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ORDINANCE 2021-15 - AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING THE CITY'S CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION, ARTICLE XIV, PURCHASING, SECTION 2-117, ASSISTANCE TO LOCAL BUSINESSES AND SMALL BUSINESSES, BY EXPANDING THE USE OF LOCAL AND SMALL BUSINESS PREFERENCES, ADDING A VETERAN BUSINESS ENTERPRISE PREFERENCE, AND ADDING A "GREEN INITIATIVES" PREFERENCE AND ADDING CLARIFICATIONS ON THE AUTHORIZED PREFERENCES AND ORDER OF PRECEDENCE OF THE PREFERENCES; PROVIDING FOR SEVERABILITY, THE REPEAL OF LAWS IN CONFLICT, CODIFICATION, AND AN EFFECTIVE DATE

WHEREAS, the City of Lake Worth Beach, Florida (the "City") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, in 2019, the City substantially updated its Procurement Code, which is located in section 2-111 through section 2-117 of the City's Code of Ordinances; and

WHEREAS, the City's Procurement Code, in section 2-117, currently provides a preference in Invitations for Bids (IFB) for local and small businesses when not prohibited by other law; and

WHEREAS, the City Commission has recognized the need to expand these preferences to include other solicitations such as Requests for Proposals (RFPs) and Requests for Qualifications (RFQs); and,

WHEREAS, the City Commission also recognizes the need to rectify the economic disadvantage of service-disabled veterans, who are statistically the least likely to be self-employed when compared to the veteran population as a whole and who have made extraordinary sacrifices on behalf of the nation, the state, and the public, by providing opportunities for service-disabled veteran business enterprises as further set forth in section 295.187, Florida Statutes (Florida Veteran Business Enterprise Opportunity Act); and

WHEREAS, the City Commission also recognizes the need to encourage and reward potential vendors who utilize "green initiatives" which reduce energy consumption and greenhouse gas emissions, utilize renewable energy sources, increase recycling opportunities and minimize waste, and avoid the use of highly toxic chemicals, which in turn improve the quality of life within the City and strengthen the City's economy; and,

WHEREAS, consistent with the above, the City Commission has determined the need to revise the Procurement Code to expand the use of the existing local and small business preferences and to create a new veteran business enterprise preference and a "green initiatives" preference; and,

WHEREAS, the City Commission has reviewed the amendments set forth in this ordinance to the City's Procurement Code and has determined that the amendments are in the best interest of the public health, safety and general welfare of the City, its residents and visitors and serve a valid public purpose.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, that:

56 **Section 1:** That the foregoing "WHEREAS" clauses are ratified and confirmed as
57 being true and correct findings of the City Commission and are made a specific part of this
58 ordinance as if set forth herein.

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60 **Section 2:** Chapter 2, Administration, Article XIV, Purchasing, Section 2-117,
61 Assistance to Local Businesses and Small Businesses, is hereby amended as follows
62 (underlined language is added and strike-through language is deleted):
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64 **Sec. 2-117. Assistance to local businesses, ~~and small businesses,~~ veteran business**
65 **enterprises, and businesses utilizing green initiatives.**
66

67 (a) *Purpose.* The policy of the city is to afford all businesses an opportunity for participation in
68 the city's procurement processes and to prohibit discrimination by the city or its providers of
69 goods and/or services. ~~The purpose of this section is to serve the public interest by spurring~~
70 ~~economic development through encouraging small businesses to locate and remaining in~~
71 ~~Palm Beach County, especially the city.~~ The city will take all necessary, reasonable and legal
72 action to prevent discrimination in its procurement process, to afford all businesses, including
73 local, ~~and~~ small businesses, ~~and~~ veteran business enterprises, are afforded the maximum
74 opportunity to participate in the city's procurement processes. The purpose of this section is
75 to the serve the public interest by recognizing the economic disadvantage of small
76 businesses and veteran-owned businesses and by recognizing the desire to spur economic
77 development in the city by encouraging all existing and new businesses to locate or have
78 locations in Palm Beach County, especially in the city. It is also the purpose of this section
79 to serve the public interest by recognizing the enhancements to the quality of life and the
80 city's economy which occur through the city's procurement of goods and/or services from
81 businesses that utilize "green initiatives" which reduce energy consumption and greenhouse
82 gas emissions, utilize renewable energy sources, increase recycling opportunities and
83 minimize waste, and avoid the use of highly toxic chemicals.
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85 (b) *Local preference.*
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- 87 (1) As set forth herein, preference will be given to a local business (entity or person)
88 with a physical address within the corporate limits of the City of Lake Worth Beach.
89 Proof of the person's or entity's residency shall be a valid business tax receipt
90 issued by the city and certificate of occupancy within the city.
- 91 (12) In an IFB where the anticipated total procurement value exceeds fifty thousand
92 dollars (\$50,000.00), the city commission may give preference to a local business,
93 if and only if, the local business is determined to be a responsible and responsive
94 bidder and the local business' bid is determined to be within five (5) percent or fifteen
95 thousand dollars (\$15,000.00), whichever is less, of the lowest, responsible and
96 responsive bid.
- 97 (23) In an RFP or RFQ where the anticipated total procurement value exceeds fifty
98 thousand dollars (\$50,000.00), the city commission may assign five (5) percent of
99 the total evaluation points or 5 out of 100 assigned evaluation points to a local
100 business if the local business is determined to be a responsible and responsive
101 respondent.
- 102 (34) ~~Exceptions.~~ The local business preference shall not apply for the procurement of
103 goods and/or services if such preference is prohibited by law, contract or other
104 regulation applicable to the city.
- 105 (45) The procurement division and city staff are strongly encouraged to utilize local
106 businesses for purchases that are anticipated to have a total value of less than fifty
107 thousand dollars (\$50,000.00) and for purchases made on the procurement card.
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109 (c) *Small business preference.*

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136 (d) *Veteran business enterprise preference.*

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- (1) The city may utilize the databases of Palm Beach County Office of Small Business and the small business program of other municipalities within Palm Beach County to acquire lists of potential vendors for procurement opportunities. The city will also abide by the definitions and dollar limits established to determine the qualifications of a small business. Businesses or firms currently certified with either Palm Beach County or a Palm Beach County municipality will automatically be acceptable to the city as a small business for purposes of this subsection.
- (2) In an IFB where the anticipated total procurement value exceeds fifty thousand dollars (\$50,000.00), the City commission may give preference to a small business, if and only if, the small business is determined to be a responsible and responsive bidder and the small business' bid is determined to be within five (5) percent or fifteen thousand dollars (\$15,000.00), whichever is less, of the lowest, responsible and responsive bid.
- (3) In an RFP or RFQ where the anticipated total procurement value exceeds fifty thousand dollars (\$50,000.00), the city commission may assign five (5) percent of the total evaluation points or 5 out of 100 assigned evaluation points to a small business if the small business is determined to be a responsible and responsive respondent.
- (4) Exceptions. The small business preference shall not apply for the procurement of goods and/or services if such preference is prohibited by law, contract or other regulation applicable to the city.
- (45) The procurement division and city staff are strongly encouraged to utilize small businesses for purchases that are anticipated to have a total value of less than fifty thousand dollars (\$50,000.00) and for purchases made on the procurement card.

- (1) The city may utilize the databases of the Florida Department of Management Services and similar business certification programs of other counties and municipalities within the State of Florida to acquire lists of potential veteran business enterprises, as that term is defined in section 295.187, Florida Statutes, for procurement opportunities. The city will also abide by the definitions and dollar limits established in section 295.187, Florida Statutes, to determine the qualifications of a veteran business enterprise. Businesses or firms currently certified by the Florida Department of Management Services or a similar county or municipal program will automatically be acceptable to the city as a veteran business enterprise for purposes of this subsection. Alternatively, the city may establish through its procurement policy a verification process for determining a veteran business enterprise.
- (2) In an IFB where the anticipated total procurement value exceeds fifty thousand dollars (\$50,000.00), the city commission may give preference to a veteran business enterprise if the veteran business enterprise is determined to be a responsible and responsive bidder and the veteran business enterprise's bid is determined to be within five (5) percent or fifteen thousand dollars (\$15,000.00), whichever is less, of the lowest, responsible and responsive bid.
- (3) In an RFP or RFQ where the anticipated total procurement value exceeds fifty thousand dollars (\$50,000.00), the city commission may assign five (5) percent of the total evaluation points or 5 out of 100 assigned evaluation points to a veteran business enterprise if the veteran business enterprise is determined to be a responsible and responsive respondent.
- (4) Exceptions. The veteran business enterprise preference shall not apply for the procurement of goods and/or services if such preference is prohibited by law, contract, or other regulation applicable to the city.

163 (5) The procurement division and city staff are strongly encouraged to utilize veteran
164 business enterprises for purchases that are anticipated to have a total value of less
165 than fifty thousand dollars (\$50,000.00) and for purchases made on the procurement
166 card.

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168 (e) Green initiatives preference.

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170 (1) In all procurements where the anticipated total procurement value exceeds fifty
171 thousand dollars (\$50,000.00), the city shall develop qualifications, selection criteria
172 and/or specifications which require and/or encourage the city's desire to contract
173 with businesses that utilize "green initiatives". "Green initiatives" as utilized in this
174 section include any initiative directly or indirect used by a business in providing the
175 goods and/or services sought by the city which reduces energy consumption and
176 greenhouse gas emissions, utilizes renewable energy sources, increases recycling
177 opportunities and minimizes waste, avoids the use of highly toxic chemicals, and
178 such other initiatives in the city's sole determination that provide an environmentally-
179 conscious benefit to the city. The city may also establish through its procurement
180 policy a standard "green initiatives" solicitation provision to be utilized in lieu of
181 creating a specific provision for each solicitation.

182 (2) In an IFB where the anticipated total procurement value exceeds fifty thousand
183 dollars (\$50,000.00), the city commission may give preference to a business that
184 utilizes "green initiatives" as defined in the IFB if the business is determined to be a
185 responsible and responsive bidder and the business' bid is determined to be within
186 five (5) percent or fifteen thousand dollars (\$15,000.00), whichever is less, of the
187 lowest, responsible and responsive bid.

188 (3) In an RFP or RFQ where the anticipated total procurement value exceeds fifty
189 thousand dollars (\$50,000.00), the city commission may assign five (5) percent of
190 the total evaluation points or 5 out of 100 assigned evaluation points to a business
191 that utilizes "green initiatives" as defined in the RFP or RFQ if the business is
192 determined to be a responsible and responsive respondent.

193 (4) Exceptions. The "green initiatives" preference shall not apply for the procurement of
194 goods and/or services if such preference is prohibited by law, contract, or other
195 regulation applicable to the city.

196 (5) The procurement division and city staff are strongly encouraged to utilize businesses
197 that utilize "green initiatives" for purchases that are anticipated to have a total value
198 of less than fifty thousand dollars (\$50,000.00) and for purchases made on the
199 procurement card.

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201 (f) Order of preferences. For the purpose of determining the best value in the award of an IFB
202 where both the local business and small business preference are applicable, the local
203 business preference shall take precedence over the small business preference. Order and
204 application of preferences. For all preferences set forth in this section except for the "green
205 initiatives" preference, only one preference may be identified in a response to a city
206 procurement. For the purpose of determining the best value in the award of an IFB where
207 more than one (1) bidder identifies a preference set forth in this section (except for the "green
208 initiatives" preference), the veteran business enterprise preference shall take precedence
209 over the local business preference, and the local business preference shall take precedence
210 over the small business preference.

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212 **Section 3:** Severability. If any section, subsection, sentence, clause, phrase or portion
213 of this ordinance is for any reason held invalid or unconstitutional by any court of competent
214 jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and
215 such holding shall not affect the validity of the remaining portions thereof.

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Section 4: Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5: Codification. The sections of the ordinance shall be made a part of the City Code of Ordinances and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "division", or any other appropriate word.

Section 6: Effective Date. This ordinance shall become effective 10 days after passage.

The passage of this ordinance on first reading was moved by _____, seconded by _____ and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Herman Robinson
- Commissioner Sarah Malega
- Commissioner Christopher McVoy
- Commissioner Kimberly Stokes

The Mayor thereupon declared this ordinance duly passed on first reading on the _____ day of _____, 2021.

The passage of this ordinance on second reading was moved by _____, seconded by _____, and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Herman Robinson
- Commissioner Sarah Malega
- Commissioner Christopher McVoy
- Commissioner Kimberly Stokes

The Mayor thereupon declared this ordinance duly passed second reading on the _____ day of _____, 2021.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk