBE/WBE and SBE programs and related Toledo Municipal Code provisions and/or ordinances.

SECTION 5. That if any provision, or any section, subsection, paragraph, sentence, phrase or word, of this Ordinance shall be found to be invalid, illegal or unenforceable for any reason, the validity and application of the remainder of this Ordinance shall not be affected thereby and shall remain in effect to the full extent allowable under law.

SECTION 6. That the Council finds and determines that all formal actions of this Council and of any of its committees concerning and relating to the passage of this Ordinance were taken, and all deliberations of this Council and of any of its committees that resulted in such formal action were held, in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 7. That this Ordinance shall be in full force and effect from and after January 1, 2024.

Passed: May 30, 2023: yeas 12, nays 0.

Attest:

Gerald E. Dendinger
Clerk of Council

Matt Cherry
President of Council

Approved:

May 30, 2023
Wade Kapszukiewicz
Mayor

