

7/11/79
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Introduced by: RUBY CHOW

79-1018

ORDINANCE NO. 4528

AN ORDINANCE relating to discrimination and affirmative action in employment by county contractors, subcontractors or vendors; establishing policies; prescribing procedures, obligations, and requirements; prescribing penalties for noncompliance; and repealing Ordinance 198, Sections 1 through 13 and KCC 12.16.010 through KCC 12.16.160.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. DEFINITIONS.

a. "Affirmative action" shall mean policies, procedures and programs designed to increase the representation of minorities and women in employment, applications for employment, and employment-related training programs (of minorities and women).

b. "Contractor" shall mean any person, firm, business, organization, company, partnership or corporation contracting to do business with King County, including, but not limited to, construction contractors, consultant contractors, providers of professional services, service agencies and vendors, but not including governmental agencies.

c. "Discrimination" shall mean differential treatment of or pursuit of policies or practices that have a disproportionate impact upon persons due to their creed, race, color, sex, age, marital status, national origin or the presence of any sensory, mental or physical handicap, unless such policies or practices are necessary for the performance of the job and no less discriminatory alternatives are possible.

d. "Employment" shall mean any and all terms and conditions and policies and practices of employment including, but not limited to, hiring, firing, upgrading, demotion, recruiting, transfer, lay-off, termination, pay rates and advertisement, hours and conditions of work.

1 e. "Minority" shall include Blacks, Asians, Pacific
2 Islanders, American Indians, Alaska Natives, Hispanics and
3 Mexican-Americans.

4 f. "Underrepresentation" shall mean presence in a
5 contractor's work force of minorities and women in proportionate
6 numbers lower than the goals established for the contractor's
7 business under this ordinance.

8 g. "Vendors" shall mean any contractor selling or supplying
9 materials, equipment and supplies to the County,

10 SECTION 2. NONDISCRIMINATION.

11 No contractor, subcontractor, or union doing business with
12 the county, or furnishing workers or services in connection
13 therewith, shall discriminate against any person on the basis of
14 race, color, creed, sex, age, nationality, marital status or the
15 presence of any sensory, mental or physical handicap, (provided
16 that such handicap does not hinder the performance of the job) in
17 employment, and no such contractor, subcontractor, or union shall
18 violate any of the terms of Chapter 49.60 of the Revised Code of
19 Washington, Title VII of the Civil Rights Act of 1964, or any
20 other applicable federal, state or local law or regulation
21 regarding nondiscrimination in employment.

22 SECTION 3. GOALS AND TIMETABLES; AFFIRMATIVE ACTION
23 REQUIRED.

24 a. Goals. The Executive shall annually set goals and
25 timetables for minority and female employment by contractors
26 doing business with King County, which goals shall be based on
27 appropriate work force, demographic or other relevant data.
28 These goals shall be set forth in the County's Affirmative Action
29 Plan. Where, due to the nature of the business, the goals
30 established for employment with King County in the County's
31 Affirmative Action Plan are similarly appropriate and relevant
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1 for county contractors, those goals shall be adopted for
2 compliance with this section. The setting, monitoring, and
3 evaluating of a contractor's performance in attempting to meet
4 goals shall be based on total hours of employment and training of
5 minorities and women at the contractor's locations and
6 establishments in King County or at the contractor's locations
7 and establishments where work under contract with King County is
8 being performed and contracted for when such occurs outside King
9 County.

10 b. Guidelines. Guidelines for the determination of
11 underrepresentation and employment goals will include, but not be
12 limited to:

13 (1) Minorities and women in the local labor market;

14 (2) Minorities and women presently in the trade or job
15 category;

16 (3) Minorities and women seeking employment in or with the
17 requisite skills for the trade or job category;

18 (4) Minorities and women presently in apprenticeship or
19 other training programs in the trade or job category;

20 (5) Minorities and women seeking admission to
21 apprenticeship or other training programs in the trade or job
22 category.

23 c. Affirmative Action Requirement. Where a contractor's
24 employment statistics demonstrate that minorities and/or women
25 are underrepresented in its work force in relationship to the
26 goals established by the Executive, contractors, subcontractors,
27 and unions doing business with the county, or providing workers
28 or services in connection therewith, shall take affirmative
29 action measures, as stipulated in this ordinance, to increase the
30 representation of minorities and women at locations and
31 establishments where projects and work are being done under
32 contract with King County. Affirmative action steps shall be
33 based on what is reasonably required to achieve employment goals

1 which will cure underrepresentation. Underrepresentation of
2 minorities and women will not itself be deemed a violation of
3 this ordinance where reasonable affirmative action measures are
4 adopted and are being implemented in good faith.

5 SECTION 4. MINIMUM AFFIRMATIVE ACTION MEASURES.

6 The evaluation of a contractor's compliance with this
7 ordinance shall be based upon the contractor's effort to achieve
8 maximum results from its affirmative action program. The
9 contractor shall document these efforts and shall implement
10 affirmative action steps at least as extensive as the following:

11 a. Reporting. Periodic reporting of employment statistics
12 and affirmative action policies and procedures as may be
13 requested by the King County Executive or his designee.

14 b. Policy Dissemination. Internal and external
15 dissemination of the contractor's equal employment opportunity
16 policy; posting of nondiscrimination policies and of the
17 requirements of this ordinance on bulletin boards clearly visible
18 to all employees; notification to each subcontractor, labor union
19 or representative of workers with which there is a collective
20 bargaining agreement or other contract, subcontract, or
21 understanding, of the contractor's commitments under this
22 ordinance; inclusion of the equal opportunity policy in
23 advertising in the news media and elsewhere.

24 c. Recruiting. Adoption of recruitment procedures
25 designed to increase the representation of women and minorities
26 in the pool of applicants for employment; including, but not
27 limited to, establishing and maintaining a current list of
28 minority and female recruitment sources, providing these sources
29 written notification of employment opportunities, and
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1 solicitation of bids for subcontracts from firms whose employment
2 profile meets the affirmative action goals established under this
3 ordinance.

4 d. Self-Assessment and Test Validation. Review of all
5 employment policies and procedures, including review of tests,
6 hiring and training practices and policies, performance
7 evaluations, seniority policies and practices, job
8 classifications and job assignments, to assure that they do not
9 discriminate against, or have a discriminatory impact on
10 minorities and women and validation of all tests and other
11 selection requirements where there is an obligation to do so
12 under state or federal law.

13 e. Record Referrals. Maintain a current file of
14 applications of each minority and female applicant or referral
15 for employment indicating what action was taken with respect to
16 each such individual and the reasons therefor. Contact these
17 people when an opening exists for which they may be qualified.
18 Names may be removed from the file after three years have elapsed
19 from their last application or referral.

20 f. Notice of Union Noncooperation. Provide immediate
21 written notification to the Executive when the union or unions
22 with which the contractor has a collective bargaining agreement
23 contract or understanding has not referred to the contractor a
24 minority person or woman sent by the contractor, or when the
25 contractor has other information that the union referral process
26 has impeded the contractor's efforts to meet its obligations
27 under this ordinance.

28 g. Supervisors. Ensure that all supervisory personnel
29 understand and are directed to adhere to and implement the
30 nondiscrimination and affirmative action obligations of the
31 contractor under this ordinance. Such direction shall include,
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1 but not be limited to, adherence to, and achievement of,
2 affirmative action policies in performance appraisals of
3 supervisory personnel.

4 h. Training. Develop on-the-job training opportunities
5 which expressly include minorities and women.

6 SECTION 5. CONTRACT REQUIREMENTS.

7 The county's policy, as stated in this ordinance, requiring
8 nondiscrimination in contractor or subcontractor employment and
9 affirmative action shall be included in all county contracts.
10 Any violation of the specific provisions of this ordinance and of
11 any term of the affidavit of compliance required herein,
12 including reporting requirements, shall be deemed a violation of
13 this ordinance. Any such violation shall be further deemed a
14 breach of a material provision of the contract between the county
15 and the contractor. Such breach shall be grounds for
16 cancellation, termination, or suspension, in whole or in part, of
17 the contract by the county, or for invoking the enforcement
18 provisions of the contract of this ordinance providing for
19 penalties, liquidated damages, or other remedies, and may result
20 in ineligibility for further county contracts. PROVIDED, that
21 underrepresentation of minorities and women and the failure or
22 inability of any contractor to achieve employment goals will not
23 be a violation where that contractor has adopted and pursued a
24 reasonable affirmative action program in compliance with this
25 ordinance. The burden is on the contractor to demonstrate its
26 compliance with this ordinance.

27 SECTION 6. PRE-CONTRACT QUALIFICATION.

28 Prior to becoming eligible for all awards of any county
29 contract, contractors must first be certified by the County
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1 Administrative Officer or his designee as having complied with
 2 the provisions of this section. The county shall not enter into
 3 a contract with nor receive products and services from an
 4 ineligible contractor.

5 a. Work Force Data. All contractors entering into
 6 contracts or agreements with King County valued at one thousand
 7 dollars or more shall submit to the County Executive a total
 8 personnel inventory employment profile providing minority and
 9 female employment data. The Executive may determine the form in
 10 which this data shall be provided.

11 b. Compliance Affidavits and Union Statements. All
 12 contractors entering into contracts with King County of more than
 13 ten thousand dollars, or which in the aggregate result in yearly
 14 sales to King County of more than ten thousand dollars, shall
 15 submit an affidavit of compliance, in the form provided by the
 16 county, demonstrating their commitment to comply with the
 17 provisions of this ordinance, and shall further submit a signed
 18 statement of compliance from a union or employee referral agency.
 19 The affidavit of compliance shall set forth the contractor's
 20 specific employment goals, minimum affirmative action
 21 requirements, reporting requirements and other such provisions as
 22 the Executive deems necessary and appropriate for compliance with
 23 and enforcement of this ordinance; PROVIDED, that the affidavit
 24 of compliance shall not require actions or goals inconsistent
 25 with the standards, guidelines and affirmative action measures
 26 set forth in this ordinance; PROVIDED FURTHER, that in lieu of
 27 the affidavit the Executive may accept a statement pledging
 28 adherence to an existing contractor affirmative action plan where
 29 the provisions of the plan are found by the Executive to
 30 substantially fulfill the requirements of this ordinance.

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1 c. Vendors, Yearly Renewals. Vendors who became qualified
 2 under paragraphs a and b of this section shall remain so
 3 qualified until October 31, of the year in which they were
 4 qualified and shall be entitled to bid and be considered for the
 5 sale of materials, supplies and equipment at any time during that
 6 year without requalification. Further, upon submittal of an
 7 updated employment profile, such vendor's qualification shall be
 8 extended from year to year.

9 During such time as a vendor remains continuously qualified
 10 under this ordinance to do business with King County, the
 11 affidavit of compliance initially submitted to gain qualification
 12 shall be deemed to be effective and in force without further
 13 renewal or resubmission. Should qualification lapse or be
 14 terminated at any time due to a failure to submit an annual
 15 employment profile or upon a finding of violation of this
 16 ordinance, the county having previously complied with notice of
 17 hearing provisions, a new affidavit of compliance and employment
 18 profile shall be required prior to vendor's being requalified.

19 SECTION 7. STATEMENTS FROM UNIONS.

20 Contractors required to submit compliance affidavits to
 21 include a union statement from a union or worker referral agency
 22 shall do so on forms provided by the Executive. The statement
 23 shall be in writing, signed by the authorized officers or agents
 24 of all labor unions or agencies referring workers or providing or
 25 supervising apprenticeship or other training programs from whom
 26 the contractor obtains employees. The statement shall affirm
 27 that the signer(s)'s organization has no practices and policies
 28 which discriminate on the basis of race, color, creed, sex, age,
 29 marital status, the presence of any physical, mental or sensory
 30 handicap, or national origin, that the signer(s)'s organization
 31 will affirmatively cooperate in the implementation of the
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1 policies and provisions of this ordinance, and that the
2 organization consents and agrees that recruitment, employment,
3 and the terms and conditions of employment under all contracts
4 with the county shall be in accordance with the purposes and
5 provisions of this ordinance.

6 SECTION 8. SUBCONTRACTORS

7 For projects and contracts over one hundred thousand
8 dollars, the prime contractor shall be required to submit to King
9 County, along with its qualifying documents under this ordinance,
10 employment profiles, affidavits of compliance, reports and union
11 statements from its subcontractors in the same manner as these
12 are required of the prime contractor. Reporting requirements of
13 the prime contractor during the contract period will apply
14 equally to all subcontractors. As a condition of their contract,
15 prime contractors shall be responsible for both the submission of
16 affidavits and reports and for requiring their subcontractors and
17 vendors to employ racial minorities and women. Any violation of
18 this ordinance or the requirements of the affidavit of compliance
19 by the subcontractor will be deemed a violation by the prime
20 contractor and subject to the sanctions and penalties set out in
21 the contract and in this ordinance.

22 SECTION 9. COMPLIANCE MONITORING.

23 The County Executive is authorized to contract with an
24 appropriate agency to monitor compliance with this ordinance and
25 to conduct such investigations as may be necessary to determine
26 compliance on the part of any firm or organization with the
27 requirements of this ordinance. It shall be the duty of each
28 department responsible for and initiating contracts subject to
29 this ordinance to assure that contractors are notified of their
30 obligations hereunder. The County Administrative Officer or his
31 designee shall have the direct responsibility and authority to
32 insure that contractors are properly monitored and that each
33 county department is in full compliance with the provisions of

1 this ordinance.

2 SECTION 10. REPORTING REQUIREMENTS.

3 The contractor will, upon request, furnish all information
 4 and reports as reasonably required by the Executive, and by any
 5 appropriate agency authorized under Section 9, to determine
 6 compliance with this ordinance, and the affidavit of compliance,
 7 and will permit access to its books, records and accounts for
 8 purposes of investigation to ascertain compliance with the
 9 nondiscrimination and affirmative action requirements of this
 10 ordinance. Unless otherwise required by law, all information,
 11 data or records obtained pursuant to the monitoring and
 12 investigation activities authorized hereunder shall be kept
 13 confidential by the county or authorized agency, except that the
 14 county may release such information when requested to do so in
 15 cooperation with state and federal agencies administering and
 16 enforcing state and federal laws against discrimination.

17 SECTION 11. NOTICE AND HEARING.

18 Upon receipt of an allegation that any contractor or vendor
 19 has violated any provision of this ordinance, or if a violation
 20 is discovered from information gained through compliance
 21 monitoring, the County Executive or authorized agency will
 22 conduct an investigation. If it appears that a violation has
 23 occurred, the County Executive or his designee will, upon ten
 24 days' written notice to the contractor, conduct a hearing to
 25 determine whether a violation has occurred. The notice shall
 26 contain a brief statement of the allegations and the reasons that
 27 a violation is believed to have occurred. The hearing shall be
 28 recorded and each party shall have the right to call and examine
 29 witnesses, to produce documentary and physical evidence, to
 30 cross-examine witnesses and to be represented by anyone of his
 31 choice lawfully permitted to do so. The parties shall include
 32 the complainant, if any, the contractor or vendor, and a
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1 representative of the Executive or the agency conducting the
2 investigation. The Executive may suspend progress payments on a
3 contract or contracts pending the outcome of the hearing. Unless
4 otherwise agreed to by all parties, the hearing shall be
5 commenced no later than twenty-one days after service of a notice
6 of violation.

7 SECTION 12. SANCTIONS.

8 After the hearing, the Executive or hearing examiner shall
9 make written findings and conclusions and may undertake one of
10 the following:

11 a. Dismissal of the complaint when a violation is found not
12 to have occurred;

13 b. Suspension or cancellation of the contract in part or in
14 whole;

15 c. Disqualification of the contractor;

16 d. Exclusion from future contracts or vending until
17 demonstration of compliance;

18 e. Liquidated damages of up to ten percent of the contract
19 amount;

20 f. Enforcement of any provision of the contract providing
21 other remedies, such as penalties or liquidated damages for
22 violation of contractual provisions, or enforcement of any other
23 remedy available at law to the County.

24 SECTION 13. ADDITIONAL SANCTIONS.

25 Any person, firm, corporation, business, union, or
26 organization that prevents or interferes with a contractor's
27 efforts to comply with the requirements of this ordinance shall
28 be subject to a civil penalty of five hundred dollars for each
29 occurrence, the county having previously complied with the notice
30 and hearing provisions of this ordinance.
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1 SECTION 14. ADMINISTRATIVE RULES OF PRACTICE AND PROCEDURE.

2 Administrative practices and procedures required to fully
3 implement the provisions of this ordinance shall be promulgated
4 and filed with the Clerk of the Council in the manner prescribed
5 in KCC 2.98.

6 SECTION 15. SEVERABILITY.

7 Should any section, subsection, paragraph, sentence, clause,
8 or phrase of this ordinance be declared unconstitutional or
9 invalid for any reason, such decision shall not affect the
10 validity of the remaining portions of this ordinance.

11 SECTION 16. Ordinance 198, Sections 1 through 13 and KCC
12 12.16.010 through KCC 12.16.160 are each hereby repealed.

13 SECTION 17. 1979 GOAL.

14 The county's 1979 goal for minority and female employment
15 within contractors doing business with the county shall be:

- 16 a. Vendor and Service Contracts: Of the total hours of
- 17 employment deemed necessary for an employer to complete
- 18 contracted work for King County eleven percent shall have been
- 19 accomplished by minority employees and thirty-five percent shall
- 20 have been accomplished by female employees.

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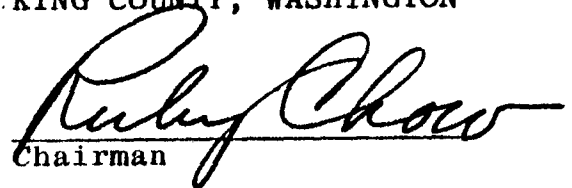
1 b. Construction Contracts: Of the total number of hours of
 2 employment deemed necessary for an employer to complete
 3 contractual work for King County thirteen percent shall have been
 4 accomplished by minority employees and five percent shall have
 5 been accomplished by female employees.

6 PROVIDED THAT, the 1980 goal and the goal for all ensuing
 7 years thereafter shall be stated in the County's Affirmative
 8 Action Plan as approved by the Council.

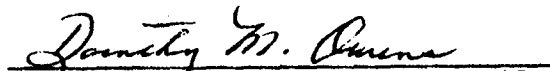
9 INTRODUCED AND READ for the first time this 30th day of
 10 July, 1979.

11 PASSED this 15th day of October, 1979.

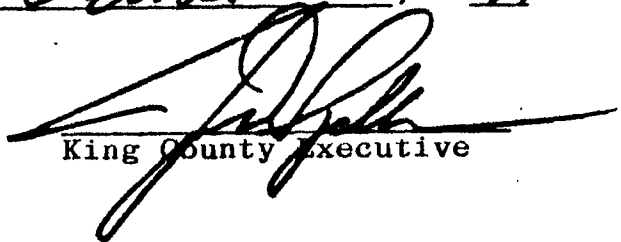
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 13 KING COUNTY COUNCIL
 KING COUNTY, WASHINGTON

14 
 15 Chairman

16 ATTEST:

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 18 
 19 Deputy Clerk of the Council

20 APPROVED this 23^d day of October, 1979

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 22 King County Executive

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