



Legislation Text

File #: 34158, Version: 1

**Fiscal Note**

The Ordinance codifies existing practice. No additional appropriation is required.

**Title**

Creating Section 33.54 of the Madison General Ordinances to establish the Small Business Enterprises Appeals Committee.

**Body**

DRAFTER'S ANALYSIS: The City has a process for a public works contractor to appeal a decision on a failure to meet the City's Small Business Enterprise (SBE) requirements. However, the process is not codified in the Madison General Ordinances. This ordinance places the current process into the ordinances.

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The Common Council of the City of Madison do hereby ordain as follows:

Section 33.54 entitled "Small Business Enterprises Appeals Committee" of the Madison General Ordinances is created to read as follows:

**"33.54 SMALL BUSINESS ENTERPRISES APPEALS COMMITTEE.**

- (1) Creation. There is hereby created the Small Business Enterprises Appeals Committee to consist of five (5) members who shall serve without compensation.
- (2) Composition. The Affirmative Action Commission and the Board of Public Works shall each elect two of their members to serve on the Committee. They may also elect alternates to serve in the event the regular member is unable to serve. The fifth member shall be appointed by the Mayor. The members of the Committee shall not be subject to confirmation by the Council. Each member's term shall be two (2) years.
- (3) Meetings and Staffing. The Committee shall meet as required. The Committee shall select its own Chair and Vice Chair, and shall be governed by its own rules, or if none have been adopted, by Robert's Rules of Order. The City Engineer shall provide staff assistance to the Committee, and the City Attorney shall furnish the Committee any legal assistance necessary to carry out of its functions.
- (4) Duties. The Committee shall hear appeals from any party who has been found ineligible to be awarded a public works contract due to the party's failure to demonstrate a good faith effort under the City's Small Business Enterprises Program. All appeals shall be made in writing, and must be delivered to and received by the City Engineer no later than the close of the third business day following the affected party's receipt of the written notification of ineligibility by the Affirmative Action Division Manager. The notice of appeal shall state the basis for the appeal of the decision of the Affirmative Action Division Manager.
- (5) Hearings. The Committee shall schedule a hearing within ten (10) business days after receiving the notice of appeal. The date of the hearing shall be not more than twenty-one (21) calendar days after the notice of appeal has been received by the City Engineer. During the pendency of the appeal, the Common Council may not award the public works contract at issue to any contractor. At the hearing the Affirmative Action Division Manager shall have the burden of proof to persuade the Committee of the facts supporting his or her findings. Each party shall have the right to appear in person and by counsel, to call and examine all witnesses and to introduce exhibits. The Committee shall have the power to compel by subpoena duces tecum the production before it of documents, books, records, paper or other evidence which may relate to the subject matter of the hearing. In the admission of evidence, the Committee shall abide by the provisions of Wis. Stats. Sec. 227.45(1) through (6). The Committee shall make written findings of fact and conclusions of law on whether the finding of ineligibility should be

sustained or overturned. The Committee shall provide written findings and conclusions and a written order within five (5) calendar days after the conclusion of the hearing, to be signed by the Chair of the Committee, and shall promptly mail or otherwise deliver copies thereof upon the appellant, the City Engineer, and the Affirmative Action Division Manager. The Committee's findings and conclusions shall constitute a final administrative determination and shall be subject to review in court as provided below.

(6) Judicial Review.

- (a) Any party to a hearing resulting in a final determination may seek review by certiorari within thirty (30) days of receipt of the final determination. The court may affirm or reverse the final determination, or remand to the Committee for further proceedings consistent with the court's decision.
- (b) If review is sought of a final determination, the record of the proceedings shall be transcribed at the expense of the party seeking review. A transcript shall be supplied to anyone requesting the same at the requester's expense. By stipulation, the court may order a synopsis of the proceedings in lieu of a transcript. The court may otherwise limit the requirement of a transcript."