

**CITY OF BALTIMORE
COUNCIL BILL 05-0249
(First Reader)**

Introduced by: Councilmembers Holton, Clarke, Kraft, Spector, Rawlings Blake, President
Dixon, Councilmembers D'Adamo, Mitchell, Conaway, Welch, Harris

Introduced and read first time: August 15, 2005

Assigned to: Economic Development and Public Financing Subcommittee

REFERRED TO THE FOLLOWING AGENCIES: Baltimore Development Corporation, Department of
Finance, Bureau of Purchases, City Solicitor, Office of Minority Business Development

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **A Commercial Non-Discrimination Policy**

3 FOR the purpose of establishing a clear policy against discrimination in business on the basis of
4 race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability and a
5 clear policy for the City not to engage in business with firms that discriminate in their
6 solicitation, selection, or treatment of vendors, suppliers, subcontractors, or business
7 customers; establishing a formal complaint process and investigation process for alleged
8 violations of this policy; and providing due process for hearing evidence, rendering findings,
9 and imposing sanctions for violations of the commercial non-discrimination policy.

10 BY repealing and reordaining, with amendments
11 Article 5 - Finance, Property, and Procurement
12 Section(s) 3-1, 5-2, 40-7
13 Baltimore City Code
14 (Edition 2000)

15 BY adding
16 Article 5 - Finance, Property, and Procurement
17 Section(s) 29-1 through 29-20, inclusive, to be under the new subtitle designation
18 "Subtitle 29. Commercial Non-Discrimination Policy"
19 Baltimore City Code
20 (Edition 2000)

21 **Recitals**

22 As a result of extensive evidence of race- and gender-based discrimination against minority
23 and women-owned business enterprises presented to the Baltimore City Council in the 1990
24 Millemann Report and the 2000 Disparity Study conducted by City consultants, the City has
25 determined that it is necessary for it to establish and firmly enforce a clear policy against
26 discrimination in business on the basis of race, gender, religion, national origin, ethnicity,
27 sexual orientation, age, or disability. The City is further committed to establish a clear policy
28 for the City not to engage in business with firms that discriminate in their solicitation,

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

1 selection, hiring, or treatment of vendors, suppliers, subcontractors, or business customers.
2 Such a commercial non-discrimination policy approach has been favorably commented upon
3 by the United States Supreme Court in *City of Richmond v. J. A. Croson*, 488 U.S. 469, 509-
4 510 (1989), and by other federal courts.

5 The City of Baltimore has further determined that it has a constitutional duty to ensure that the
6 tax dollars collected from its citizens do not serve to finance and reward the evil of private
7 prejudice on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age,
8 disability, or any other form of unlawful discrimination.

9 It is in the best interests of the City of Baltimore to enhance competition on City projects by
10 promoting equal opportunity and the full participation of all segments of the community in a
11 marketplace environment that is free from the effects of discrimination. The City is likely to
12 benefit from a discrimination-free marketplace through lower prices and higher revenues.

13 Through enactment of this Ordinance, the City of Baltimore provides a formal mechanism for
14 receiving, investigating, and resolving complaints of discrimination filed against businesses that
15 have submitted a bid or proposal for, have been selected to engage in, or are engaged in doing
16 business with the City. The City also gives fuller meaning and effect to the goals and objectives
17 of this policy by including enforcement provisions that may subject violators of the commercial
18 non-discrimination policy to possible contract termination, debarment from participation in City
19 contracts and projects, or other remedial actions.

20 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
21 Laws of Baltimore City read as follows:

22 **Baltimore City Code**

23 **Article 5. Finance, Property, and Procurement**

24 **SUBTITLE 3. DEPOSIT OF CITY FUNDS**

25 **§ 3-1. Required deposit and accounting.**

26 (a) *Deposits.*

27 (1) The Director of Finance shall deposit all money belonging to the City in banks which
28 shall be designated by the Board of Finance.

29 (2) And it shall be the duty of the Board of Finance in making the selection to enter into
30 an agreement with the banks so selected with regard to compensating the City, either
31 by service rendered by the banks to the City, or some rate of compensation in the
32 form of interest on the balances belonging to the City, as in its judgment will be most
33 beneficial to the City.

34 (3) AND IT SHALL BE THE DUTY OF THE BOARD OF FINANCE IN MAKING THE SELECTION TO
35 ENSURE THAT THOSE BANKS ARE IN FULL COMPLIANCE WITH THE CITY'S COMMERCIAL
36 NON-DISCRIMINATION POLICY AS SET FORTH IN SUBTITLE 29 OF THIS ARTICLE, AND
37 TO ENTER INTO AN AGREEMENT WITH THE BANKS SELECTED ON SUCH BASIS TO
38 COMMENSURATELY PLACE CITY DEPOSITS WITH THOSE BANKS THAT BEST EXHIBIT

1 DEMONSTRATED COMMITMENT TO THE PRINCIPLES OF NON-DISCRIMINATION IN
2 COMMERCIAL LENDING PRACTICES.

3 (b) *Accounts; reports.*

4 (1) It shall be the duty of the Director of Finance to keep regular and correct account of
5 all moneys received and expended by him on behalf of the City.

6 (2) And he shall submit an annual report as soon as practicable after June 30, showing all
7 moneys received and expended by him during the preceding FISCAL year.

8 **Subtitle 5. Investments**

9 **§ 5-2. Local government investment policy.**

10 (a) *State guidelines adopted.*

11 The Mayor and City Council of Baltimore shall be governed by a local government
12 investment policy that is consistent with and complies with the local government
13 investment guidelines adopted [in accordance with the provisions of the Annotated]
14 UNDER STATE Code [of Maryland,] Article 95, § 22F[, as amended].

15 (b) *Board of Finance to adopt and implement policy.*

16 The Board of Finance shall [have the authority to] adopt and implement the local
17 government investment policy for Baltimore City.

18 (c) *Amendments.*

19 Any amendments to the CITY’S local government investment policy [of the City]:

20 (1) shall be consistent with the local government investment guidelines; and

21 (2) shall be submitted to the State Treasurer in accordance with [the provisions of the
22 Annotated] STATE Code [of Maryland,] Article 95, § 22F[, as amended].

23 (D) *COMMERCIAL NON-DISCRIMINATION.*

24 CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION, THE BOARD OF FINANCE SHALL
25 AMEND THE CITY’S LOCAL GOVERNMENT INVESTMENT POLICY TO BE CONSISTENT WITH
26 SUBTITLE 29 {“COMMERCIAL NON-DISCRIMINATION POLICY”} OF THIS ARTICLE AND TO
27 ENSURE THAT NO CITY FUNDS ARE INVESTED IN OR THROUGH BUSINESS ENTITIES THAT
28 ARE IN VIOLATION OF THE CITY’S COMMERCIAL NON-DISCRIMINATION POLICY.

1 **SUBTITLE 29. COMMERCIAL NON-DISCRIMINATION POLICY**

2 **§ 29-1. PURPOSE AND INTENT.**

3 IT IS THE INTENT OF THE CITY OF BALTIMORE TO AVOID BECOMING A PASSIVE PARTICIPANT IN
4 PRIVATE SECTOR COMMERCIAL DISCRIMINATION BY REFUSING TO ENGAGE IN BUSINESS WITH
5 BUSINESS FIRMS THAT DISCRIMINATE IN THE SOLICITATION, SELECTION, HIRING, OR
6 TREATMENT OF VENDORS, SUPPLIERS, SUBCONTRACTORS, OR COMMERCIAL CUSTOMERS ON
7 THE BASIS OF RACE, GENDER, RELIGION, NATIONAL ORIGIN, ETHNICITY, SEXUAL ORIENTATION,
8 AGE, OR DISABILITY BY PROVIDING A PROCEDURE FOR RECEIVING, INVESTIGATING, AND
9 RESOLVING COMPLAINTS OF DISCRIMINATION FILED AGAINST BUSINESS FIRMS THAT HAVE
10 SUBMITTED A BID OR PROPOSAL FOR, HAVE BEEN SELECTED TO ENGAGE IN, OR ARE ENGAGED
11 IN DOING BUSINESS WITH THE CITY.

12 **§ 29-2. DEFINITIONS.**

13 (A) *IN GENERAL.*

14 IN THIS SUBTITLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED UNLESS THE
15 CONTEXT CLEARLY REQUIRES A DIFFERENT MEANING.

16 (B) *BUSINESS FIRM.*

17 “BUSINESS FIRM” MEANS ANY PERSON, FIRM, SOLE PROPRIETORSHIP, PARTNERSHIP,
18 CORPORATION, LIMITED LIABILITY COMPANY, OR OTHER BUSINESS ENTITY OR
19 COMBINATION OF THEM, INCLUDING ANY FINANCIAL INSTITUTION, DEVELOPER,
20 CONSULTANT, PRIME CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR VENDOR, THAT HAS
21 SUBMITTED A BID OR PROPOSAL, HAS BEEN SELECTED TO DO BUSINESS, OR IS DOING
22 BUSINESS WITH THE CITY, INCLUDING SELLING OR LEASING SUPPLIES, OR GOODS, OR
23 PROVIDING CONSTRUCTION, FINANCIAL, PROFESSIONAL, OR OTHER SERVICES, IN RETURN
24 FOR A FEE OR ANY OTHER FORM OF COMPENSATION.

25 (C) *CHIEF.*

26 “CHIEF” MEANS THE CHIEF OF THE MINORITY AND WOMEN’S BUSINESS OPPORTUNITY
27 OFFICE.

28 (D) *CITY.*

29 “CITY” MEANS THE CITY OF BALTIMORE AND THOSE AGENCIES, BOARDS, COMMISSIONS,
30 GOVERNMENT AUTHORITIES, AND CORPORATIONS AUTHORIZED TO ACT ON BEHALF OF, OR
31 AS AGENT FOR, THE CITY OF BALTIMORE.

32 (E) *CONTRACT.*

33 “CONTRACT” MEANS AN AGREEMENT WITH ANY BUSINESS FIRM LET BY OR ON BEHALF OF
34 THE CITY FOR THAT BUSINESS FIRM TO SELL OR LEASE SUPPLIES, OR GOODS, OR PROVIDE
35 CONSTRUCTION, FINANCIAL, PROFESSIONAL, OR OTHER SERVICES, IN RETURN FOR A FEE OR
36 ANY OTHER FORM OF COMPENSATION.

37 (F) *DISCRIMINATION.*

1 (1) *IN GENERAL.*

2 “DISCRIMINATION” MEANS ANY DISADVANTAGE, DIFFERENCE, DISTINCTION, OR
3 PREFERENCE IN THE SOLICITATION, SELECTION, HIRING, OR TREATMENT OF A VENDOR,
4 SUPPLIER, SUBCONTRACTOR, COMMERCIAL CUSTOMER, OR ANY OTHER BUSINESS
5 ENTITY ON THE BASIS OF RACE, GENDER, RELIGION, NATIONAL ORIGIN, ETHNICITY,
6 SEXUAL ORIENTATION, AGE, DISABILITY, OR ANY OTHER FORM OF UNLAWFUL
7 DISCRIMINATION REGARDING THE CHARACTERISTICS OF THAT BUSINESS ENTITY’S
8 EMPLOYEES OR OWNERS.

9 (2) *EXCLUSION.*

10 “DISCRIMINATION” DOES NOT INCLUDE OTHERWISE LAWFUL EFFORTS, INCLUDING
11 THOSE SPECIFIED IN SUBTITLE 28, {“MINORITY AND WOMEN’S BUSINESS
12 ENTERPRISES”} OF THIS ARTICLE, TO REMEDY THE EFFECTS OF DISCRIMINATION THAT
13 HAS OCCURRED OR IS OCCURRING IN THE MARKETPLACE.

14 (G) *FINANCIAL INSTITUTION.*

15 (1) *IN GENERAL.*

16 “FINANCIAL INSTITUTION” MEANS ANY PERSON OR ENTITY ENGAGED IN THE BUSINESS
17 OF LENDING MONEY, GUARANTEEING LOANS, EXTENDING CREDIT, SECURING BONDS,
18 OR PROVIDING VENTURE OR EQUITY CAPITAL TO BUSINESS ENTITIES, OR THAT OFFERS
19 FINANCIAL SERVICES IN CONNECTION WITH CITY PROJECTS OR THE ADMINISTRATION
20 OF CITY GOVERNMENT.

21 (2) *INCLUSIONS.*

22 “FINANCIAL INSTITUTION” INCLUDES ANY BANK, SAVINGS AND LOAN ASSOCIATION,
23 VENTURE CAPITAL COMPANY, INSURANCE COMPANY, BONDING COMPANY, MORTGAGE
24 COMPANY, CREDIT UNION, AND BROKER.

25 (H) *INCLUDES; INCLUDING.*

26 “INCLUDES” OR “INCLUDING” MEANS BY WAY OF ILLUSTRATION AND NOT BY WAY OF
27 LIMITATION.

28 (I) *HEARING EXAMINER.*

29 “HEARING EXAMINER” MEANS AN INDIVIDUAL APPOINTED BY THE CITY SOLICITOR TO
30 CONDUCT HEARINGS UNDER THIS SUBTITLE.

31 (J) *OFFICE.*

32 “OFFICE” MEANS THE MINORITY AND WOMEN’S BUSINESS OPPORTUNITY OFFICE.

1 (K) *SUBCONTRACT.*

2 “SUBCONTRACT” MEANS AN AGREEMENT FOR THE PERFORMANCE OF A PARTICULAR
3 PORTION OF WORK TO BE PERFORMED UNDER A CONTRACT WITH THE CITY.

4 **§ 29-3. SCOPE.**

5 (A) *IN GENERAL.*

6 THIS SUBTITLE APPLIES TO ALL BUSINESS FIRMS AND ALL CONTRACTS TO WHICH THE CITY
7 IS A PARTY.

8 (B) *THIRD-PARTY CONTRACTS.*

9 EVERY CONTRACT AND OTHER AGREEMENT BETWEEN THE CITY OF BALTIMORE AND ANY
10 GOVERNMENTAL AGENCY, QUASI-GOVERNMENTAL AGENCY, CORPORATION, DEVELOPER,
11 OR CONTRACTOR, UNDER WHICH THE AGENCY, CORPORATION, DEVELOPER, OR
12 CONTRACTOR RECEIVES ANY FISCAL ASSISTANCE FROM OR THROUGH THE CITY FOR THE
13 PURPOSE OF CONTRACTING WITH BUSINESSES TO PERFORM REAL ESTATE DEVELOPMENT,
14 RENOVATION, MAINTENANCE, OR OTHER SERVICES, MUST REQUIRE THE AGENCY,
15 CORPORATION, DEVELOPER, OR CONTRACTOR TO COMPLY WITH THIS SUBTITLE IN
16 AWARDING AND ADMINISTERING THAT CONTRACT OR AGREEMENT.

17 **§ 29-4. RULES OF CONSTRUCTION.**

18 (A) *LIBERAL CONSTRUCTION.*

19 THE PROVISIONS OF THIS SUBTITLE ARE TO BE LIBERALLY CONSTRUED TO ACCOMPLISH ITS
20 POLICIES AND PURPOSES.

21 (B) *MANDATORY, PROHIBITORY, AND PERMISSIVE TERMS.*

22 (1) *MANDATORY TERMS.*

23 “MUST” AND “SHALL” ARE EACH MANDATORY TERMS USED TO EXPRESS A
24 REQUIREMENT OR TO IMPOSE A DUTY.

25 (2) *PROHIBITORY TERMS.*

26 “MUST NOT”, “MAY NOT”, AND “NO...MAY” ARE EACH MANDATORY NEGATIVE TERMS
27 USED TO ESTABLISH A PROHIBITION.

28 (3) *PERMISSIVE TERMS.*

29 “MAY” IS PERMISSIVE.

30 (C) *NUMBER.*

31 THE SINGULAR INCLUDES THE PLURAL AND VICE VERSA.

1 (D) *SEVERABILITY.*

2 (1) ALL PROVISIONS OF THIS SUBTITLE ARE SEVERABLE.

3 (2) IF A COURT DETERMINES THAT A WORD, PHRASE, CLAUSE, SENTENCE, PARAGRAPH,
4 SUBSECTION, SECTION, OR OTHER PROVISION IS INVALID OR THAT THE APPLICATION OF
5 ANY PART OF THE PROVISION TO ANY PERSON OR CIRCUMSTANCES IS INVALID, THE
6 REMAINING PROVISIONS AND THE APPLICATION OF THOSE PROVISIONS TO OTHER
7 PERSONS OR CIRCUMSTANCES REMAIN IN FULL FORCE AND EFFECT TO THE MAXIMUM
8 EXTENT PRACTICABLE.

9 (E) *TIME COMPUTATIONS.*

10 (1) *COMPUTATION OF TIME AFTER AN ACT, EVENT, OR DEFAULT.*

11 (I) IN COMPUTING ANY PERIOD OF TIME PRESCRIBED BY THIS SUBTITLE, THE DAY OF
12 THE ACT, EVENT, OR DEFAULT AFTER WHICH THE DESIGNATED PERIOD OF TIME
13 BEGINS TO RUN IS NOT INCLUDED.

14 (II) IF THE PERIOD OF TIME ALLOWED IS MORE THAN 7 DAYS, INTERMEDIATE
15 SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS ARE COUNTED.

16 (III) IF THE PERIOD OF TIME ALLOWED IS 7 DAYS OR LESS, INTERMEDIATE SATURDAYS,
17 SUNDAYS, AND LEGAL HOLIDAYS ARE NOT COUNTED.

18 (IV) THE LAST DAY OF THE PERIOD SO COMPUTED IS INCLUDED UNLESS IT IS A
19 SATURDAY, SUNDAY, OR LEGAL HOLIDAY, IN WHICH EVENT THE PERIOD RUNS
20 UNTIL THE END OF THE NEXT DAY THAT IS NOT A SATURDAY, SUNDAY, OR LEGAL
21 HOLIDAY.

22 (2) *COMPUTATION OF TIME BEFORE A DAY, ACT, OR EVENT.*

23 (I) IN DETERMINING THE LATEST DAY FOR PERFORMING AN ACT THAT IS REQUIRED BY
24 THIS SUBTITLE TO BE PERFORMED A PRESCRIBED NUMBER OF DAYS BEFORE A
25 CERTAIN DAY, ACT, OR EVENT, ALL DAYS PRECEDING THAT DAY, INCLUDING
26 INTERVENING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, ARE COUNTED IN
27 THE NUMBER OF DAYS SO PRESCRIBED.

28 (II) THE LATEST DAY IS INCLUDED IN THE DETERMINATION UNLESS IT IS A SATURDAY,
29 SUNDAY, OR LEGAL HOLIDAY, IN WHICH EVENT THE LATEST DAY IS THE FIRST
30 PRECEDING DAY THAT IS NOT A SATURDAY, SUNDAY, OR LEGAL HOLIDAY.

31 **§ 29-5. SHORT TITLE.**

32 THIS SUBTITLE MAY BE CITED AS THE “COMMERCIAL NON-DISCRIMINATION POLICY”.

33 **§ 29-6. COMMERCIAL NON-DISCRIMINATION POLICY.**

34 IT IS THE POLICY OF THE CITY OF BALTIMORE NOT TO ACCEPT BIDS OR PROPOSALS FROM, NOR
35 TO ENGAGE IN BUSINESS WITH, ANY BUSINESS FIRM THAT HAS DISCRIMINATED ON THE BASIS
36 OF RACE, GENDER, RELIGION, NATIONAL ORIGIN, ETHNICITY, SEXUAL ORIENTATION, AGE,

1 DISABILITY, OR ANY OTHER FORM OF UNLAWFUL DISCRIMINATION IN ITS SOLICITATION,
2 SELECTION, HIRING, OR TREATMENT OF ANOTHER BUSINESS.

3 **§ 29-7. COMPLAINTS OF DISCRIMINATION.**

4 ANY ADULT PERSON, BUSINESS ENTITY, ASSOCIATION, ORGANIZATION, OR GOVERNMENT
5 AGENCY MAY FILE AN ADMINISTRATIVE COMPLAINT WITH THE CHIEF STATING FACTS
6 SHOWING OR TENDING TO SHOW THAT A BUSINESS FIRM HAS ENGAGED IN DISCRIMINATION
7 AGAINST ONE OR MORE OTHER BUSINESSES. WITHIN 10 BUSINESS DAYS, THE CHIEF SHALL
8 NOTIFY THE BUSINESS FIRM AGAINST WHOM THE COMPLAINT WAS FILED THAT A COMPLAINT
9 HAS BEEN RECEIVED.

10 **§ 29-8. INVESTIGATION OF COMPLAINTS.**

11 THE OFFICE'S INVESTIGATIVE UNIT SHALL REVIEW AND INVESTIGATE DISCRIMINATION
12 COMPLAINTS FILED UNDER THIS SUBTITLE. THE CITY SOLICITOR IN CONSULTATION WITH THE
13 CHIEF SHALL EXERCISE HIS OR HER BEST JUDGMENT TO ASSIGN OFFICE STAFF PERSONS, OTHER
14 CITY PERSONNEL, AND OUTSIDE CONSULTANTS TO THE INVESTIGATIVE UNIT AS NECESSARY TO
15 CONDUCT INVESTIGATIONS IN A COMPREHENSIVE, FAIR, COMPETENT, AND EFFICIENT MANNER.
16 THE INVESTIGATIVE UNIT SHALL SEEK ALL RELEVANT EVIDENCE FROM THE COMPLAINANT,
17 FROM THE RESPONDENT BUSINESS FIRM, AND FROM EXTERNAL SOURCES RELATING TO THE
18 ALLEGATIONS OF THE COMPLAINT.

19 **§ 29-9. INITIAL FINDINGS AND RECOMMENDATIONS.**

20 (A) BASED UPON THE INVESTIGATIVE UNIT'S REVIEW AND INVESTIGATION, THE CHIEF SHALL
21 MAKE AN INITIAL NON-BINDING FINDING OF EACH ALLEGATION STATED IN THE
22 COMPLAINT, THAT EITHER:

- 23 (1) THE INVESTIGATION PRODUCED SUFFICIENT EVIDENCE TO FIND THAT THE ALLEGED
24 DISCRIMINATION DID TAKE PLACE ("SUSTAINED");
- 25 (2) THE INVESTIGATION FAILED TO PRODUCE SUFFICIENT EVIDENCE TO FIND THAT THE
26 ALLEGED DISCRIMINATION TOOK PLACE ("NOT SUSTAINED");
- 27 (3) THE INVESTIGATION PRODUCED SUFFICIENT EVIDENCE TO FIND THAT THE ALLEGED
28 DISCRIMINATION DID NOT TAKE PLACE ("UNFOUNDED");
- 29 (4) THE INVESTIGATION PRODUCED SUFFICIENT EVIDENCE TO ESTABLISH THAT THE
30 COMPLAINANT KNOWINGLY MADE ONE OR MORE FALSE OR FRIVOLOUS
31 ALLEGATIONS ("FALSE OR FRIVOLOUS");
- 32 (5) THE ALLEGATION HAS BEEN SETTLED OR OTHERWISE RESOLVED WITH THE
33 AGREEMENT OF THE INTERESTED PARTIES; OR
- 34 (6) THE ALLEGATION HAS BEEN WITHDRAWN.

35 (B) THE CHIEF SHALL RECOMMEND TO THE CITY SOLICITOR, OR HIS OR HER REPRESENTATIVE,
36 APPROPRIATE ACTION TO BE TAKEN. THAT ACTION MAY INCLUDE ADDITIONAL
37 INVESTIGATION OF THE COMPLAINT, SANCTIONS, REMEDIES, OR OTHER ACTION
38 CONSISTENT WITH THIS SUBTITLE.

1 (C) THE INITIAL NON-BINDING FINDINGS AND RECOMMENDATIONS SHALL BE MADE BY THE
2 CHIEF WITHIN 120 CALENDAR DAYS OF RECEIPT OF THE COMPLAINT.

3 (D) THE CITY SOLICITOR MAY EXTEND THIS TIME LIMIT AT THE REQUEST OF THE CHIEF AND
4 FOR GOOD CAUSE OR IF THE PARTIES AGREE TO MEDIATE A SETTLEMENT TO THE
5 COMPLAINT.

6 (E) THE CHIEF SHALL NOTIFY THE COMPLAINANT AND THE BUSINESS FIRM WITHIN 5 BUSINESS
7 DAYS OF THE ISSUANCE OF THE INITIAL NON-BINDING FINDINGS AND RECOMMENDATIONS,
8 INCLUDING AN EXPLANATION OF THE REASONS JUSTIFYING THE INITIAL FINDINGS.

9 **§ 29-10. HEARINGS.**

10 (A) IF THE CHIEF DETERMINES THAT ONE OR MORE ALLEGATIONS ARE SUSTAINED, THE
11 BUSINESS FIRM AGAINST WHOM THE ALLEGATIONS WERE MADE SHALL BE ENTITLED TO AN
12 ADMINISTRATIVE HEARING ON THE ALLEGATIONS AND AN OPPORTUNITY TO PARTICIPATE
13 IN THE ADMINISTRATIVE HEARING. THE BUSINESS FIRM MUST REQUEST AN
14 ADMINISTRATIVE HEARING BY FILING A WRITTEN REQUEST WITH THE CHIEF WITHIN 15
15 CALENDAR DAYS OF NOTICE OF THE INITIAL FINDINGS AND RECOMMENDATIONS. IF THE
16 BUSINESS FIRM FAILS TO PROPERLY REQUEST AN ADMINISTRATIVE HEARING, THE INITIAL
17 NON-BINDING FINDINGS AND RECOMMENDATIONS SHALL BECOME THE FINAL
18 ADMINISTRATIVE DECISION OF THE CITY PENDING REVIEW AND APPROVAL BY THE BOARD
19 OF ESTIMATES. IF THE BUSINESS FIRM DOES REQUEST AN ADMINISTRATIVE HEARING, THE
20 CHIEF SHALL SO NOTIFY THE CITY SOLICITOR IMMEDIATELY, AND WITHIN 10 DAYS, THE
21 CITY SOLICITOR SHALL APPOINT A HEARING EXAMINER FOR PURPOSES OF CONDUCTING
22 THE ADMINISTRATIVE HEARING. THE ADMINISTRATIVE HEARING SHALL BE HELD BY THE
23 HEARING EXAMINER WITHIN 90 CALENDAR DAYS OF THE APPOINTMENT OF THE HEARING
24 EXAMINER.

25 (B) EXCEPT WHERE THEY CONFLICT WITH THIS SUBTITLE OR THE RULES AND REGULATIONS
26 ESTABLISHED BY CITY SOLICITOR PURSUANT TO THIS SUBTITLE, THE HEARING SHALL BE
27 CONDUCTED IN A MANNER SIMILAR TO THE ADMINISTRATIVE HEARING PROCEDURES SET
28 FORTH IN §§ 40-4 AND 40-5 OF THIS ARTICLE. THE CITY SOLICITOR SHALL ESTABLISH
29 REGULATIONS, AS NECESSARY, THAT ARE IN ACCORDANCE WITH THIS SUBTITLE AND ANY
30 DUE PROCESS RIGHTS TO WHICH ANY PARTY IS ENTITLED, TO FURTHER SPECIFY THE
31 PROCEDURES AND STANDARDS BY WHICH THESE ADMINISTRATIVE HEARINGS ARE
32 CONDUCTED. AT A MINIMUM, THE HEARING SHALL AFFORD ALL PARTIES AN OPPORTUNITY
33 TO PRESENT WITNESSES, CONDUCT DIRECT AND CROSS-EXAMINATION OF WITNESSES,
34 INTRODUCE RELEVANT EVIDENCE, SUBMIT BRIEFS, AND PRESENT ORAL ARGUMENT.
35 FINDINGS SHALL BE MADE BY THE HEARING EXAMINER BASED UPON A PREPONDERANCE
36 OF THE EVIDENCE PRESENTED.

37 (C) THE HEARING EXAMINER MAY ISSUE PROTECTIVE ORDERS FOR GOOD CAUSE FOR THE
38 FOLLOWING REASONS:

39 (1) TO LIMIT, OR OTHERWISE IMPOSE CONDITIONS ON, ACCESS BY ANY PERSON TO ANY
40 DOCUMENT IN THE POSSESSION OF A PARTY, INCLUDING AN DOCUMENT IN THE
41 CITY'S POSSESSION OR IN THE RECORD OF THE HEARING THAT IS NOT A PUBLIC
42 RECORD; OR

1 (2) TO CLOSE ALL OR ANY PORTION OF THE HEARING, OR OTHERWISE IMPOSE
2 CONDITIONS ON ACCESS TO THE HEARING BY ANY PERSON.

3 (D) WITHIN A REASONABLE PERIOD OF TIME NOT TO EXCEED 120 DAYS AFTER THE CLOSING OF
4 THE HEARING RECORD, THE HEARING EXAMINER SHALL PREPARE A WRITTEN DECISION
5 THAT MAY AFFIRM OR REJECT THE INITIAL FINDINGS AND RECOMMENDATIONS, MAY
6 SUBSTITUTE DIFFERENT FINDINGS AND ORDER APPROPRIATE REMEDIES, OR MAY RETURN
7 THE CASE TO THE CHIEF FOR FURTHER INVESTIGATION AND FINDINGS TO BE COMPLETED
8 WITHIN A PERIOD OF TIME SPECIFIED BY THE HEARING EXAMINER.

9 (E) THE HEARING EXAMINER'S WRITTEN DECISION SHALL BE BASED UPON A PREPONDERANCE
10 OF THE EVIDENCE CONTAINED IN THE HEARING RECORD, AND SHALL REFLECT THE
11 EVIDENTIARY BASIS FOR ITS FINDINGS.

12 **§ 29-11. REMEDIES.**

13 WHEN A COMPLAINT IS SUSTAINED IN A FINAL ADMINISTRATIVE DECISION, THE HEARING
14 EXAMINER OR THE BOARD OF ESTIMATES SHALL ORDER ANY ONE OR MORE OF THE
15 FOLLOWING ACTIONS:

16 (1) ANY REMEDY PROVIDED BY LAW OR AGREED TO BY THE RESPONDENT BUSINESS FIRM,
17 THE COMPLAINANT, AND THE CITY;

18 (2) RECOMMENDATION TO, OR IMPLEMENTATION OF PROCEDURES BY, THE CITY
19 SOLICITOR AND THE BOARD OF ESTIMATES FOR DEBARMENT OF THE RESPONDENT
20 BUSINESS FIRM FROM BIDDING AND CONTRACT AWARDS ON CITY PROJECTS FOR A
21 PERIOD OF NOT MORE THAN 5 YEARS, ACCORDING TO THE PROCEDURES SET FORTH IN
22 §§ 40-4 AND 40-5 OF THIS ARTICLE;

23 (3) RESCISSION, SUSPENSION OR TERMINATION OF ANY CURRENT CONTRACT BETWEEN THE
24 RESPONDENT BUSINESS FIRM AND THE CITY; OR

25 (4) REFERRAL OF THE MATTER FOR CRIMINAL PROSECUTION FOR FRAUD AND OTHER
26 VIOLATIONS OF MARYLAND LAW AND UNDER THE TERMS OF § 28-98 OF THIS ARTICLE,
27 IF APPROPRIATE UNDER THE CIRCUMSTANCES.

28 **§ 29-12. SANCTIONS FOR FILING FALSE OR FRIVOLOUS COMPLAINT.**

29 IF THE CHIEF DETERMINES THAT ONE OR MORE ALLEGATIONS OF A COMPLAINT ARE FALSE
30 AND THAT THE COMPLAINANT KNEW THEM TO BE FALSE WHEN FILED, OR THAT ONE OR MORE
31 OF THE ALLEGATIONS OF A COMPLAINT ARE SO FRIVOLOUS THAT THEY ARE WHOLLY WITHOUT
32 MERIT, THE CHIEF MAY REFUSE TO REVIEW OR INVESTIGATE ANY COMPLAINT FILED UNDER
33 THIS SUBTITLE BY THE SAME COMPLAINANT FOR A PERIOD OF UP TO 3 YEARS. THE CHIEF MAY
34 ALSO RECOMMEND TO THE HEARING EXAMINER OR THE BOARD OF ESTIMATES THAT
35 MONETARY SANCTIONS BE IMPOSED AGAINST THE COMPLAINANT IN THE AMOUNT OF THE
36 COSTS INCURRED FOR THE INVESTIGATION AND REVIEW OF THE FALSE OR FRIVOLOUS
37 COMPLAINT.

1 **§29-13. ADMINISTRATIVE APPEALS.**

2 A BUSINESS FIRM AGAINST WHOM A COMPLAINT HAS BEEN FILED OR A COMPLAINANT MAY
3 APPEAL THE DECISION OF THE HEARING EXAMINER BY FILING A REQUEST FOR AN APPEAL IN
4 WRITING WITH THE CITY SOLICITOR WITHIN 10 CALENDAR DAYS FROM SERVICE OF THE
5 NOTICE OF THE DECISION. THE CITY SOLICITOR, OR HIS OR HER REPRESENTATIVE, SHALL
6 WITHIN 10 CALENDAR DAYS OF RECEIPT OF THE REQUEST FOR APPEAL, NOTIFY ALL PARTIES
7 THAT AN APPEAL HAS BEEN REQUESTED, AND REFER THE MATTER TO THE BOARD OF
8 ESTIMATES TO HEAR THE APPEAL. THE CITY SOLICITOR SHALL ALSO TRANSFER THE ENTIRE
9 RECORD OF THE INVESTIGATION AND ADMINISTRATIVE HEARING TO THE BOARD OF
10 ESTIMATES IN ADVANCE OF THE APPEAL HEARING. THE APPEAL SHALL BE HEARD AND THE
11 BOARD OF ESTIMATES SHALL RENDER A FINAL ADMINISTRATIVE DECISION WITHIN 45
12 CALENDAR DAYS OF RECEIPT OF THE REQUEST FOR APPEAL. EXCEPT WHERE THEY CONFLICT
13 WITH THIS SUBTITLE OR THE RULES AND REGULATIONS ESTABLISHED BY THE CITY SOLICITOR
14 PURSUANT TO THIS SUBTITLE, THE APPEAL HEARING SHALL BE CONDUCTED PURSUANT TO THE
15 ADMINISTRATIVE HEARING PROCEDURES SET FORTH IN §§ 40-4 AND 40-5 OF THIS ARTICLE. AT
16 THE APPEAL HEARING, THE CHIEF OR THE CHIEF'S DESIGNEE SHALL BE RESPONSIBLE FOR
17 PRESENTING THE JUSTIFICATIONS FOR ITS FINDINGS AND RECOMMENDATIONS AS PREVIOUSLY
18 SUSTAINED OR MODIFIED BY THE HEARING EXAMINER.

19 **§ 29-14. JUDICIAL AND APPELLATE REVIEW.**

20 (A) *JUDICIAL REVIEW.*

21 A PARTY AGGRIEVED BY A FINAL DECISION OF THE BOARD OF ESTIMATES MAY SEEK
22 JUDICIAL REVIEW OF THAT DECISION BY PETITION TO THE CIRCUIT COURT FOR BALTIMORE
23 CITY IN ACCORDANCE WITH THE MARYLAND RULES OF PROCEDURE.

24 (B) *APPELLATE REVIEW.*

25 A PARTY TO THE JUDICIAL REVIEW MAY APPEAL THE COURT'S FINAL JUDGMENT TO THE
26 COURT OF SPECIAL APPEALS IN ACCORDANCE WITH THE MARYLAND RULES OF
27 PROCEDURE.

28 **§ 29-15. MANDATORY NONDISCRIMINATION CONTRACT CLAUSE.**

29 EVERY CONTRACT AND SUBCONTRACT SHALL CONTAIN A NONDISCRIMINATION CLAUSE THAT
30 READS AS FOLLOWS:

31 CONTRACTOR SHALL NOT DISCRIMINATE ON THE BASIS OF RACE, GENDER,
32 RELIGION, NATIONAL ORIGIN, ETHNICITY, SEXUAL ORIENTATION, AGE, OR
33 DISABILITY IN THE SOLICITATION, SELECTION, HIRING, OR TREATMENT OF
34 SUBCONTRACTORS, VENDORS, SUPPLIERS, OR COMMERCIAL CUSTOMERS.
35 CONTRACTOR SHALL PROVIDE EQUAL OPPORTUNITY FOR SUBCONTRACTORS TO
36 PARTICIPATE IN ALL OF ITS PUBLIC SECTOR AND PRIVATE SECTOR
37 SUBCONTRACTING OPPORTUNITIES, PROVIDED THAT NOTHING CONTAINED IN THIS
38 CLAUSE SHALL PROHIBIT OR LIMIT OTHERWISE LAWFUL EFFORTS TO REMEDY THE
39 EFFECTS OF MARKETPLACE DISCRIMINATION THAT HAS OCCURRED OR IS
40 OCCURRING IN THE MARKETPLACE, SUCH AS THOSE SPECIFIED IN ARTICLE 5,
41 SUBTITLE 28 OF THE BALTIMORE CITY CODE. CONTRACTOR UNDERSTANDS AND
42 AGREES THAT VIOLATION OF THIS CLAUSE IS A MATERIAL BREACH OF THE

1 CONTRACT AND MAY RESULT IN CONTRACT TERMINATION, DEBARMENT, OR OTHER
2 SANCTIONS.

3 **§ 29-16. CONTRACTOR BID REQUIREMENTS.**

4 ALL REQUESTS FOR BIDS OR PROPOSALS ISSUED BY THE CITY SHALL INCLUDE A CLAUSE THAT
5 READS AS FOLLOWS:

6 AS PART OF ITS BID OR PROPOSAL, BIDDER SHALL PROVIDE TO THE CITY A LIST OF
7 ALL INSTANCES WITHIN THE PAST 10 YEARS WHERE A COMPLAINT WAS FILED OR
8 PENDING AGAINST BIDDER IN A LEGAL OR ADMINISTRATIVE PROCEEDING
9 ALLEGING THAT BIDDER DISCRIMINATED ON THE BASIS OF RACE, GENDER,
10 RELIGION, NATIONAL ORIGIN, ETHNICITY, SEXUAL ORIENTATION, AGE, OR
11 DISABILITY AGAINST ITS SUBCONTRACTORS, VENDORS, SUPPLIERS, OR
12 COMMERCIAL CUSTOMERS, AND A DESCRIPTION OF THE STATUS OR RESOLUTION OF
13 EACH COMPLAINT, INCLUDING ANY REMEDIAL ACTION TAKEN.

14 **§ 29-17. CONTRACT DISCLOSURE REQUIREMENTS.**

15 EVERY CONTRACT ISSUED BY THE CITY SHALL INCLUDE A CLAUSE THAT READS AS FOLLOWS:

16 UPON THE CITY'S REQUEST, AND UPON THE FILING OF A COMPLAINT AGAINST
17 CONTRACTOR PURSUANT TO ARTICLE 5, SUBTITLE 29, OF THE BALTIMORE CITY
18 CODE, CONTRACTOR AGREES TO PROVIDE THE CITY, WITHIN 60 CALENDAR DAYS,
19 A TRUTHFUL AND COMPLETE LIST OF THE NAMES OF ALL SUBCONTRACTORS,
20 VENDORS, AND SUPPLIERS THAT CONTRACTOR HAS USED IN THE PAST 5 YEARS ON
21 ANY OF ITS CONTRACTS THAT WERE UNDERTAKEN WITHIN THE BALTIMORE CITY
22 MARKET AREA AS DEFINED IN ARTICLE 5, §28-1(D) OF THE BALTIMORE CITY
23 CODE, INCLUDING THE TOTAL DOLLAR AMOUNT PAID BY CONTRACTOR FOR EACH
24 SUBCONTRACT OR SUPPLY CONTRACT. CONTRACTOR AGREES TO FULLY
25 COOPERATE IN ANY INVESTIGATION CONDUCTED BY THE CITY PURSUANT TO THE
26 CITY'S COMMERCIAL NON-DISCRIMINATION POLICY, AS CONTAINED IN ARTICLE
27 5, SUBTITLE 29, OF THE BALTIMORE CITY CODE. CONTRACTOR UNDERSTANDS
28 AND AGREES THAT VIOLATION OF THIS CLAUSE IS A MATERIAL BREACH OF THE
29 CONTRACT AND MAY RESULT IN CONTRACT TERMINATION, DEBARMENT, AND
30 OTHER SANCTIONS.

31 **§ 29-18. OTHER LEGAL REMEDIES.**

32 THE REMEDIES PROVIDED BY THIS SUBTITLE ARE IN ADDITION TO ANY OTHER STATUTORY,
33 LEGAL, OR EQUITABLE REMEDIES THAT MAY BE AVAILABLE AND ARE NOT INTENDED TO BE
34 PREREQUISITE TO OR EXCLUSIVE OF ANY OTHER REMEDIES.

35 **§ 29-19. NON-INTERRUPTION OF PERFORMANCE.**

36 THE FILING, INVESTIGATION, HEARING, AND APPEAL OF A COMPLAINT UNDER THIS SUBTITLE
37 DOES NOT HINDER OR AFFECT THE AWARD OF, PERFORMANCE OF, OR PAYMENT ON A
38 CONTRACT PRIOR TO A FINAL ADMINISTRATIVE DECISION THAT ESTABLISHES A VIOLATION.

1 **§ 29-20. RULES AND REGULATIONS.**

2 (A) *SOLICITOR MAY ADOPT.*

3 THE CITY SOLICITOR MAY ADOPT RULES AND REGULATIONS TO CARRY OUT THIS
4 SUBTITLE.

5 (B) *FILING WITH LEGISLATIVE REFERENCE.*

6 A COPY OF ALL RULES AND REGULATIONS MUST BE FILED WITH THE DEPARTMENT OF
7 LEGISLATIVE REFERENCE BEFORE THEY TAKE EFFECT.

8 **Subtitle 40. Debarment from City Contracts**

9 **§ 40-7. Violations of other laws.**

10 (a) *Judgments.*

11 The Board may debar a person from entering into a contract with the City if that person,
12 or a principal of that person, or any other person substantially involved in that person's
13 contracting activities:

14 (1) has been convicted under the laws of the City, this State, another state, or the
15 United States of:

16 (i) a criminal offense incident to obtaining, attempting to obtain, or
17 performing a public or private contract; or

18 (ii) fraud, embezzlement, theft, forgery, falsification or destruction of records,
19 or receiving stolen property;

20 (2) has been convicted of a criminal violation of an antitrust statute of this State,
21 another state, or the United States;

22 (3) has been convicted of a violation of the Racketeer Influenced and Corrupt
23 Organization Act or of the Mail Fraud Act for acts in connection with the
24 submission of bids or proposals for a public or private contract;

25 (4) has been convicted of a violation of Title 14 {"Preferences"}, Subtitle 3
26 {"Minority Business Participation"} of the State Finance and Procurement
27 Article;

28 (5) has been convicted of conspiracy to commit any act or omission that would
29 constitute grounds for conviction under any of the laws or statutes described in
30 paragraphs (1) through (5) of this subsection; [or]

31 (6) has been found civilly liable under an antitrust statute of this State, another state,
32 or the United States for acts or omissions in connection with the submission of
33 bids or proposals for a public or private contract; OR

1 (7) HAS BEEN FOUND IN A FINAL ADMINISTRATIVE DETERMINATION O HAVE VIOLATED
2 THE CITY'S COMMERCIAL NON-DISCRIMINATION POLICY, AS SET FORTH IN
3 SUBTITLE 29 OF THIS ARTICLE.

4 (b) *Admissions.*

5 The Board may debar a person from entering into a contract with the City if, during the
6 course of an official investigation or other proceeding, that person, or a principal of that
7 person, or any other person substantially involved in that person's contracting activities
8 has admitted, in writing or under oath, an act or omission that constitutes grounds for
9 conviction or liability under any law described in subsection (a) of this section.

10 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
11 are not law and may not be considered to have been enacted as a part of this or any prior
12 Ordinance.

13 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
14 after the date it is enacted.