

June 1, 1987  
1635B:RS:clt

INTRODUCED BY: Ron Sims

PROPOSED NO.: 87-364

ORDINANCE NO. 8121

AN ORDINANCE relating to the King County minority and women's business enterprise requirements, adding the definition of "corporate sponsored dealership", and the standards for determining that such a dealership is a bona fide minority/women's business, and amending Ordinance 5983, Section 1, as amended and K.C.C. 4.18.010.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 5983, Section 1, as amended, and KCC 4.18.010 are hereby amended 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. "Affirmative Action Plan," shall mean the written, formal King County policy adopted annually, stating the goals and programs of county government to be performed in the areas of contract compliance, equal employment opportunity and minority/women's business contracting.

B. "Affirmative Efforts," shall mean making vigorous attempts in good faith to contact and contract with minority/women's businesses. Where affirmative efforts are required by, or are grounds for waiving provisions of this chapter, the director, department of executive administration's determination shall be based on procedures to be outlined in accordance with the dictates of this chapter.

1 C. "Architectural and Engineering Contracts" shall mean  
2 contracts for the performance of architectural and engineering  
3 services by licensed and registered firms and persons acting as  
4 consultants to King County.

5 D. "Broker" shall mean a business which purchases goods or  
6 services from another business or businesses for the sole purpose  
7 of resale to the county or a contractor doing business with the  
8 county.

9 E. "Certification" shall mean the process by which a  
10 business is determined to meet the criteria for a bona fide  
11 minority/women's business as set forth in this chapter.

12 F. "Combination Minority and Women Business" means an  
13 established and ongoing small business concern which is organized  
14 for profit, independent, performing a commercially useful  
15 function, and which is fifty percent owned and controlled by a  
16 minority male and fifty percent owned and controlled by a  
17 non-minority woman. Both owners must be lawful permanent  
18 residents of the United States.

19 G. "Commercially Useful Function," shall mean the  
20 performance of real and actual services in the discharge of any  
21 contractual endeavor. The contractor must perform a distinct  
22 element of work which the business has the skill and expertise as  
23 well as the responsibility of actually performing, managing and  
24 supervising. In determining whether a business is performing a  
25 commercially useful function, factors, including but not limited  
26 to the following, will be considered:

27 1. Whether the business has the skill and expertise to  
28 perform work for which it is being/has been certified;

29 2. Whether the business actually performs, manages and  
30 supervises the work for which it is being/has been certified; and  
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1           3. Whether the business purchases goods and/or services  
2 from a non-minority/women's business enterprise and simply  
3 resells goods to the county, county contractor, or other person  
4 doing business with the county for the purpose of allowing those  
5 goods to be counted towards fulfillment of minority/women's  
6 business enterprise utilization goals.

7           H. "Concession Contracts," shall mean, those contractual  
8 arrangements for the sale of food, beverages and/or items of  
9 personal property at any facility owned and/or managed by King  
10 County.

11           I. "Conduit" shall mean a minority/women's business with  
12 which a contractor has agreed to subcontract, when the minority/  
13 women's business does not perform the subcontract, and instead  
14 the subcontract is performed by a non-minority/women's business.

15           J. "Construction Contracts," shall mean, those contractual  
16 arrangements made by King County for the construction, repair,  
17 rehabilitation, alteration, conversion or extension of buildings,  
18 parks, streets or other improvements to real property.

19           K. "Consultant Contracts," shall mean those contractual  
20 arrangements made for the procurement of expert personal,  
21 professional and/or technical services. Consultant contracts  
22 shall not include architectural and engineering contracts as  
23 defined by this chapter.

24           L. "Contract Awarding Authority," shall mean any person with  
25 the power to enter into a contractual arrangement binding King  
26 County and shall also mean the particular office, agency or  
27 division on whose behalf the contract is entered. In addition,  
28 this term shall include, but shall not be limited to heads of  
29 county departments, divisions or offices.

1 M. "Contractor" shall mean any person, partnership,  
2 corporation, or other type of business entity which has a  
3 contract with King County or serves in a subcontracting capacity  
4 with an entity having a contract with King County for the  
5 provision of goods and/or services.

6 N. "Corporate Sponsored Dealership", shall mean a bona fide  
7 minority/ women's business which meets the following standards in  
8 lieu of the fifty one percent ownership criterion of subsection  
9 R(1), and the control criteria of subsection R(2). The minority/  
10 women owners have entered into an agreement, contract, or  
11 arrangement with a national or regional corporation and has been  
12 granted a license to offer, sell or distribute goods or services  
13 at wholesale or retail, leasing or otherwise using the name,  
14 service mark, trademark or related characteristic of the  
15 sponsoring corporation. Capital investment for the dealership is  
16 jointly contributed by the minority/women owners and the  
17 sponsoring corporation, with the sponsoring corporation initially  
18 contributing the largest percentage. The original investment  
19 contributed by the minority/women owners may be less than fifty  
20 one percent, with a specified time limit established with the  
21 sponsoring corporation for the minority/women owners to become  
22 the sole owner of the dealership. The standards for qualifying a  
23 corporate sponsored dealership as a bona fide minority/women's  
24 business enterprise, shall include, but are not limited to:

25 1. The minority/women owners must have contributed a  
26 minimum of 25% of the capitalization investment (total required  
27 equity capital) in the dealership corporation.

28 2. The dealership contract must include a binding  
29 agreement stating that the buy-out of the corporate sponsors'  
30 interest by the minority/women owners will occur within 10 years.

1           3. If the sponsoring corporation retains majority voting  
2 rights and control of the board of directors, then the  
3 minority/women owners must annually apply at least fifty percent  
4 of the net profit and bonuses toward the buy-out of the corporate  
5 sponsors' interest within the buy-out time limit established with  
6 the corporation.

7           4. The minority/women owners must show active  
8 participation in the decision-making process on the board of  
9 directors of the dealership.

10          5. The minority/women owners must have operational  
11 control, and as such have day-to-day management control of the  
12 dealership, with responsibility for sales, service volume and  
13 profits.

14          6. The sponsoring corporation must have specifically  
15 developed a national or regional corporate sponsored dealership  
16 program to address the present-day issue of lack of opportunities  
17 for minorities or women in the dealership industry, which  
18 includes such features as: capitalization assistance from the  
19 sponsoring corporation, on-going business operations training,  
20 technical assistance to the dealership owner, and a corporate  
21 sponsored minority and women's business program.

22          7. The minority/women owners must demonstrate that the  
23 relationship between the corporate sponsor and the minority/  
24 women's business was not formed for the primary purpose of  
25 achieving certification under this subsection N, or any other  
26 similar provision of any other ordinance, regulation, rule or law.

27          8. The minority/women owners having prior business or  
28 management experience relating to the business being entered into  
29 as an owner.

1 ((N)) Q. "Department," shall refer to any department as  
2 defined by King County ordinance or other applicable law and  
3 shall include all county agencies not associated with a  
4 department. These agencies shall similarly discharge those  
5 duties this chapter requires of departments and shall include the  
6 King County prosecuting attorney, the King County assessor, and  
7 the King County council.

8 ((O)) P. "Front" shall mean a business which purports to be  
9 a minority/women's business but which is actually owned and/or  
10 controlled in a manner which is inconsistent with the  
11 requirements of certification.

12 ((P)) Q. "Joint Venture," shall mean an association of two  
13 or more persons, partnerships, corporations or any combination of  
14 them, established to carry on a single business activity which is  
15 limited in scope or direction. The degree to which a joint  
16 venture may satisfy relevant utilization goals cannot exceed the  
17 proportionate interest of the minority/women's business held as a  
18 member of the joint venture in the work to be performed. The  
19 agreement establishing the joint venture, partnership or other  
20 multi-entity relationship shall be in writing. Further,  
21 minority/women's participation in a joint venture shall be based  
22 on the sharing of real economic interest in the venture and shall  
23 include proportionate control over management, interest in  
24 capital acquired by the joint venture, and interest in earnings.

25 ((Q)) R. "Legitimately Owned and Controlled," shall mean for  
26 the purposes of determining whether a business is a "minority  
27 business" and/or a "women's business" that women, minorities or a  
28 combination thereof shall possess:  
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1           1. Ownership of at least fifty one percent interest in the  
2 business, unless the minority/women's business qualifies as a  
3 corporate sponsored dealership under the provisions of subsection  
4 N.

5           2. Control over management, interest in capital, interest  
6 in profit or loss and contributions to capital, equipment and  
7 expertise on which the claim of minority/women-owned status under  
8 this chapter is based. The minority/women owners must possess  
9 and exercise the legal power to direct the management and  
10 policies of the business and to make the day-to-day as well as  
11 major decisions on matters of management, policy, and  
12 operations. If the owners of the business who are not minorities  
13 and/or women are disproportionately responsible for the operation  
14 of the business, then the business is not controlled by  
15 minorities and/or women. The business must be owned, controlled,  
16 and managed on a day-to-day, full-time basis by the minority  
17 and/or women owner(s). The requirements of this subsection R(2)  
18 shall not apply, if the minority/women's business qualifies as a,  
19 corporate sponsored dealership under the provisions of subsection  
20 N.

21           3. Ownership and control shall be measured as though not  
22 subject to the community property interest of a spouse if both  
23 spouses certify that:

24           a. Only one spouse participates in the management of the  
25 business;

26           b. The nonparticipating spouse relinquishes control over  
27 his/her community property interest in the subject business.  
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1 ((R)) S. "Minority Business," means an independent  
2 incorporated or unincorporated established and ongoing small  
3 business concern other than a joint venture organized to engage  
4 in commercial transactions, which is legitimately owned and  
5 controlled by a minority person or persons. The ownership  
6 interests shall be real and continuing and control over  
7 management interest in capital acquired by the business, and  
8 interest in earnings shall be commensurate with the percentage of  
9 ownership upon which the claim of Minority Business Enterprise  
10 status is based.

11 ((S)) I. "Minority or Minorities" shall mean ethnic persons,  
12 including Blacks, Asians, Pacific Islanders, American Indians,  
13 Alaska Natives, Hispanics and Mexican-Americans who are citizens  
14 or lawful permanent residents of the United States.

15 ((F)) U. "Nonprofit Corporation" shall mean a corporation  
16 organized pursuant to R.C.W. Ch. 24.03. In the case of nonprofit  
17 corporations organized under the laws of a state other than  
18 Washington, a nonprofit corporation shall mean one organized for  
19 one or more of the purposes set forth in R.C.W. 24.03.015 and  
20 meeting the definitions in R.C.W. 24.03.005.

21 ((H)) V. "Pass-Through" means buying or obtaining goods  
22 from a non-women's business, non-minority business or  
23 non-combination women/minority business, and reselling or  
24 transferring those goods to the county, county contractors or  
25 other persons doing business with the county for the purpose of  
26 obtaining any advantage or benefit conferred under this chapter,  
27 without performing a commercially useful function.

28 ((V-)) W. "Percentage Factor" shall mean the special  
29 ranking factors established by this chapter to be applied in  
30 certain competitive bid situations where minority/women's  
31 businesses respond to solicitations or are included as  
32 subcontracts in responding parties' responses to solicitations.  
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1 ((W)) X. "Purchasing Contracts," shall mean, but not  
2 limited to, those contracts which are awarded by the department  
3 of executive administration as the representative of King County,  
4 or any contract awarded by King County for the purchase of  
5 tangible goods.

6 ((X)) Y. "Responding Party," shall mean, any person,  
7 partnership, corporation or business entity which makes a  
8 proposal as defined in this chapter in response to a solicitation  
9 as defined in this chapter.

10 ((Y)) Z. "Service Contracts," shall mean, those contracts  
11 for technical, professional or other work performed by a vendor,  
12 such as the making of repairs, servicing, maintenance and/or  
13 cleaning, and which does not involve the provision of substantial  
14 tangible items such as materials, supplies or equipment. For the  
15 purposes of this chapter, the term "service contracts" shall not  
16 include construction, rental or leasing of equipment or the  
17 traditional professional services such as consulting, legal  
18 services, feasibility studies and design studies.

19 ((Z)) AA. "Set Aside," shall mean that proportion of each  
20 contract awarding authority's annual expenditure for contract  
21 goods and services which equals the contract awarding authority's  
22 annual goals for participation of minority/women's businesses as  
23 established by this chapter.

24 ((AA)) BB. "Small Business Concern" means a small business  
25 as defined pursuant to Section 3 of the federal Small Business  
26 Act and relevant regulations promulgated pursuant thereto.

27 ((BB)) CC. "Solicitation," shall mean a contract awarding  
28 authority's request for the provision of any one or more of the  
29 following: goods and services of any kind, equipment leases, and  
30 rentals/purchase of space. Solicitation shall include requests  
31 for proposals, invitations to bid and similar items.  
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1 "Solicitation specifications," shall mean any documents,  
2 literature or other information accompanying a solicitation which  
3 provides additional data regarding the contract awarding  
4 authority's request.

5 ((GG)) DD. "Utilization Goals," shall mean those separately  
6 designated annual goals for the use by King County of  
7 minority/women's businesses. The goals shall be expressed as a  
8 numerical percentage of the total dollar value of all contracts  
9 to be awarded by the county. These goals shall be applicable to  
10 businesses organized for profit, along with governmental agencies  
11 and quasi-governmental agencies, unless the agencies are  
12 specifically excepted by or in accordance with the provisions of  
13 this chapter.

14 ((DD)) EE. "Utilization Requirements," shall mean those  
15 efforts which responding parties, King County and the particular  
16 department shall make to meet the county's utilization goals,  
17 including but not limited to the percentage factors and set aside  
18 requirements established by this chapter.

19 ((EE)) FF. "Violating Party," shall mean a person or entity  
20 which has violated a provision or provisions of this chapter.

21 ((FF)) GG. "Waiver Statement," shall mean a written  
22 statement directed to the director, department of executive  
23 administration containing reasons why any provision or provisions  
24 of this ordinance shall not apply to a particular person,  
25 partnership, corporation, business entity, contract awarding  
26 authority, department, or other entity. Where a waiver or  
27 waivers are granted, the utilization goals shall be applied in a  
28 manner so as to reflect the loss of the monetary value of those  
29 contracts exempted from the requisites of this chapter.

30 ((GG)) HH. "Women's Business," means an independent  
31 incorporated or unincorporated established and ongoing small  
32 business concern other than a joint venture organized to engage  
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1 in commercial transactions, which is legitimately owned and  
2 controlled by a woman or women who is (are) residents of the  
3 United States or its territories. The ownership interests shall  
4 be real and continuing, and control over management, interest in  
5 capital acquired by the business, and interest in earnings shall  
6 be commensurate with the percentage of ownership upon which the  
7 claim of women's business status is based.

8 NEW SECTION. SECTION 2. Corporate Sponsored Dealerships --  
9 Reporting requirements. The executive is directed to report to  
10 the council by, and no later than June 30, 1988 with the costs to  
11 the county and the number of Corporate Sponsored Dealerships  
12 certified under the provisions of this ordinance.

13 INTRODUCED AND READ for the first time this 11<sup>th</sup> day  
14 of May, 1987.

15 PASSED this 22<sup>nd</sup> day of June, 1987.

16 KING COUNTY COUNCIL  
17 KING COUNTY, WASHINGTON

18 Gary Grant  
19 Chairman

20 ATTEST:

21 Dorothy M. Owens  
22 Clerk of the Council

23 APPROVED this 2<sup>nd</sup> day of July, 1987.

24 Jim Hill  
25 King County Executive



**King County Executive**  
**TIM HILL**

400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 344-4040

June 30, 1987

The Honorable Gary Grant  
Chairman, King County Council  
Room 402  
C O U R T H O U S E

RE: King County Ordinance No. 8121

Dear Chairman Grant:

I wish to express my wholehearted support for adoption of Ordinance No. 8121 expanding the Minority and Women's Business (MWB) Enterprise Program to include certification procedures for minority/women-owned corporate-sponsored dealerships. This legislation represents a positive step toward recognizing the potential for MWB participation in those commodity areas where high-dollar capitalization requirements for business ownership have historically prohibited meaningful MWB involvement.

Certification of corporate-sponsored dealerships owned by **bona fide** woman and minority entrepreneurs will help to broaden King County's overall MWB vendor base and will contribute directly to long-term economic development. King County Ordinance No. 8121 will serve as model legislation for other jurisdictions in the State of Washington and throughout the Pacific Northwest.

Affirmative Action Program staff has been directed to carefully monitor certification activity initiated under the new Ordinance. I will provide a status report to the Council describing the efficacy of the program in June 1988.

Sincerely,

Tim Hill  
King County Executive

TH:KP:bi

cc: Jerry Saulter, Director, Executive Administration  
ATTN: Richard James, Affirmative Action Administrator