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Introduced By: Ron Sims  
Proposed No.: 95-661

ORDINANCE NO. **11992**

AN ORDINANCE relating to discrimination and affirmative action in employment by contractors, subcontractors and vendors, repealing Ordinance 4528, Sections 1, as amended, 2, as amended, 4, as amended, 5, as amended, 6, as amended, 7, as amended, 8, as amended, 9, as amended, 10, as amended, Ordinance 7788, Section 3, as amended, Ordinance 10849, Sections 4 and 16, and Ordinance 11032, Section 19 (part), and K.C.C. 12.16.010, K.C.C. 12.16.020, K.C.C. 12.16.025, K.C.C. 12.16.030, K.C.C. 12.16.040, K.C.C. 12.16.050, K.C.C. 12.16.060, K.C.C. 12.16.070, K.C.C. 12.16.080, K.C.C. 12.16.090, K.C.C. 12.16.100, K.C.C. 12.16.115, K.C.C. 28.20.070, and adding new sections to K.C.C. 12.16.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 4528, Sections 1, as amended, 2, as amended, 4, as amended, 5, as amended, 6, as amended, 7, as amended, 8, as amended, 9, as amended, 10, as amended, Ordinance 7788, Section 3, as amended, Ordinance 10849, Sections 4 and 16, and Ordinance 11032, Section 19 (part), and K.C.C. 12.16.010, K.C.C. 12.16.020, K.C.C. 12.16.025, K.C.C. 12.16.030, K.C.C. 12.16.040, K.C.C. 12.16.050, K.C.C. 12.16.060, K.C.C. 12.16.070, K.C.C. 12.16.080, K.C.C. 12.16.090, K.C.C. 12.16.100, K.C.C. 12.16.115, K.C.C. 28.20.070 are hereby repealed.

NEW SECTION. SECTION 2. There is added to K.C.C. 12.16 a new section to read as follows:

**Definitions.** All words shall have their ordinary and usual meanings except those defined in this section which shall have in addition, the meaning set forth below. In the event of conflict, the specific definition spelled out below shall presumptively, but not conclusively, prevail.

A. "Administrator" means the manager of the minority and women's business enterprises and contract compliance division.

B. "Affidavit and Certificate of Compliance" means a notarized statement sworn under oath provided by a contractor pursuant to this chapter.

1 C. "Affirmative action" means policies, procedures and programs designed to  
2 increase the representation of and remedy the results of past discrimination against  
3 minorities, women, and persons with disabilities in employment, applications for  
4 employment, and employment-related training programs (of minorities, women and  
5 persons with disabilities).

6 D. "Contract Awarding Authority" means any person with the power to enter into a  
7 contractual arrangement binding the county and also means the particular office, agency or  
8 division on whose behalf the contract is entered. In addition, this term includes, but is not  
9 limited to, heads of county departments, divisions or offices.

10 E. "Contractor" means any person, firm, business, organization, company,  
11 partnership, corporation or other legal entity, excluding real property lessors and lessees,  
12 contracting to do business with the county including, but not limited to, public work  
13 contractors, consultant contractors, providers of professional services, service agencies,  
14 vendors, and suppliers selling or furnishing materials, equipment, goods or services, but  
15 not including governmental agencies.

16 F. "Disability" means any physical or mental impairment which substantially limits  
17 one or more major life activities.

18 G. "Discrimination" means differential treatment of or pursuit of policies or  
19 practices that have a disproportionate impact upon persons due to their creed, religion,  
20 race, color, sex, age, marital status, sexual orientation, national origin or the presence of  
21 any sensory, mental or physical disability, unless such policies or practices are necessary  
22 for the performance of the job and no less discriminatory alternatives are possible.

23 H. "Employment" means any and all terms and conditions and policies and practices  
24 of employment including, but not limited to, hiring, firing, upgrading, demotion,  
25 recruiting, transfer, lay-off, termination, pay rates and advertisement, hours and conditions  
26 of work.

27 I. "Minority or Minorities" means a person who is a citizen of the United States and  
28 who is a member of one or more of the following historically disadvantaged racial groups:

29 1. Black or African American: Having origins in any of the Black racial groups  
30 of Africa;

1                   2. Hispanic: Of Mexican, Puerto Rican, Cuban, or Central or South American  
2 culture or origin;

3                   3. Asian American: Having origins in any of the original peoples of the Far  
4 East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or

5                   4. American Indian or Alaskan Native: Having origins in any of the original  
6 peoples of North America.

7                   J. "New hire" means a person hired for the first time by a contractor.

8                   K. "Permanent employees" or "Permanent workforce" means those persons  
9 employed by a bidder, proposer or contractor for at least six continuous months  
10 immediately prior to the bid or proposal opening or the award of a contract by the county,  
11 and who are currently employed by the bidder, proposer or contractor.

12                  L. "Qualified disabled person" means a person with a disability who, with  
13 reasonable accommodation, can perform the essential functions of the job in question.

14                  M. "Reasonable accommodation" means steps taken to modify facilities used by  
15 employees or to modify a particular job component which enables an otherwise qualified  
16 person with a disability to perform the essential functions of the job.

17                  N. "Rehire" means a person who worked for the contractor and was rehired. This  
18 person had not worked for the contractor for six continuous months prior to the award of  
19 the contract.

20                  M. "Sexual orientation" means male or female heterosexuality, bisexuality, or  
21 homosexuality, and includes a person's attitudes, preferences, beliefs and practices  
22 pertaining to sex.

23                  N. "Underrepresentation" means presence in a contractor's work force of minorities,  
24 women, and persons with disabilities in proportionate numbers lower than the goals  
25 established for the contractor's business under this chapter.

26                  O. "Section 504" shall mean Section 504 of the Rehabilitation Act of 1973 as  
27 amended which states that, "No otherwise qualified handicapped individual in the United  
28 States shall, solely by reason of his handicap be excluded from the participation in, be  
29 denied the benefits of, or be subjected to discrimination under any program or activity  
30 receiving federal financial assistance."

1            NEW SECTION. SECTION 3. There is added to K.C.C. 12.16 a new section to  
2 read as follows:

3            **Nondiscrimination - General.** No contractor, subcontractor, or union doing  
4 business with the county or a county contractor, who furnishes workers or services in  
5 connection therewith, shall discriminate against any person on the basis of race, color,  
6 creed, religion, sex, age, nationality, marital status, sexual orientation, or the presence of  
7 any sensory, mental or physical disability in an otherwise qualified disabled person in  
8 employment, and no such contractor, subcontractor, or union shall violate any of the terms  
9 of RCW Chapter 49.60, Title VII of the Civil Rights Act of 1964, or any other applicable  
10 federal, state or local law or regulation regarding nondiscrimination in employment. These  
11 provisions shall apply to all contractors, subcontractors, or unions doing business with or  
12 furnishing workers or services to the county, except other governments.

13            NEW SECTION. SECTION 4. There is added to K.C.C. 12.16 a new section to  
14 read as follows:

15            **Nondiscrimination - Persons with disabilities.** In addition to the general  
16 prohibition against discrimination stated in Section 3 of this ordinance, the following  
17 additional nondiscrimination provisions relating to employment of persons with disabilities  
18 shall apply to contractors, subcontractors, or unions doing business with or furnishing  
19 workers or services to the county, except other governments.

20            A. Reasonable accommodation. Contractors shall make reasonable accommodation  
21 to the known physical or mental limitations of an otherwise qualified disabled applicant or  
22 employee unless the contractor can demonstrate that the accommodation would impair or  
23 cause undue hardship on the operation of the contractor's business.

24            B. Pre-employment inquiries. A contractor may not conduct a pre-employment  
25 medical examination or make a pre-employment inquiry as to whether an applicant is a  
26 disabled person or as to the nature or severity of a disability. A contractor may, however,  
27 make pre-employment inquiry into an applicant's ability to perform job-related functions.  
28 Nothing in this section shall prohibit a contractor from conditioning an offer of  
29 employment on the results of a medical examination prior to initiation of the employment.  
30 if all entering employees are subjected to such an examination regardless of disability.

1            NEW SECTION. SECTION 5. There is added to K.C.C. 12.16 a new section to  
 2 read as follows:

3            **Goals and timetables - Affirmative action required. A. GOAL SETTING -**  
 4 **AFFIRMATIVE EFFORTS.** The administrator shall set goals for the employment of  
 5 minorities, women and persons with disabilities by county contractors. All contract  
 6 awarding authorities shall make vigorous and affirmative efforts to assist county  
 7 contractors in meeting their employment goals.

8            **B. GOAL SETTING METHODOLOGY.** The workforce availability of minorities,  
 9 women and persons with disabilities for employment by county contractors shall be  
 10 developed consistent with the eight factors set forth below and with applicable current  
 11 federal and state laws. Beginning in 1996 and every three years thereafter, the  
 12 administrator shall submit to the executive for approval proposed affirmative action goals  
 13 for county contractors for the following three year period. Separate employment goals  
 14 shall be established for minorities, women and persons with disabilities. The goals shall be  
 15 transmitted by the executive to the council for approval.

16            The eight factors referenced above are:

- 17            1. The minority, women and persons with disabilities population of the labor  
 18 area surrounding the facility;
- 19            2. The size of the minority, women and persons with disabilities unemployment  
 20 force in the labor area surrounding the facility;
- 21            3. The percentage of the minority, women and persons with disabilities  
 22 workforce as compared with the total workforce in the immediate labor area;
- 23            4. The general availability of minorities, women and persons with disabilities  
 24 having requisite skills in the immediate labor area;
- 25            5. The availability of minorities, women and persons with disabilities having  
 26 requisite skills in an area in which the contractor or subcontractor can reasonably recruit;
- 27            6. The availability of promotable and transferable minorities, women and  
 28 persons with disabilities within the contractor's or subcontractor's organization;
- 29            7. The existence of training institutions capable of training persons in the  
 30 requisite skills; and

1           8. The degree of training which the contractor or subcontractor is reasonably  
 2 able to undertake as a means of making all job classes available to minorities, women and  
 3 persons with disabilities.

4           C. CONTRACT COMPLIANCE GOALS. The 1995-1996 contract compliance  
 5 goals are as follows:

	Minorities	Women	Disabled Persons
6 Public work Contractors	13.48%	15.41%	7.08%
7 Vendors/Service Contractors	14.16%	48.90%	6.60%

8  
 9  
 10 Such goals shall remain in effect until such time as new goals are approved by the council.

11           NEW SECTION. SECTION 6. There is added to K.C.C. 12.16 a new section to  
 12 read as follows:

13           **Minimum affirmative action measures.** The evaluation of a contractor's  
 14 compliance with this chapter shall be based upon the contractor's effort to achieve  
 15 maximum results from its affirmative action measures. The contractor shall document  
 16 these efforts and shall implement affirmative action steps at least as extensive as the  
 17 following:

18           A. POLICY DISSEMINATION. Disseminate internally and externally the  
 19 contractor's equal employment opportunity policy; post nondiscrimination policies and  
 20 requirements of this chapter on bulletin boards clearly visible to all employees; notify each  
 21 subcontractor, labor union or representative of workers with which there is a collective  
 22 bargaining agreement or other contract, subcontract, or understanding, of the contractor's  
 23 commitments under this chapter; include the equal opportunity policy in advertising in the  
 24 news media and elsewhere; discuss equal employment opportunities and affirmative action  
 25 policies with new employees during employment orientation; discuss the policies with  
 26 managers and supervisory personnel and their roles and responsibilities in the  
 27 implementation of the measures required under this chapter.

28           B. RECRUITING. Adopt and implement recruitment procedures designed to  
 29 increase the representation of women, minorities and persons with disabilities in the pool  
 30 of applicants for employment; including, but not limited to, establishing and maintaining a

1 current list of minority, female and disabled recruitment sources, providing these sources  
2 written notification of employment opportunities and advertising vacant positions in  
3 newspapers and periodicals which have minority, female and/or disabled readership.

4 C. SELF-ASSESSMENT AND TEST VALIDATION. Review all employment  
5 policies and procedures, including tests, recruitment, hiring and training practices and  
6 policies, performance evaluations, seniority policies and practices, job classifications and  
7 job assignments, to assure that they do not discriminate against, or have a discriminatory  
8 impact on, minorities, women and persons with disabilities and validate all tests and other  
9 selection requirements where there is an obligation to do so under state or federal law.

10 D. RECORD OF REFERRALS. Maintain a current file of applications of minority,  
11 women, and persons with disabilities who are applicants or referrals for employment  
12 indicating what action was taken with respect to each such individual and the reasons  
13 therefor. Contact these people when an opening exists for which they may be qualified.  
14 Names may be removed from the file after twelve months have elapsed from their last  
15 application or referral.

16 E. NOTICE TO UNIONS. Provide notice to labor unions of the contractor's  
17 nondiscrimination and affirmative action obligations pursuant to this chapter. Contractors  
18 shall also notify the executive if labor unions fail to comply with the nondiscrimination or  
19 affirmative action provisions.

20 F. SUPERVISORS. Ensure that all supervisory personnel understand and are  
21 directed to adhere to and implement the nondiscrimination and affirmative action  
22 obligations of the contractor under this chapter. Such direction shall include, but not be  
23 limited to, adherence to, and achievement of, affirmative action policies in performance  
24 appraisals of supervisory personnel.

25 G. EMPLOYEE TRAINING. When reasonable, develop on-the-job training  
26 opportunities which expressly include minorities, women, and persons with disabilities and  
27 sponsor and/or utilize, training/educational opportunities for the advancement of women,  
28 minorities and persons with disabilities employed by the contractor, subject to acceptance  
29 by the county.

1 H. RESPONSIBLE PERSON. Designate an employee who shall have the  
2 responsibility for implementation of the contractor's affirmative action measures.

3 I. PROGRESS REPORTING. Prepare as part of the affirmative action plan an  
4 analysis and report on the progress made toward eliminating the underrepresentation of  
5 women, minorities and persons with disabilities in the contractor's workforce on an annual  
6 basis.

7 J. CONTRACTOR TRAINING. In addition, contractors who do not meet  
8 employment goals for women, minorities and persons with disabilities and who do not  
9 have approved affirmative action measures may be required to attend county-sponsored  
10 training programs on relevant areas of affirmative action and equal employment  
11 opportunity.

12 NEW SECTION. SECTION 7. There is added to K.C.C. 12.16 a new section to  
13 read as follows:

14 **Contract requirements.** A. CONTRACT PROVISIONS. The county's policy, as  
15 stated in this chapter, requiring nondiscrimination in contractor or subcontractor  
16 employment and affirmative action shall be included in all county contracts, except real  
17 property leases. Any violation of the specific provisions of this chapter and of any term of  
18 the affidavit and certificate of compliance required herein, including reporting  
19 requirements, shall be deemed a violation of this chapter. Any such violation shall be  
20 further deemed a breach of a material provision of the contract between the county and the  
21 contractor. Such breach shall be grounds for cancellation, termination, or suspension, in  
22 whole or in part, of the contract by the county, or for invoking the enforcement provisions  
23 of this chapter providing for penalties, liquidated damages, or other remedies, and may  
24 result in ineligibility for further county contracts; provided, that underrepresentation of  
25 minorities, women and persons with disabilities and the failure or inability of any  
26 contractor to achieve employment goals will not be a violation where that contractor has  
27 adopted and pursued a reasonable affirmative action measures in compliance with this  
28 chapter. The burden is on the contractor to demonstrate its compliance with this chapter.

29 B. Specifications for all county contracts, except real property leases, may require  
30 the bidder or proposer to sign and submit an affidavit and certificate of compliance



1 specifically setting forth a plan of affirmative action to be followed in the event a contract  
2 is awarded to the bidder or proposer. Such plan shall ensure equal opportunity in  
3 employment is afforded by the contractor and its subcontractors while performing the  
4 contract for the county.

5 C. The plan of affirmative action contained in such affidavit and certificate of  
6 compliance shall include, but need not be limited to, the following provisions:

7 1. Designation of a person who has been charged by the bidder or proposer with  
8 the responsibility for carrying out and reporting the bidder's or proposer's compliance with  
9 its plan of affirmative action;

10 2. Assurance that the plan of affirmative action will be communicated to  
11 supervisors and other employees of the bidder or proposer;

12 3. Assurance that the bidder's or proposer's new hires and rehires will include  
13 minorities, women and persons with disabilities;

14 4. Assurance that the bidder or proposer will proceed in good faith and make  
15 every reasonable effort to comply with the employment goals established in this chapter  
16 and provided in the specifications;

17 5. Assurance that the bidder or proposer shall correct deficiencies of under-  
18 represented persons at all levels of the workforce by considering under-represented persons  
19 to fill new hire or rehire positions;

20 6. Assurance that the bidder or proposer will make continuing efforts to recruit  
21 minorities, women and persons with disabilities and to advertise employment opportunities  
22 in a way which will effectively reach minorities, women and persons with disabilities; and

23 7. Assurance that the bidder or proposer will communicate to subcontractors and  
24 labor unions its affirmative action obligations.

25 D. Whenever the administrator determines that a contractor's affidavit and certificate  
26 of compliance is in need of review or updating, the administrator shall notify the  
27 contractor, who shall take such steps as are necessary to review or update its affidavit and  
28 certificate of compliance to meet the requirements of the county.

29 E. In addition to submitting an affidavit and certificate of compliance, a bidder or  
30 proposer may also be required, either before or after award of a contract, to submit

1 permanent workforce information, personnel inventory reports and such other  
2 documentation as may be determined by the administrator.

3 F. In addition to all other submittal requirements under this chapter, contractors  
4 performing under public work contracts shall submit monthly employment reports on such  
5 forms as may be established by the administrator which reports shall demonstrate the  
6 extent to which the contractor has complied with the requirements of this chapter.

7 G. Neither the provisions of any collective bargaining agreement, nor the failure by  
8 a union with whom the contractor has a collective bargaining agreement to refer minorities,  
9 women or persons with disabilities, shall excuse the contractor's obligation under the  
10 affidavit and certificate of compliance.

11 H. The following provisions shall be included in contracts awarded by the county,  
12 except as provided otherwise in this chapter:

13 1. During performance of this contract, the contractor agrees that it will not  
14 discriminate against any employee or applicant for employment because of religion, color,  
15 race, sex, sexual orientation, age, national origin, or the presence of any sensory, mental or  
16 physical disability, nor tolerate harassment based on any of these categories, unless based  
17 upon a bona fide occupational qualification. The contractor will take affirmative action to  
18 ensure that applicants and employees are treated, without regard to their creed, color, race,  
19 religion, sex, sexual orientation, age, national origin, or the presence of such disability.  
20 Such affirmative action shall include, but not be limited to, the following: employment,  
21 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or  
22 termination; rates of pay or other forms of compensation; and selection for training,  
23 including apprenticeships. The contractor agrees to post in conspicuous places available to  
24 employees and applicants for employment notices setting forth the provisions of this  
25 nondiscrimination clause.

26 2. The contractor will, prior to the commencement and during the term of this  
27 contract, furnish the county, upon request and on such forms as may be provided by the  
28 county, a report of the affirmative action taken by the contractor in implementing the terms  
29 of this provision, and will permit access by the administrator to the contractor's records of  
30 employment, employment advertisements, application forms, other pertinent data and

1 records related to the contract for the purpose of monitoring and investigation to determine  
2 compliance with this chapter.

3 3. The contractor will implement and carry out the obligations contained in its  
4 affidavit and certificate of compliance regarding equal employment opportunity. Failure to  
5 implement and carry out such obligations in good faith may be considered by the county as  
6 a material breach of this contract and grounds for withholding payment and/or termination  
7 of the contract and dismissal of the contractor.

8 NEW SECTION. SECTION 8. There is added to K.C.C. 12.16 a new section to  
9 read as follows:

10 **Contractor eligibility.** The administrator may require that prior to being awarded a  
11 county contract, contractors must first be determined eligible by the administrator as  
12 having complied with the provisions of this chapter. The county shall not enter into a  
13 contract with nor receive goods and/or services from a contractor that has not been  
14 determined eligible as required by this chapter.

15 A. **WORK FORCE DATA.** All contractors entering into contracts or agreements  
16 with the county valued at twenty-five thousand dollars or more shall submit to the contract  
17 awarding authority a personnel inventory report providing employment data for minorities,  
18 women and persons with disabilities, except for public work contractors. Public work  
19 contractors shall submit to the contract awarding authority a personnel inventory report  
20 when entering into contracts or agreements valued at over ten thousand dollars. This  
21 requirement shall also apply to contractors who accumulate contracts which total twenty-  
22 five thousand dollars or more in a given calendar year. The administrator may determine  
23 the form in which this data shall be provided.

24 B. **COMPLIANCE AFFIDAVITS AND UNION STATEMENTS.** All contractors,  
25 except public work contractors, entering into contracts with the county of more than  
26 twenty-five thousand dollars, or which in the aggregate result in yearly sales to the county  
27 of more than twenty-five thousand dollars, shall submit an affidavit of compliance, in the  
28 form provided by the county, demonstrating their commitment to comply with the  
29 provisions of this chapter, and shall further submit a signed statement of compliance from a  
30 union or employee referral agency. Public work contractors entering into contracts of ten

1 thousand dollars or more shall submit an affidavit of compliance and a statement from a  
2 union or employee referral agency. The contractor shall abide by all the terms and  
3 conditions set forth in the affidavit. The affidavit of compliance shall state the reporting  
4 requirements for each contractor, the requirements of subcontractors, the employment  
5 goals for minorities, women and persons with disabilities, minimum affirmative action  
6 measures, reporting requirements and other such provisions as the administrator deems  
7 necessary and appropriate for compliance with and enforcement of this chapter; provided,  
8 that in lieu of the affidavit, the administrator may accept a statement pledging adherence to  
9 existing contractor affirmative action measures where the provisions of these measures are  
10 found by the administrator to substantially fulfill the requirements of this chapter.

11 C. VENDORS, YEARLY RENEWALS. Vendors who became qualified under  
12 subsections A. and B. of this section shall remain so qualified for two years after the date  
13 on which they were qualified and shall be entitled to bid and be considered for the sale of  
14 materials, supplies and equipment at any time during that period without requalification.

15 During such time as a vendor remains continuously qualified under this chapter to do  
16 business with the county, the affidavit of compliance initially submitted to gain  
17 qualification shall be deemed to be effective and in force without further renewal or  
18 resubmission. Should qualification lapse or be terminated at any time due to a change of  
19 ownership in the business or to a failure to submit an updated employment profile or upon  
20 a finding of violation of this chapter, the county having previously complied with notice of  
21 hearing provisions, a new affidavit of compliance and employment profile shall be required  
22 prior to vendor's being requalified.

23 D. SELF EVALUATION, CORRECTIVE ACTION PLAN AND ASSURANCE  
24 OF COMPLIANCE. In order to comply with Section 504 of the federal Rehabilitation Act  
25 of 1973, as amended, all contractors entering into contracts with the county, except those  
26 for the direct purchase of goods, shall complete and maintain in their office a Section 504  
27 self evaluation and corrective action plan. These plans are to be used by the contractor to  
28 review program, facility, and employment access by persons with disabilities and to  
29 determine what kind of corrective action may be needed. An assurance of compliance,

1 contained in the corrective action plan, must be signed, notarized and returned to the  
2 administrator before the contract will be signed by the county.

3 Contractors who believe that taking corrective action will cause an undue  
4 administrative or financial burden may complete and submit an accessibility waiver request  
5 form to the administrator. The administrator will approve or disapprove the request, and  
6 notify the contractor in writing regarding the decision. The administrator shall be  
7 responsible for devising and promulgating criteria to be used in determining whether or not  
8 to grant a request for waiver from the requirement to complete and maintain a Section 504  
9 self evaluation and corrective action plan.

10 NEW SECTION. SECTION 9. There is added to K.C.C. 12.16 a new section to  
11 read as follows:

12 **Statements from unions or employee referral agencies.** Contractors required to  
13 submit affidavits and certificates of compliance shall also submit statements from unions  
14 or employee referral agencies, as applicable, on forms provided by the administrator. The  
15 statement shall be in writing, signed by the authorized officers or agents of all labor unions  
16 or agencies referring workers or employees or providing or supervising apprenticeship or  
17 other training programs from whom the contractor obtains employees. The statement shall  
18 affirm that the signer(s)'s organization has no practices and policies which discriminate on  
19 the basis of race, color, creed, religion, sex, age, sexual orientation, marital status, the  
20 presence of any physical, mental or sensory disability, or national origin, that the  
21 signer(s)'s organization will affirmatively cooperate in the implementation of the policies  
22 and provisions of this chapter, and that the organization consents and agrees that  
23 recruitment, employment, and the terms and conditions of employment under all contracts  
24 with the county shall be in accordance with the purposes and provisions of this chapter.

25 NEW SECTION. SECTION 10. There is added to K.C.C. 12.16 a new section to  
26 read as follows:

27 **Subcontractors.** For all public work contracts, prime contractors shall be required  
28 to submit to the county affidavits and certificates of compliance, reports and statements  
29 from unions or employee referral agencies from their subcontractors in the same manner as  
30 these are required of the prime contractor. For these contracts, the reporting requirements

1 that apply to the prime contractor during the contract period will apply equally to all  
2 subcontractors. As a condition of their contract, prime contractors shall be responsible for  
3 ensuring that their subcontractors make affirmative efforts to meet the same employment  
4 goals that apply to the prime contractors. Any violation of this chapter or the requirements  
5 of the affidavit and certificate of compliance by the subcontractor will be deemed a  
6 violation by the prime contractor and will subject the prime contractor to the sanctions and  
7 penalties set out in the contract and in this chapter.

8 NEW SECTION. SECTION 11. There is added to K.C.C. 12.16 a new section to  
9 read as follows:

10 **Compliance monitoring.** The administrator shall monitor compliance with this  
11 chapter and shall conduct such investigations as may be necessary to determine compliance  
12 on the part of any firm or organization with the requirements of this chapter. It shall be the  
13 duty of each contract awarding authority to assure that contractors are notified of their  
14 obligations hereunder. The administrator shall have the direct responsibility and authority  
15 to insure that contractors are properly monitored and that each county department is in full  
16 compliance with provisions of this chapter.

17 NEW SECTION. SECTION 12. There is added to K.C.C. 12.16 a new section to  
18 read as follows:

19 **Reporting requirements.** A. The executive, through the administrator, shall have  
20 the responsibility for monitoring implementation of the requirements of this chapter and  
21 shall have the power to request from all county departments and offices, responding  
22 parties, and/or contractors any relevant records, information and documents. The  
23 administrator shall have access to all county records related to compliance with this  
24 chapter. Departments shall provide full cooperation to the administrator in the  
25 implementation of this chapter and shall promptly submit records, information and  
26 documents upon request of the administrator.

27 B. County contract awarding authorities shall keep complete and detailed records  
28 regarding compliance with this chapter. The administrator shall devise and promulgate to  
29 all county departments uniform standards for the keeping of complete and detailed records  
30 as required by this chapter. The contractor will, upon request, furnish all information and

1 reports as reasonably required by the administrator to determine compliance with this  
2 chapter, and the affidavit and certificate of compliance, and will permit access to its books,  
3 records and accounts for purposes of investigation to ascertain compliance with the  
4 nondiscrimination and affirmative action requirements of this chapter. Unless otherwise  
5 required by law, all information, data or records obtained pursuant to the monitoring and  
6 investigation activities authorized under this chapter shall be kept confidential by the  
7 county, except that the county may release such information when requested to do so in  
8 cooperation with state and federal agencies administering and enforcing state and federal  
9 laws against discrimination.

10 NEW SECTION. SECTION 13. There is added to K.C.C. 12.16 a new section to  
11 read as follows:

12 **Enforcement.** A. Where a complaint alleging a violation of this chapter has been  
13 filed by any individual or entity, including a contract awarding authority, within six  
14 months of the completion of all work on a contract alleging a violation of this chapter by a  
15 contractor or where, within that same time period, evidence of a violation is discovered  
16 from information gained through compliance monitoring, the administrator shall cause to  
17 be served or mailed, by certified mail, return receipt requested, a copy of the complaint or  
18 notice of investigation on the respondent within twenty days after the filing of said charge  
19 and shall promptly make an investigation thereof. If the investigation is conducted by a  
20 party selected by the administrator, the costs of such investigation shall be borne by the  
21 department or project, as applicable, for which the contract was awarded. The  
22 investigation shall be directed to ascertain the facts concerning the violation alleged in the  
23 complaint and shall be conducted in an objective and impartial manner. During such  
24 investigation, the administrator shall consider any statement of position or evidence with  
25 respect to the allegations of the complaint which the complainant or the respondent wishes  
26 to submit.

27 1. The administrator shall have the authority to sign and issue subpoenas  
28 requiring the attendance and testimony of witnesses, the production of evidence including  
29 but not limited to books, records, correspondence or documents in the possession or under  
30 the control of the person or entity subpoenaed, and access to evidence for the purpose of

1 examination and copying as is necessary for the investigation. The administrator shall  
2 consult with the prosecuting attorney before issuing any subpoena under this section.

3 If an individual or entity fails to obey a subpoena issued hereunder, or obeys a  
4 subpoena but refuses to testify when requested concerning any matter under investigation,  
5 the administrator may seek the assistance of the county prosecuting attorney by requesting  
6 that the prosecutor petition the Superior Court for King County for an order or other  
7 appropriate action necessary to secure enforcement of the subpoena.

8 2. The results of the investigation shall be reduced to written findings of fact and  
9 a finding shall be made that there either is or is not reasonable cause for believing that a  
10 violation has been or is being committed. If a finding is made that there is no reasonable  
11 cause, said finding shall be served on the complainant and respondent. Within thirty days  
12 after service of such negative finding, the complainant shall have the right to file a written  
13 request with the administrator asking for reconsideration of the finding. The administrator  
14 shall respond to such request in writing within a reasonable time by granting or denying the  
15 request and specifying the reasons for either granting or denying the request.

16 B. If the finding is made initially or on request for reconsideration that reasonable  
17 cause exists to believe that a violation by a contractor or subcontractor has occurred, the  
18 administrator shall endeavor to remedy the violation by conference, conciliation and  
19 persuasion, which may, by agreement of the parties, include monetary compensation, the  
20 creation of additional opportunities for minorities, women or persons with disabilities to be  
21 employed on other contracts, or such other requirements as may lawfully be agreed upon  
22 by the parties and the administrator. Any settlement agreement shall be reduced to writing  
23 and signed by both parties. An order shall then be entered by the administrator setting  
24 forth the terms of the agreement. Copies of such order shall be delivered to all affected  
25 parties and the original thereof recorded with the division of records and elections.

26 If no agreement can be reached, a finding to that effect shall be made by the  
27 administrator and incorporated in a preliminary order, with a copy thereof furnished to the  
28 complainant and respondent. The preliminary order shall also include:

- 29 1. A finding that a violation has occurred;
- 30 2. The basis for such finding.



1 C. In the case of failure to reach an agreement for the elimination of such a  
2 violation, and upon the entry of a preliminary order, the complaint and any and all findings  
3 made and remedies ordered shall be certified by the administrator to the office of the  
4 county hearing examiner for hearing.

5 A hearing shall thereafter be conducted by the office of the hearing examiner for the  
6 purpose of affirming, denying, or modifying the preliminary order. The hearing shall be  
7 conducted on the record and the hearing examiner shall have such rule making and other  
8 powers necessary for conduct of the hearing as are specified by K.C.C. 20.24.170. Such  
9 hearings shall be conducted within a reasonable time after receipt of the certification.  
10 Written notice of the time and place of the hearing shall be given at least ten days prior to  
11 the date of the hearing to each affected party and to the administrator.

12 Each party shall have the following rights, among others:

- 13 1. To call and examine witnesses on any matter relevant to the issues of the  
14 complaint;
- 15 2. To introduce documentary and physical evidence;
- 16 3. To cross-examine opposing witnesses on any matter relevant to the issues of  
17 the complaint;
- 18 4. To impeach any witness regardless of which party first called such witness to  
19 testify;
- 20 5. To rebut evidence presented against a party;
- 21 6. To self-representation or to be represented by anyone of a party's choice who  
22 is lawfully permitted to do so.

23 D. Following review of the evidence submitted, the hearing examiner presiding at  
24 the hearing shall enter written findings and conclusions, shall render a written decision and  
25 shall order one or more of the following:

- 26 1. Dismissal of the complaint when a violation is found not to have occurred;
- 27 2. Suspension or cancellation of the contract in part or in whole;
- 28 3. Disqualification and/or debarment of the violator from participation in county  
29 contracts for a period of up to five years;

1           4. Exclusion of the violator from future contracts or vending until demonstration  
2 of compliance;

3           5. Enforcement of any provision of the contract providing remedies, such as  
4 penalties or liquidated damages for violation of contractual provisions or enforcement of  
5 any other remedy available under the laws of the county. Upon a finding by the hearing  
6 examiner that a contractor has in fact failed to abide by the provisions of this chapter,  
7 liquidated damages not to exceed the entire contract amount shall be imposed unless the  
8 hearing examiner finds that the imposition of such damages would be clearly inequitable,  
9 in which case the hearing examiner may grant such other relief as may be lawful and  
10 appropriate.

11           E. In the case where the alleged violator is the contract awarding authority, and a  
12 finding is made that there is reasonable cause to believe that the contract awarding  
13 authority has committed a violation, the finding shall be forwarded to the executive, who  
14 shall review the evidence and may order one or more of the following:

- 15           1. Dismissal of the complaint when a violation is found not to have occurred;
- 16           2. Corrective personnel action;
- 17           3. Disqualification and suspension of authority of all members, any board,  
18 commission, or other body constituting the violating contract awarding authority;
- 19           4. Enforcement of any other remedy available under the laws of the county.

20           F. In addition to any other remedy available under the laws of the county and the  
21 State of Washington, any person, firm, corporation, business, union, or organization which  
22 prevents or interferes with or retaliates against a contractor and/or subcontractor's efforts to  
23 comply with the requirements of this chapter or which submits false or misleading  
24 information to any county department or employee concerning compliance with this  
25 chapter shall be subject to a civil penalty of up to five thousand dollars for each  
26 occurrence, the county having previously complied with the notice and hearing provisions  
27 of this chapter. Each submission of false or misleading information shall constitute a  
28 separate occurrence.

29           **SECTION 14. Effective date.** This ordinance shall take effect on January 1, 1996.

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SECTION 15. Severability. The provisions of this ordinance shall be effective in all cases unless otherwise provided by federal law. The provisions of this ordinance are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or other portion of this ordinance or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance or the validity of the application to other persons or circumstances.

SECTION 16. Continuation of ordinances. The provisions of this ordinance, so far as they are substantially the same as those of ordinances existing at the time of the enactment of this ordinance, shall be construed as continuations thereof.

INTRODUCED AND READ for the first time this 25<sup>th</sup> day of

September, 1995.

PASSED by a vote of 12 to 0 this 9<sup>th</sup> day of October, 1995.

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

Kent Pullen  
Chair

ATTEST:

Gerald A. Postum  
Clerk of the Council

APPROVED this 20<sup>th</sup> day of October, 1995.

for Ken. Raymond  
King County Executive