

§17-109. Local Bidding Preferences. [25.1]

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(1) *Legislative findings.*

(a) Local businesses that seek to enter into contracts with the City labor under a competitive disadvantage with businesses from other areas because of the higher administrative costs of doing business in the City (e.g., higher taxes, higher rents, higher wages and benefits for labor, higher insurance rates, etc.).

(b) The public interest would be served by encouraging businesses to locate and remain in Philadelphia through the provision of a preference to local businesses in the award of City contracts.

(c) The bid preference will serve the public interest because the growth and development of local businesses will have a significant positive impact on the economic health of the City by, among other things, the creation of local jobs and increased tax revenue.

(d) The bid preference will serve the goal of rewarding those businesses which contribute the most to the local economy.

(e) The bid preference, in affording local businesses a competitive advantage when bidding on City contracts, does not exclude any potential contractor.

(2) *Definitions.* For purposes of this Section, the following definitions apply:

(a) "Business Entity" shall mean any individual, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, joint venture, or unincorporated association, including any parent company, subsidiary, exclusive distributor or company affiliated therewith, engaged in a business or commercial enterprise.

(b) "Commissioner" shall mean the Procurement Commissioner, and "Department" shall mean the Procurement Department.

(c) "Local Business Entity" shall mean any Business Entity certified pursuant to subsection (3).

(3) *Certification.*

(a) A Business Entity that seeks to be certified as a Local Business Entity shall make application to the Commissioner on a form provided by the Department. Such application shall not be considered by the Commissioner unless the Business Entity files with the Commissioner:

(i) A written certificate that the Business Entity is not delinquent in the payment of any City or School District of Philadelphia taxes, charges, fees, rents or claims, or that the Business Entity has entered into an agreement to pay any such delinquency and is abiding by the terms of such agreement; and

(ii) A written waiver of the provisions of Section 19-506(2) to expressly authorize the Revenue Department to share with the Department all information in its possession concerning the Business Entity, including any information that would otherwise be confidential.

(b) The Commissioner shall certify a Business Entity as a Local Business Entity if the Commissioner determines:

(i) That the Business Entity, during the preceding 12 months, has filed a business privilege tax return with the City establishing that the contractor conducted business within the City within the calendar year preceding the filing of the return.

(ii) That during the preceding eighteen (18) months the Business Entity:

(A) Has continuously maintained a valid business privilege

license and all other licenses and permits necessary to conduct business with the City;

(B) Has continuously occupied an office within the City, where business is conducted; and

(C) Satisfies at least one of the following requirements:

(1) More than half of the Business Entity's full-time employees work in the City at least sixty percent of the time;

(2) More than fifty of the Business Entity's full-time employees work in the City at least sixty percent of the time; or

(3) The Business Entity's principal place of business is located in the City.

(c) If a Business Entity's principal place of business is not located in the City, then the Commissioner, prior to certifying the Business Entity as a Local Business Entity, shall:

(i) Require the Business Entity to provide employment and other data necessary to establish that the Business Entity has met the requirements for certification; and

(ii) In the absence of documentation demonstrating the existence of an office within the City of Philadelphia, conduct a site inspection of the Business Entity's offices within the City.

(4) *Term of Certification.* A certification by the Commissioner pursuant to subsection (3) shall be valid for a term of three years, or for such other period as the Commissioner shall prescribe by regulation. To maintain its certification during the three-year term, the Local Business Entity must:

(a) Provide to the Commissioner, every year by the anniversary of the certification, an updated certificate in the form required by subsection (3)(a)(i) and a sworn affidavit affirming that the Local Business Entity continues to comply with subsection 3(b); and

(b) Promptly notify the Commissioner if there is a material change to the ownership or control of the Local Business Entity, or if there is a change in address or phone number, or if there is any other change in the operations of the Local Business Entity that would cause the Local Business Entity no longer to comply with the provisions of subsection 3(b).

(5) *Award of City Contracts.*

(a) On any contract for which the City secures competitive bids pursuant to Section 8-200(1) of the Home Rule Charter, the Commissioner shall award a five percent bid preference to any Local Business Entity that submits with its bid:

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(1) A current certification from the Commissioner as a Local Business Entity;

(2) The Local Business Entity's most recent annual affidavit under subsection 4(a);

(3) A certification by the Local Business Entity that, throughout the entirety of the contract:

(A) The Local Business Entity or a subcontractor will perform the majority of any work on the subject contract within the geographic limits of the City;

(B) The Local Business Entity or a subcontractor will maintain within the City a majority of the inventory or equipment that will be used on the contract; and

(C) The Local Business Entity will satisfy subsection 3(a),

subsection 3(b), and at least one of the requirements identified in subsection (3)(c).

(4) If the Local Business Entity relies upon a subcontractor to meet the requirements in subparagraph (a)(3)(A) or (a)(3)(B) of this subsection:

(A) a current certification from the Commissioner that the subcontractor itself is a Local Business Entity; and

(B) the subcontractor's most recent annual affidavit provided to the Commissioner pursuant to subsection 4(a).

(b) In determining the lowest responsible bidder on any such contract, the Commissioner shall subtract five percent from the bid of any Local Business Entity awarded such a preference, or shall implement the bid preference otherwise pursuant to regulations promulgated by the Commissioner.

(c) The terms of the certification required under subparagraph (a)(3) of this subsection shall be deemed to be incorporated into any contract for which a bid preference is awarded. If the Commissioner determines that a Business Entity fails to comply with these terms at any time during the term of the contract, that Business Entity shall be deemed to be in breach of such contract, shall be required to pay liquidated damages of ten percent of the bid, and may be debarred by the Commissioner for up to three years. If the Commissioner determines to issue a debarment order, the Commissioner shall give the Business Entity written notice thereof and an opportunity to present evidence at a hearing in opposition to the intended debarment. After any such hearing, the Commissioner or such hearing panel as he or she may designate shall issue a written determination stating the grounds for its decision.

(6) *Waiver.* The Commissioner may determine not to award a bid preference if the Commissioner certifies that such a preference would result in the loss of federal, state or similar funds or grants. The Commissioner shall transmit a copy of any such determination to the Mayor, the President of City Council, and the Chief Clerk of City Council no later than one (1) week following the contract award.

(7) *Regulations.* The Procurement Department shall promulgate such regulations as it may deem necessary to aid in the administration and enforcement of the provisions of this Section, and shall submit any such regulations to the Mayor, the President of City Council, and the Chief Clerk of City Council when it submits the regulations to the Department of Records under Section 8-407(a) of the Home Rule Charter.

(8) *Inspections.* The Commissioner shall have the authority to inspect and monitor all premises, business practices, and operations of any Local Business Entity as may be necessary or appropriate to ensure compliance with this Section.

(9) *Annual Report.* Not later than February 1 of each year, the Commissioner shall issue a report in writing to the Mayor, the President of City Council, and the Chief Clerk of City Council identifying, with respect to the time period between January 1 and December 31 of the preceding year:

(a) the types of contracts in which a bid preference was awarded;

(b) the number of each type; and

(c) the name of all Local Business Entities in breach of contract pursuant to subsection 5(c).

CHAPTER II ADMINISTRATION

2-62 PURCHASING; LOCAL PREFERENCE POLICY

2-62.1 Definitions.

As used in this section:

Local business shall mean a business firm with fixed offices or locally taxable distribution points within the boundaries of the City of Alameda which hold a current business license with an Alameda business address which is not a post office box. (Ord. No. 2673 N.S.)

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CHAPTER II ADMINISTRATION

2-62 PURCHASING: LOCAL PREFERENCE POLICY

2-62.2 Award of Contracts for Materials and Supplies.

Subject to the limitations contained in this section, in the evaluation of bids or proposals for the award of all contracts for the purchase or lease of supplies, materials, equipment or other personal property, a local business shall, upon written application noted on the space provided on City bid or proposal documents, there shall be extended a five (5%) percent preference for local businesses. The awarding officer shall consider the quality offered and its conformity with the specifications, the delivery and discount terms and conditions, the service reputation of the bidder, and other information and data required to prove the lowest responsible bidder. (Ord. No. 2673 N.S.)

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CHAPTER II ADMINISTRATION

2-62 PURCHASING: LOCAL PREFERENCE POLICY.

2-62.3 Award of Contracts for Labor.

Subject to the limitations contained in this section, in the evaluation of any contract or hiring of any labor for public contract work, preference shall be given to contractors, mechanics, artisans or other laborers of any class, who shall be a local business as defined herein, provided that the labor, quality and price of the work shall be equal to that of others who would be considered for the award of the contract. (Ord. No. 2673 N.S.)

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CHAPTER II ADMINISTRATION

2-62 PURCHASING; LOCAL PREFERENCE POLICY

2-62.4 Award of Personal Service Contracts.

Subject to the limitations contained in this section, in the evaluation of a contract for the performance of personal services, upon written application noted on the space provided on the City bid or proposal documents, there shall be extended a five (5%) percent preference for local businesses defined in this section, provided however, that all such contracts shall be awarded on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. (Ord. No. 2673 N.S.)

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CHAPTER II ADMINISTRATION2-62 PURCHASING; LOCAL PREFERENCE POLICY

2-62.5 Exemptions.

The following contracts are exempt from the provisions of this section:

1. Contracts to the extent to which application of the provisions of this section would be prohibited by State or Federal law or regulation or would result in what the awarding authority finds to be an unacceptable loss of government revenue or funding.
2. Contracts funded in whole or in part from donations and gifts to the City to the extent the provisions would conflict with any special conditions attached to the gifts or donations, provided the gift and the special conditions have been approved and accepted pursuant to the donations policy of the City.
3. Contracts resulting from exigent emergency conditions where any delay in completion or performance of the contract would jeopardize public health, safety or welfare of the citizens of the City, or where in the judgment of the City Manager or his/her designee the operational effectiveness or a significant City function would be seriously threatened if the contract were not entered into expeditiously.
4. Contracts with any single or sole source supplier for supplies, material, equipment or other personal property. (Ord. No. 2673 N.S.)

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CHAPTER II ADMINISTRATION2-62 PURCHASING; LOCAL PREFERENCE POLICY**2-62.6 Enforcement and Penalties.**

If the City Manager or his/her designee determines that a contractor or bidder has made an intentional misstatement to obtain a price preference under this section, the contractor or bidder shall be subject to any remedy available to the City at law or equity, including, but not limited to the following:

1. A finding of intentional misstatement or noncompliance shall be regarded by the awarding authority as a basis for determining whether or not the bidder or contractor is a responsible bidder for the present and future contracts. Any disqualification imposed as a result of this determination shall last for a period of one (1) year.
2. An intentional misstatement made to obtain a price preference under this section shall subject the recipient of any such price preference to a civil penalty of treble the dollar price preference received, or one thousand (\$1,000.00) dollars whichever is greater. (Ord. No. 2673 N.S.)

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Local Preference

The City of San Jose's new local preference policy will encourage local companies to do business with the City and speed the growth of jobs for San Jose residents. The policy builds on the City's ongoing work to improve the City's systems for purchasing goods and services

Bids for goods and services from businesses located in Santa Clara County will now be viewed more favorably than non-local competitors while still including factors such as cost and experience. Small businesses with 35 or fewer employees will also benefit. For bids on goods local businesses will have a 2.5% cost advantage and small, local companies a 5% cost advantage. In reviewing services provided through a request for proposal process local businesses will receive a 5% point advantage and small, local companies a 10% point advantage



The new policy will help grow new jobs for residents by keeping more of the City of San Jose's spending within the regional economy. This model is based on successful implementation by other communities with additional local improvements suggested through the public input process

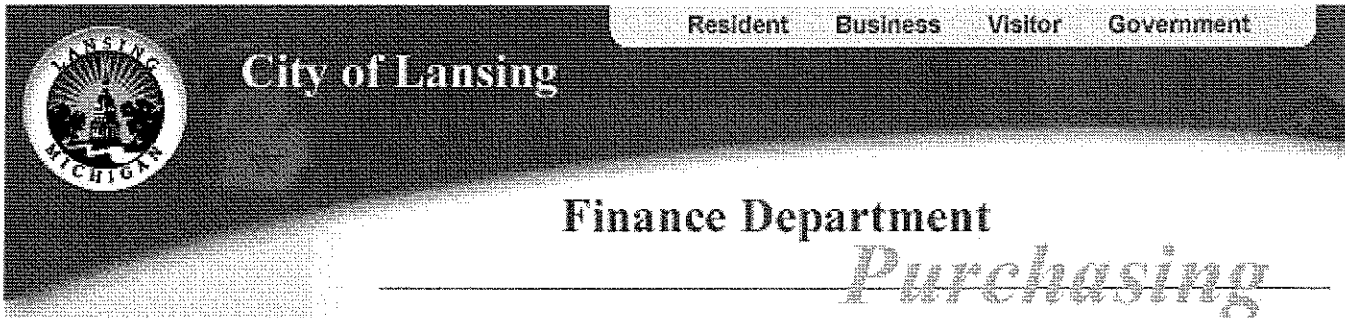
These changes are part of a larger City of San José program to make it easier for businesses to sell products and services to the City through increased outreach and process improvements. This effort, called the Small Business Opportunity Program (SBOP) has also begun tracking the City's performance in achieving higher rates of small business participation in contracts and purchasing agreements. The San Jose City Council adopted the Local Preference Policy on May 18, 2004 and it became effective on June 18, 2004

City Council memorandums are available with specific details.

[Local Preference](#), (pdf) ([Local Preference Procurement Supplement](#) (pdf))

[Small Business Opportunity Program - September 2003](#) (pdf), ([Diagram-attachment](#) (pdf))

[Small Business Opportunity Program - January 2003](#) (pdf)



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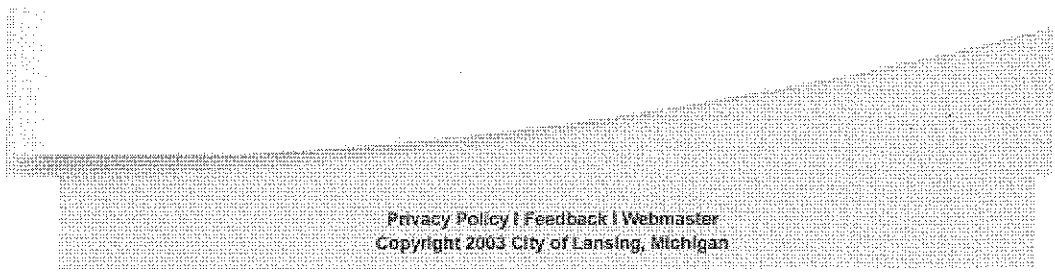
Local Preference

The City of Lansing in partnership with the business community recognizes the need to facilitate economic development in our community. As part of the economic growth strategy, the City has incorporated Local Preference, [Supplier Diversity](#) and [Living Wage](#) into the City Purchasing policies.

The Council's Local Preference [Ordinance](#) provides opportunities for Lansing Based Businesses to become part of the City's purchasing process.

Highlights of the Ordinance include:

- Purchases greater than \$1000 must have one Lansing based business quote whenever available.
- Purchases greater than \$15,000 will allow the Lansing based business within 5% of the low bid, all other things equal, a chance to match the low bid and receive the contract.
- Construction contracts greater than \$500,000 are exempt from the Local Preference Ordinance.



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ORDINANCE NO. 206.16

AN ORDINANCE OF THE CITY OF LANSING, MICHIGAN, TO REVISE CHAPTER 206 OF THE CODIFIED ORDINANCES OF THE CITY OF LANSING BY REMOVING THE CURRENT GENERAL LANGUAGE AND REPLACING IT WITH SECTIONS 206.16(1) - (4) THAT SPECIFY IN GREATER DETAIL THE PROCEDURE TO BE USED WHEN THE BID OF A LANSING BASED BUSINESS IS WITHIN A CERTAIN PERCENTAGE OF THE LOWEST BIDDER WHO IS NOT A LANSING BASED BUSINESS.

THE CITY OF LANSING ORDAINS:

Section 1. That Chapter 206 of the Code of Ordinances of the City of Lansing, Michigan, be and hereby is amended by removing the current language and adding SECTIONS 206.16(1)-(4) AS FOLLOWS:

206.16. Preference for local bidders or offerors.

~~If the lowest and most responsible and responsive bids received are for the same amount or unit price and all the criteria enumerated in Section 206.02(a)(1)H.1. to 10. are equal, or if the using agency and the Director concur that two firms, one of which is a local firm, are equally qualified in all relevant aspects, then the contract shall be awarded to a local bidder or offeror.~~

LANSING BASED BUSINESSES MAY BE AWARDED A CONTRACT AS THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER UNDER THE CIRCUMSTANCES SPECIFIED HEREIN.

206.16(1) DEFINITIONS.

(A) CITY RESIDENT(S) MEANS AN INDIVIDUAL WHOSE PRIMARY PLACE OF RESIDENCE IS WITHIN THE CORPORATE LIMITS OF THE CITY OF LANSING AS EVIDENCED BY VOTER REGISTRATION ADDRESS, DRIVER'S LICENSE ADDRESS OR STATE IDENTIFICATION ADDRESS OR AFFIDAVIT FORM DEVELOPED BY THE CITY ATTORNEY.

(B) GOOD FAITH EFFORT MEANS THOSE DEMONSTRABLE ACTIVITIES SUPPORTED BY DOCUMENTATION AND RESULTS THAT VERIFY THE BIDDER'S ATTEMPTS TO REACH THE ESTABLISHED GOAL.

1 Approved as to form:

City Attorney
Dated: _____

(C) IMPLEMENTING DEPARTMENT MEANS THE CITY DEPARTMENT OR AGENCY THAT HAS RESPONSIBILITY FOR OVERSIGHT OF A CONTRACT.

(D) JOINT VENTURE MEANS A CO-OPERATION BETWEEN TWO OR MORE CORPORATE BODIES FOR A PARTICULAR PROJECT IN WHICH THEY SHARE THE RESPONSIBILITIES AND PROFITS ASSOCIATED WITH THE PROJECT.

(E) LANSING BASED BUSINESS MEANS THE PHYSICAL AND ECONOMIC RELATIONSHIP TO LANSING DETERMINED EVIDENCED BY A BUILDING OR OFFICE PHYSICALLY LOCATED IN THE CITY AND THE PAYMENT OF (1) CITY INCOME TAXES ON THE CONTRACTOR'S NET PROFITS, AND (2) CITY PROPERTY TAXES ON A PLANT OR OFFICE AND EQUIPMENT SUCH AS IS ORDINARILY REQUIRED FOR THE PERFORMANCE OF THE CONTRACT BID.

ANY BUSINESS PHYSICALLY LOCATED IN LANSING WHICH OPERATES UNDER A CITY AUTHORIZED TAX ABATEMENT OR FORGIVENESS PROGRAM, OR ANY OTHER CITY AUTHORIZED TAX CREDIT PROGRAM, IS STILL CONSIDERED A LANSING BASED BUSINESS FOR PURPOSES OF THIS ORDINANCE.

(F) SUBCONTRACTOR MEANS A PERSON OR COMPANY THAT ASSUMES, BY SECONDARY CONTRACT, SOME OR ALL OF THE OBLIGATIONS OF AN ORIGINAL CONTRACTOR.

206.16(2) PURCHASES UNDER \$15,000

PURSUANT TO SECTION 206.03, DEPARTMENTS PURCHASING SUPPLIES, SERVICES PROCURED UNDER BID AND CONSTRUCTION ITEMS FOR LESS THAN \$15,000, WHICH ARE NOT PURCHASED BY USE OF A PROCUREMENT CARD MUST SOLICIT AT LEAST ONE QUOTE FROM A LANSING BASED BUSINESS UNLESS NO LANSING BASED BUSINESS PROVIDING THE SERVICE, SUPPLY OR CONSTRUCTION ITEM CAN BE IDENTIFIED. THE PROCURING DEPARTMENT WILL DOCUMENT EFFORTS TO USE LANSING BASED BUSINESSES.

206.16(3) PREFERENCE FOR LANSING BASED BUSINESSES ON CONTRACTS OVER \$15,000 AND UNDER \$500,000.

WHEN SEALED BIDS ARE RECEIVED UNDER SECTION 206.02 FOR PURCHASES, SUPPLIES AND CONSTRUCTION CONTRACTS GREATER THAN \$15,000 AND LESS THAN \$500,000, THE FOLLOWING SHALL APPLY:

(1) THE PERSON OR BUSINESS SUBMITTING THE LOWEST BID SHALL BE DEEMED THE LOWEST BIDDER. IF, HOWEVER, THE LOWEST BIDDER IS NOT A LANSING BASED BUSINESS, ANY LANSING BASED BUSINESS WITH A BID WITHIN A SPECIFIED PERCENTAGE OF THE LOWEST BID THAT HAS BEEN DEEMED RESPONSIVE AND RESPONSIBLE UNDER THE PURCHASING ORDINANCE SHALL BE DEEMED THE LOWEST BIDDER IF IT AGREES TO REDUCE ITS BID TO MATCH THE BID OF THE LOWEST BIDDER.

THE PERCENTAGE DIFFERENCE SHALL BE ESTABLISHED BY COUNCIL RESOLUTION AND MAY BE REVISED FROM TIME TO TIME AS COUNCIL DEEMS APPROPRIATE.

(2) IF A LANSING BASED BUSINESS REFUSES TO REDUCE ITS BID TO MATCH THE LOWEST BID, THEN THE NEXT LOWEST RESPONSIBLE LANSING BASED BUSINESS WITH A BID WITHIN THE ESTABLISHED PERCENTAGE OF THE LOWEST BID SHALL BE GIVEN THE OPPORTUNITY TO REDUCE ITS BID TO MATCH THE BID OF THE LOWEST BIDDER. IF THE LANSING BIDDER AGREES TO REDUCE ITS BID TO MATCH THE BID OF THE LOWEST NON-LANSING BIDDER, IT WILL BE DEEMED THE LOWEST BIDDER AND AWARDED THE CONTRACT.

(3) IF NO RESPONSIVE AND RESPONSIBLE LANSING BASED BUSINESS WITHIN THE ESTABLISHED PERCENTAGE OF THE LOWEST BID AGREES TO REDUCE ITS BID TO THAT OF THE LOWEST BIDDER, THEN THE CONTRACT SHALL BE AWARDED TO THE PERSON OR BUSINESS WITH THE LOWEST, MOST RESPONSIVE AND RESPONSIBLE BID.

(4) EXCEPT FOR CONSTRUCTION CONTRACTS, NO CONTRACT AWARDED PURSUANT TO THIS ORDINANCE SHALL BE SUBLET IN ANY MANNER THAT PERMITS 50% OR MORE OF THE DOLLAR VALUE OF THE CONTRACT TO BE PERFORMED BY A SUBCONTRACTOR OR SUBCONTRACTORS WHO DO NOT MEET THE DEFINITION OF LANSING BASED.

(5) ANY LANSING BASED BUSINESS AWARDED A CONTRACT PURSUANT TO THIS ORDINANCE SHALL AGREE TO MAKE AVAILABLE TO THE CITY ALL RECORDS NECESSARY TO ESTABLISH ITS ELIGIBILITY AND COMPLIANCE WITH ALL CITY, STATE AND LOCAL LAWS.

206.16(4) AFFIRMATIVE MEASURES FOR ENHANCING LANSING BASED BUSINESSES

(1) THE CITY MAY ELIMINATE BID, PERFORMANCE, AND PAYMENT BONDING REQUIREMENTS WHEN IT DEEMS APPROPRIATE FOR LANSING BASED BUSINESSES, EXCEPT FOR CONTRACTS FOR CONSTRUCTION, ALTERATIONS OR REPAIRS EXCEEDING \$30,000, SUBJECT TO THE REQUIREMENTS OF MCL 129.201.

(2) THE CITY MAY ALLOW FOR JOINT VENTURES OR OTHER DOCUMENTED BUSINESS ARRANGEMENTS TO ENABLE LANSING BASED BUSINESSES TO MEET BONDING REQUIREMENTS FOR CONTRACTS GREATER THAN \$15,000.

Section 2. All ordinances, resolutions or rules, parts of ordinances, resolutions or rules inconsistent with these provisions are repealed.

Section 3. Should any section, clause or phrase of this Ordinance be declared to be invalid, the same shall not affect the validity of the Ordinance as a whole, or any part other than the part so declared to be invalid.

Section 4. This Ordinance shall take effect on the 30th day after enactment unless given immediate effect by the City Council.

Approved as to form:

City Attorney Date

4 Approved as to form:

City Attorney
Dated: _____