

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
EQUITY DIVISION

ASSOCIATED GENERAL CONTRACTORS )  
OF AMERICA, ALABAMA BRANCH, )  
INC., et al., )  
Plaintiffs, )  
v. ) CIVIL ACTION NO.  
CITY OF BIRMINGHAM, et al., ) CV77-506-014-WAT  
Defendants. )

CONSENT DECREE

The present litigation is the 1989 sequel to the Alabama Supreme Court's 1981 decision in Arrington v. Associated General Contractors, 403 So. 2d 893 (Ala. 1981) , which struck down the mandatory set-aside provisions of the City of Birmingham's Minority Business Enterprise Program (MBE) for its public works contracts. Because the current litigation is founded upon the 1981 court decision, some background facts are essential for a full understanding of this Consent Decree.

I. History of the Case.

In 1974, the Birmingham City Council adopted Ordinance 74-2, which required assurance of nondiscriminatory employment practices by those contracting with the City of Birmingham. Ordinance 74-2 was amended on May 3, 1977, by Ordinance 77-81 to include a requirement that, within thirty days of an award of a city contract, the contracting party provide an analysis of its work force by race, sex, and national origin. Additionally, the amended Ordinance

authorized the Mayor to "promulgate such additional rules and regulations as he [might] determine to be reasonably necessary to insure compliance with or to promote the objectives of" the amended Ordinance.

In October 1977, former Birmingham Mayor David Vann, pursuant to the authority granted in Ordinance 77-81, instructed the City Engineer to include in the bid specifications for City contracts a requirement that the general or prime contractor agree to expend at least ten percent of the contract amount with certain minority subcontractors or suppliers. The specification had its genesis in the 1977 Public Works Employment Act, popularly known as the PWEA, 42 U.S.C. Section 6701, et seq. (Supp. III 1979). The PWEA required that a local government unit awarded PWEA funds assure that at least ten percent of the contract amount would be expended with minority business enterprises.

On November 30, 1977, Associated General Contractors of America, Alabama Branch, Inc. (AGC), along with several contractors doing business in the Birmingham area, brought suit in this court against Birmingham, its Mayor, and other city officials, seeking to have declared invalid Ordinance 77-81 and the Mayor's regulation requiring the ten percent minority commitment. Additionally, plaintiffs sought an order preliminary enjoining defendants' enforcement of the Ordinance and the Mayor's regulation. Plaintiffs' complaint alleged that the City's Ordinance and regulation violated due process and equal protection guarantees or the federal and state constitutions, federal statutes forbidding discrimination on account of race, and the state competitive bid law. After a hearing, this court entered an order denying plaintiff's motion to preliminary enjoin enforcement

of Ordinance 77-81, but granted plaintiffs' motion to preliminarily enjoin enforcement of the Mayor's regulation.

Nine days after this Court declared the Mayor's regulation void and enjoined its enforcement, the Birmingham City Council adopted Ordinance 77-257. Later, on August 28, 1979, the Council amended the ordinance to change certain bid requirements and to provide further for waiver of the ordinance provisions. Shortly thereafter, following the election of Richard Arrington, Jr., to succeed David Vann as Mayor of Birmingham, plaintiffs sought to permanently enjoin the enforcement of Ordinance 77-257, as amended, by amending their complaint of November 30, 1977, to put at issue the validity of the amended Ordinance and to substitute the then appropriate City officials as parties defendant.

The amendment complaint charged that the Ordinance violated the equal protection and due process guarantees of the state and federal constitutions, as well as 42 U.S.C. Sections 1981 and 1983; 42 U.S.C. Sections 2000 (d) (1)-(4); and the Alabama Competitive Bid Law, Code 1975, Section 41-16-50. Defendants put at issue each count of plaintiff's complaint, and after a hearing on the merits, this Court, with findings of fact and conclusions of law, found for plaintiffs and permanently enjoined enforcement of the challenged Ordinance. The defendants appealed this Court's order to the Alabama Supreme Court. A five member majority of the Supreme Court affirmed this Court's order. However, that majority limited its decision by emphasizing:

In conclusion, we note that our decision does not and cannot foreclose the City's enforcement of federal statutes or constitutionally imposed administrative regulations. Nor do we conclude that no municipality or state governmental entity may initiate a constitutionally sound affirmative action program. We only decide the case before us.

403 So. 2d at 903-04.

On January 21, 1988, plaintiffs filed their amended complaint, including a request for a preliminary injunction, and petition for an order to show cause. The parties were allowed to engage in limited discovery, and the hearing on the request for a preliminary injunction began on February 25, 1988. On January 28, 1988, the parties agreed that the hearing would relate only to the request for a preliminary injunction. It was further agreed that all other issues in the case could wait until the trial on the merits. No order to show cause or rule nisi was issued.

The hearing on the request for a preliminary injunction lasted from February 25, 1988, through May 10, 1989, with a subsequent briefing schedule through June of 1988.

Immediately after the United States Supreme Court decided City of Richmond v. J.A. Croson Co., 109 S. Ct. 706 (1989), Mayor Arrington issued an executive order clarifying the MBE program, and he also issued a manual describing the MBE program as clarified. In light of these developments and since this Court had received no evidence on the request for a preliminary injunction for approximately nine months, the City moved for the trial court to conduct supplemental hearings. That motion was denied.

In compliance with its Resolution and in light of Croson, supra, the City also moved this Court to stay proceedings while the City Council reviewed what changes it would make in the MBE program. The City also informed this Court that the City was inclined to move on its own to a Disadvantaged Business Enterprise (DBE) Program, where white-owned disadvantaged businesses could participate. This Court also denied this request and instead issued its preliminary injunction in the form of an Order and Opinion, dated March 31, 1989.

The City filed a notice of appeal on April 3, 1989. The City requested that this Court stay its order, but that request was denied. The City then immediately requested that the Supreme Court of Alabama stay the preliminary injunction issued by this Court. The Supreme Court of Alabama stayed the preliminary injunction on April 7, 1989. The parties are presently briefing the issues on appeal in that Court. No hearing date has been set on this appeal.

During the pendency of the appeal in this case, the parties and certain interested non-parties have met frequently in an effort to resolve the issues raised by the plaintiffs and the defendants in a way that recognizes the respective legal rights of the parties and other concerned citizens of Birmingham and which promotes economic growth in Birmingham for all segments of the City. The parties are also concerned about the ever increasing expense of this litigation which could cost the City of Birmingham over \$1,000,000.00 for defending the case through the trial proceedings alone, and which said costs would probably not be recouped by the City even if its defense efforts are successful. By agreeing to this settlement, the defendants are not admitting liability or any wrongdoing. Likewise, the plaintiffs are not admitting that they would not obtain full relief on their claims if they proceeded with them to trial.

This Consent Decree, and the relief contained herein, is based upon the voluminous record developed both before this Court and in the administrative proceedings before the City Council of the City of Birmingham. The plaintiffs do not concede that the testimony given in the administrative proceedings is sufficient to support an affirmative action program. However, the parties agree, and the Court determines, that the total record developed before this Court adequately supports the relief contained in this

Consent Decree. The relief contained in this Consent Decree does not infringe upon the federal or state constitutional or statutory rights of any person and does not constitute unlawful discrimination on racial or sexual grounds against any racial or gender group. The plaintiffs contend that the relief contained in this Consent Decree is nondiscriminatory and therefore the Supreme Court's decision in Croson is not applicable to the relief contained in this Consent Decree. The plaintiffs contend that the record developed before this Court and in the administrative proceedings before the City Council does not satisfy the guidelines set forth in Croson and is not adequate to support race-based preferences. The defendants contend that the record developed before this Court and in the administrative proceedings before the City Council satisfies the guidelines set forth in Croson and is adequate to support race-based preferences. Despite this disagreement, both parties agree, and the Court determines, that the relief contained in this Decree is not violative of the Croson decision. The plaintiffs do not admit that the existing record supports any future modification which the City may make in the affirmative action programs incorporated in this Consent Decree, nor does the existing record support any new or different affirmative action program. Notwithstanding this position of the plaintiffs, the parties recognize that the city retains the right to make future modifications in the affirmative action programs contained in this Consent Decree; if the City determines that the affirmative action programs contained in this Consent Decree are not adequate and effective in remedying past discrimination and the vestiges thereof, then the City may adopt stronger affirmative action programs, which may include but are not limited to mandatory set-asides and race-based preferences, provided the administrative record

supports such modifications. In that event, the plaintiffs reserve the right to challenge that action and if they choose to pursue such a challenge, nothing in this Consent Decree shall serve to prejudice the plaintiffs.

## II. Class Certification

After consideration of all the evidence, and after proper notice, the Court has certified a class of all present, past and future non-minority owned construction contractors and subcontractors who have done or might have done business with the City or any of its Board or Agencies. The class was certified pursuant to Rule 23, Alabama Rules of Civil Procedure. The class is so numerous that joinder of all members is impracticable, there are questions of law and fact common to the class, the claims of the class, and the representative plaintiffs will fairly and adequately protect the interest of the class. The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole. This consent decree provides all appropriate relief to class members.

## III. The Agreement

The plaintiffs (and the class they represent) and the defendants, being desirous of implementing a solution to the subject-matter of this continuous litigation without further cost and expense, and the parties having waived further hearing and having agreed to the form of this decree, without admissions by the defendants of violations of the United States Constitution, federal statutes, the Constitution of the State of Alabama, or state laws, and the Court being of the opinion that the entry of this decree is

in the interests of the parties and will effectuate the mandates of federal and state constitutions and federal and state laws, now therefore:

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. This action, including plaintiffs' amended complaint, seeking a preliminary injunction and an order to show cause, is hereby dismissed with prejudice, with all parties to bear their own costs, except for the payment specified in paragraph four below.

2. The parties shall adopt, implement, comply with the affirmative action plan described as "Birmingham Plan-Construction Industry Program" (hereinafter referred to as "BP-CIP"), attached hereto as "Attachment 1" and incorporated herein in its entirety (including all Appendices).

3. The City Council shall within 60 days of the date this Consent Decree is approved by the Court adopt and pass Ordinance No. : \_\_\_\_\_, an ordinance establishing the Birmingham Construction Industry Authority, and which is Appendix "F" to Attachment 1. Once this ordinance is passed by the City Council, all previously adopted City minority business enterprise ordinances, resolutions, manuals, rules and regulations, including but not limited to Code of City of Birmingham sections 3-3-16, 4-1-51, 4-1-52, 4-1-53; Executive Order 31-81, as last amended; Resolution 87-88, as last amended; Executive Order 61-89; and, The City of Birmingham Manual for Minority Business Enterprise Program (issued March 1, 1989), shall be superseded by the affirmative action plan and ordinance provided for in this paragraph and in paragraph 2 above, as codified in Attachment 1.



4. (a) The city of Birmingham shall pay to James Starnes, lead counsel for the plaintiffs, the total sum of \$500,000.00, which said amount is hereby declared to be a fair and reasonable sum for the full payment of all monetary claims between the parties, attorneys' fees, costs, and expenses incurred in or related to this cause by plaintiffs and all counsel who have represented the named plaintiffs and the plaintiff class. The payment of this money shall satisfy any and all monetary obligations by and between any and all of the parties hereto.

(b) In the event there is no appeal of this decree, the payment shall be made within seven days after the expiration of the time for appeal. If an appeal is filed, then the payment shall be made after affirmance of this decree and all time for subsequent challenge has elapsed.

(c) In addition to the amounts specified in paragraph 4 (a) above, the defendants shall pay to James Starnes at the rate of \$150.00 per hour an additional amount for attorney's fees, but not to exceed 20 hours or \$3000.00, for services rendered on behalf of the plaintiff class in conjunction with the Rule 23 "fairness hearing". After approval of this Consent Decree, Mr. James Starnes shall submit to Mr. Donald V. Watkins, counsel for the defendants, and itemized list of his services rendered and payment shall not be remitted until 42 days after said submission.

5. (a) This Consent Decree resolves all issues presented in this area and vacates all prior orders, injunctions, and memorandum opinions entered by the Court in this case, including, but not limited to, any order, injunction, or memorandum opinion which prohibits the City of Birmingham from implementing its Decree. Moreover, this Consent Decree shall in no way constitute a finding or

citation for contempt against the City of Birmingham or damage award for the Rives Construction Company, or any other plaintiff.

(b) Contemporaneous with the execution of this Consent Decree, the parties have filed a joint motion for the Supreme Court of Alabama to vacate the preliminary injunction, vacate the stay, dismiss the appeal and remand the case for the purpose of allowing the trial court to consider this Consent Decree.

6. Prior to the commencement of any further legal action, whether a new lawsuit or an amendment to the complaint filed in this lawsuit, the parties shall engage in good faith efforts to resolve any disputes involving the MBE/DBE program. The parties hope that the programs established under this Consent Decree will achieve the goals and objectives of the BP-CIP's MBE/DBE Program, as outlined in Attachment 1. However, the parties recognize that changes or modifications may be necessary in these programs. Those potential changes are of two types. First, there may be changes which are made by the BP-CIP's Authority. Any such change shall be made pursuant to the terms of the Plan, as described in Attachment 1, and does not require prior court approval. Second, the parties recognize that this Consent Decree does not compromise the constitutional or statutory authority of the Mayor and the City Council, in any respect. The Mayor, as chief executive, and the City Council, as a legislative body, shall maintain their authority to modify, repeal and replace, as they deem necessary and without prior approval of this Court, any of the programs provided for in this Consent Decree. If changes of this second type occur, the plaintiffs reserve their rights to challenge any such changes in the programs. While the parties hope that no changes of the second type are necessary, this Consent

Decree neither limits the authority of the City to make such changes of the second type nor does it operate as prior consent by the plaintiffs to such changes. This Consent Decree does not affect the authority of the Mayor or the City with respect to appointments and other nonbid contract.

7. This Consent shall remain in effect until and unless both parties agree that it is no longer necessary.

Done this \_\_\_\_\_ day of \_\_\_\_\_, 1989

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Circuit Judge

Approved by:

12/14/89  
Date

1205 North 19th Street  
Birmingham, Alabama 35234  
(205) 323-5963

12/14/89  
Date

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Date

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11/21/89

BIRMINGHAM PLAN - CONSTRUCTION INDUSTRY PROGRAM

I. Introduction

The following represents an agreement reached between the Associated General Contractors of America, Alabama Branch (AGC) and the Mayor of the City of Birmingham, Alabama on procedures and policies for MBE/DBE participation in the construction industry.

In order to promote the economic growth of metropolitan Birmingham and to enhance full participation of all sectors of the Birmingham community in that growth, the parties described herein agree to a program which shall be known as the Birmingham Plan - Construction Industry Program (hereinafter referred to as "BP-CIP or the "Plan"). The BP-CIP and its operations are described herein. This is a voluntary program based upon good faith efforts, the understanding of the need for the total community to help promote and a share in the community's economic growth and commitment to this end by the participating parties.

The BP-CIP shall exist under the umbrella of the overall Birmingham Plan and its Steering Committee.

II. Administrative Unit - "The Authority"

The participating parties agree to establish a Board called the Construction Industry Authority (hereinafter referred to as the "Authority") to administer the BP-CIP and to accommodate public and private participation in the Plan. The Authority shall be created by ordinance of the City of

Birmingham. Public and private entities desirous of participating in the BP-CIP shall evidence their commitment by executing a participation agreement with the Authority.

A. Composition: The Authority shall be composed of a initial eleven-member Board of Directors, who will be nominated by the Mayor of the City of Birmingham, upon a recommendation of the below named sponsor entities, and shall be appointed to the Authority by the Birmingham City Council: the Associated General Contractors (AGC) Alabama Branch, two members; the Alabama Minority Contractors Association (AMC), two members; The City of Birmingham, two members; The American Sucontractors Association, one member; The Birmingham Chamber of Commerce, one member; and the Metropolitan Business Association, one member; The Local Chapter of the Associated Builders and Contractors, one member; and The Local Chapter of the National Association of Surety Bond Producers, one member.

Each Board member shall serve a term of office, which expires only when their sponsoring entity formally requests the Mayor and the City Council that he/she be replaced with a successor on the Board, or there is a vacancy created by his/her death, resignation, or inability to perform the duties of the office due to any other good or just cause. In such event, the successor shall be nominated by the Mayor, upon recommendation of the applicable sponsor, and appointed by the Council to the Authority.

In addition to the above sponsors, the Authority shall make provisions for "sponsor status" for the County of Jefferson (two members), and the University of Alabama at

Birmingham (two members), should these entities express a desire to participate in the BP-CIP.

B. Financial Support: All sponsors shall be active participants in the Authority and financial supporters of the BP-CIP. The City of Birmingham and the AGC shall be the "lead" financial supporters for the BP-CIP and accept the major responsibility to contribute to the BP-CIP. The City of Birmingham's direct contribution shall not exceed 50% or \$100,000.00 annually of the approved budget of the BP-CIP, whichever is smaller. The AGC's shall raise funds for the BP-CIP. AGC's annual goal for fundraising efforts will be \$50,000.00.

C. Functions of the Authority: As the administrative unit for the BP-CIP, the Authority shall: (i) establish rules and regulations for the program, provided that such rules and regulations are mutually acceptable to the Mayor and the AGC, (ii) provide and solicit sufficient funding for it support, (iii) approve its budget(s), (iv) certify eligible Minority Business Enterprises / Disadvantaged Business Enterprises (hereinafter referred to as "MBE/DBE") firms, as described below, (v) establish annual and/or short-term MBE/DBE participation goals in construction projects, (vi) resolve disputes regarding certification, (vii) monitor the program's progress, (viii) provide training programs and technical assistance for MBE/DBE firms, and (ix) issue reports on the program activities, at least on an annual basis.

1. The Authority's Staff - The Construction Assistance Institute: The Authority shall establish and staff a Construction Assistance Institute (hereinafter referred to as "CAI") patterned after the proposed organization for the Construction Assistance Institute depicted in Appendix A. The CAI shall make recommendations to the Authority which assist the Authority in fulfilling its functions and shall carry out all other activities designated to it by the Authority, including, but not limited to the certification of MBE/DBE firms, program evaluation, training programs, technical assistance to certified MBE/DBE firms (e.g. estimating, bid preparation, etc.), fundraising and marketing.

The CAI shall also be the official Plan Room for MBE/DBE firms.

2. Certification of MBE/DBE Firms: Any firm which is certified as meeting MBE/DBE criteria by the US Department of Transportation of Urban Mass transit Authority (UMTA) or has attained SBA-8A status will be considered for waiver of the certification process by the Authority upon presentation of its certificate of such status to the CAI Executive Director. The Executive Director shall make a final and binding decision with respect to waiving the Authority's certification process. Other MBE/DBE firms may apply to the Executive Director for certification as a MBE/DBE firm. The criteria for certification of MBE/DBE shall contain a rebuttable presumption that minority-owned and women-owned businesses are MBE/DBE firms. For the



purpose of this Plan, the term "MBE/DBE" means a business at least 51% of which is owned by blacks, women or other disadvantaged minorities; or in the case of a publicly owned business, at least 51% of the stock of said business is owned by blacks, women or other disadvantaged minorities. This presumption will apply only to businesses actually owned and managed by blacks, women, or other disadvantaged minorities for a credible period of time. The Authority shall issue administrative rules and regulations which will define what time period constitutes a "credible" period. Any business entity may be certified as a MBE/DBE firm upon a showing that it has suffered discrimination or is disadvantaged in the American construction industry. By initial certification and periodic recertification, the Plan will focus upon businesses that continue to suffer a disadvantaged status in the Birmingham area. Beneficiaries of this Plan shall be MBE/DBE firms indigenous to the metropolitan Birmingham area at the time this Plan is instituted, and MBE/DBE firms which establish offices (branches) and maintain a reasonable staff presence in the Birmingham area.

3. Goals (Targets) For MBE/DBE Participation:

The Authority will seek to increase minority participation in the public and private sectors.

The Authority, with the assistance of the CAI, shall establish goals or targets for MBE/DBE participation on an annual overall basis. In the sense that the goals may differ from year to year and project to project, they will be referred to as floating goals. Overall, however, these goals shall not be less than the historical participation of

MBE/DBE in construction projects of the City of Birmingham and its agencies, based on construction activity reports prepared by the CAI Staff. Initial consultant figures for 1988-89 construction activity show an approximate 20% minority participation. These figures (Appendix "B") are unaudited and hence unofficial and are used for demonstration purposes and for clarity of intent: for example, a progressive goal for 1990 MBE/DBE participation would be higher than what the CAI official audit showed for 1989, or in the alternative, could be significant increase of the dollar amount awarded in 1989 for the public and private sectors combined.

In any event, the Authority shall strongly encourage legitimate joint ventures between general contractor and MBE/DBE firms.

4. Goals for MBE/DBE Training Programs: With the assistance of the CAI, the Authority shall offer training programs designed to strengthen MBE/DBE firms. Goals and areas for these programs shall be determined by market analysis within the construction industry, MBE/DBE firms availability in the U.S. Census Bureau's Standard Metropolitan Statistical Analysis (SMSA) labor market for Birmingham, and other relevant criteria.

5. Guidelines: Program guidelines for general contractors and MBE/DBE contractors shall be as presented in Appendix "C".

6. Budget Office: A fiscal manager for the BP-CIP will be designated by the Authority from among an existing fiscal management program, such as that of the AGC, the City of Birmingham, or some similarly established fiscal

management program, which will volunteer such a service. See, Appendices D and E for a sample budget.

7. Signatory or Participant Status: Aside from the sponsors referred to in paragraph II (A) above, all entities, public and private, which engage at any time in the purchase of construction services within the metropolitan Birmingham area, shall be encouraged by the Authority to become signatories to (and participants in) the BP-CIP by signing a "Participation Agreement," and paying an annual fee of \$100.00 or by paying at the time it begins a construction project a fee agreed on by it and the Authority.

Signatories to the BP-CIP should honor its BP-CIP commitment, and should include its BP-CIP commitment as a part of or addendum to its bid specification documents for all of its construction projects within the Birmingham metropolitan area.

8. Ordinance Establishing the Authority: The proposed ordinance establishing the Authority is set out in Appendix "F".

APPROVED BY:

11/22/89  
Date

Richard Arrington, Jr.  
Richard Arrington, Jr.  
Mayor of the City of Birmingham

11/22/89  
Date

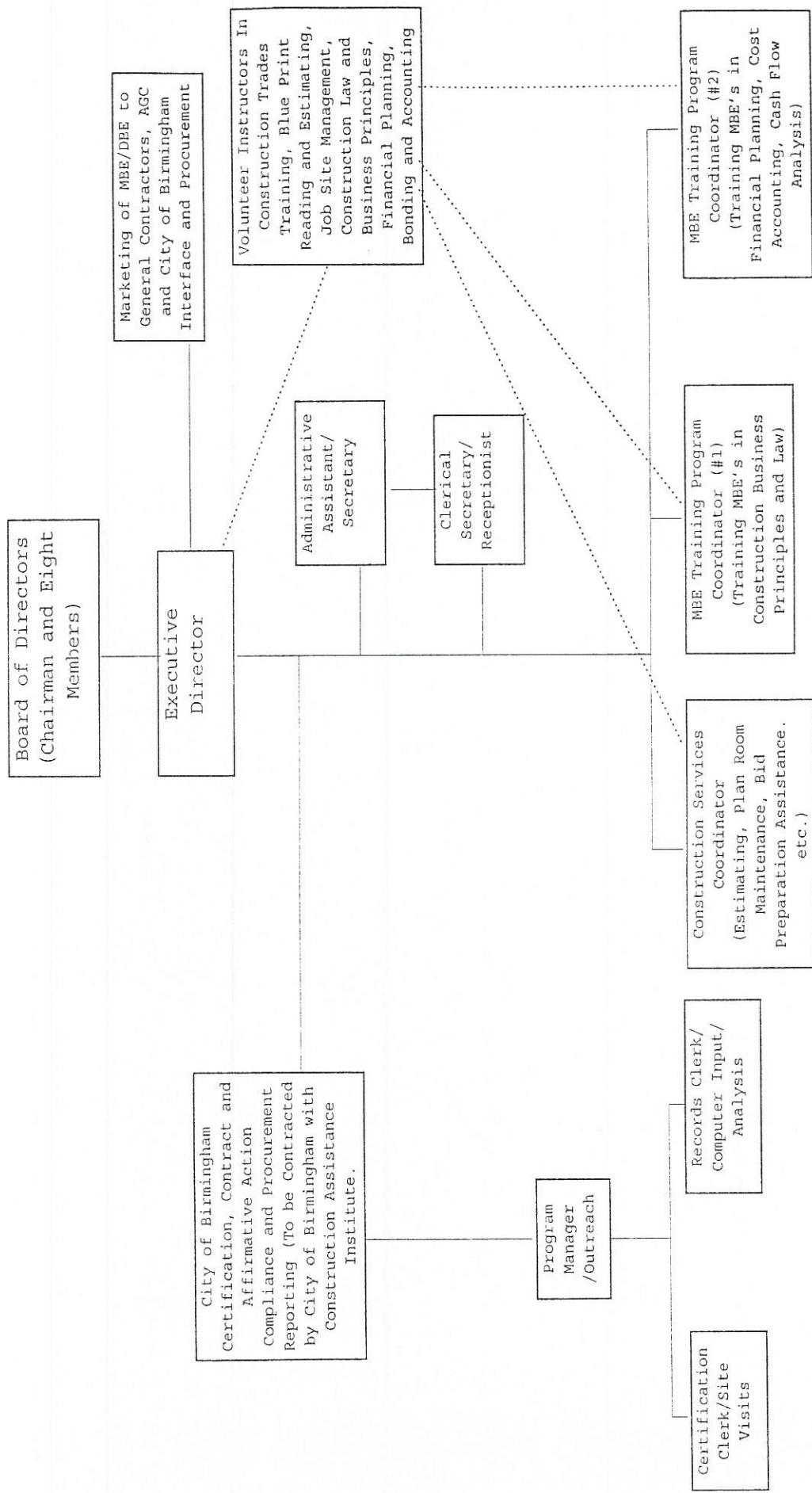
Harry Hagood  
Harry Hagood  
Exec. Director AGC, Alabama Branch

Appendix

- A. Organizational Chart Construction Assistance Institute
- B. Construction Activity Report
- C. Program Guidelines
- D. Sample Budget (Low)
- E. Sample Budget (High)
- F. Proposed Ordinance Establishing Construction Plan Authority

A. Organizational Chart Construction Assistance Institute

# Proposed Organizational Chart for Birmingham Construction Assistance Institute



B. Construction Activity Report

Board/Agency/Department	Total Contracts		MBF Contracts		MBF Contracts (%)	
	1988	1989	1988	1989	1988	1989
1. Alabama State Fair	609,586	0	100,548	0	16%	0
2. Birmingham Airport Authority	323,737	251,950	174,948	184,430	54%	73%
3. Birmingham Board of Education	336,327	1,321,875	163,805	315,618	49%	24%
4. Birmingham Housing Authority	4,207,873	3,545,838	1,194,848	1,686,058	28%	48%
5. Birmingham Library Board	959,453	66,995	213,762	51,120	22%	78%
6. Birmingham Park & Recreation Board	279,961	0	135,861	0	49%	0
7. Birmingham Transit Authority (MAX)	2,893,933	1,826,343	627,916	239,879	22%	13%
8. City of Birmingham, Buildings and Inspection Division	353,058	2,364,181	75,925	1,320,972	22%	56%
9. City of Birmingham, Engineering Office	7,202,498	6,985,934	1,252,871	1,581,693	17%	23%
10. City of Birmingham, Housing Office	2,916,181	1,791,732	392,165	392,565	13%	22%
11. City of Birmingham, Purchasing Division	1,138,890	1,929,254	910,511	692,593	80%	36%
12. Industrial Development Board	7,700,000	10,213,000	90,000	58,000	1%	1%
13. Industrial Water Board	390,818	19,360	152,681	8,426	39%	44%
Grand Totals	29,312,315	30,316,462	5,395,347	6,501,354	18%	21%



C. Program Guidelines

PROGRAMS GUIDELINES FOR GENERAL CONTRACTORS AND DBE CONTRACTORS

1

GENERAL CONTRACTOR ACQUIRES  
PECS AND DRAWINGS AND MAKES  
DECISION TO BID PRIME ON  
PROJECT. BEGINS WORK ON  
IN-HOUSE ESTIMATE

2

GENERAL CONTRACTOR CONTACTS  
CAI FOR DBE PARTICIPATION

3

GENERAL CONTRACTOR  
IDENTIFIES THOSE TRADES FOR  
WHICH HE IS TAKING SUB-  
CONTRACTOR BIDS

4

CAI IDENTIFIES AND NOTIFIES  
QUALIFIED DBE CONTRACTORS  
OF BID OPPORTUNITY

5

CAI STAFF ASSISTS IN BID  
PREPARATION. DBE SUBMITS  
BID AMOUNT AND SCOPE OF  
WORK TO BIDDING GENERAL  
CONTRACTORS

7

WITHIN FORTY-FIVE (45) DAYS  
AFTER RECEIVING NOTICE TO  
PROCEED GENERAL CONTRACTOR  
WILL PROVIDE CAI EXECUTIVE  
DIRECTOR A LIST OF DBE  
CONTRACTORS TO WHOM HE  
ANTICIPATES AWARDING SUB  
CONTRACTS. MEMO FORM TO BE  
U.S.E.D

6

IN CASES OF A DISPUTE  
BETWEEN A DBE CONTRACTORS  
AND A GENERAL CONTRACTOR  
(WITH RESPECT TO BID  
PLACEMENT) CAI EXECUTIVE  
DIRECTOR WILL BE ALLOWED TO  
CONFIDENTIALLY VIEW GENERAL  
CONTRACTORS BID ANALYSIS  
SPREAD SHEET

8

AFTER JOB CLOSE-OUT AND  
BEFORE GENERAL CONTRACTOR  
RECEIVES FINAL PAYMENT OF  
RETAINAGE, GENERAL  
CONTRACTOR WILL SUBMIT TO  
CAI NAMES OF DBE  
CONTRACTORS U.S.E.D ON JOB  
ALONG WITH NET DOLLAR

D. Sample Budget (Low)

Proposed Budget (Preliminary)  
for  
Birmingham Construction Assistance Institute

	<u>Low Annual Salary</u>	<u>High Annual Salary</u>
<b>STAFF SALARIES</b>		
Executive Director	\$ 55,000.00	\$ 60,000.00
Administrative Assistant	\$ 18,000.00	\$ 20,000.00
Manager of Technical Services	\$ 33,000.00	\$ 36,000.00
Sub-Total	\$ 106,000.00	\$ 116,000.00
Fringe Benefits @ 20% of Staff Salaries	\$ 21,200.00	\$ 23,200.00
Sub-Total	\$ 127,200.00	\$ 139,200.00
<b>Other Direct Assets</b>		
Rent	\$ 7,200.00	\$ 8,000.00
Communications	\$ 2,400.00	\$ 3,000.00
Travel	\$ 1,000.00	\$ 1,500.00
Automobile Expense	\$ 2,500.00	\$ 3,000.00
Cost of Plan Room Operator	\$ 1,200.00	\$ 1,500.00
Seminars & Workshops	\$ 2,000.00	\$ 3,000.00
Training Materials	\$ 2,700.00	\$ 1,500.00
Office Supplies	\$ 1,500.00	\$ 2,400.00
Dodge Report	\$ 2,400.00	\$ 2,600.00
Relocation Costs' (Exec. Dir.)	\$ 7,000.00	\$ 10,000.00
Miscellaneous	\$ 2,000.00	\$ 2,500.00
Outside Contributions (Recovering Payroll)	\$ 4,000.00	\$ 6,000.00
Total Other Direct Cost's	\$ 35,900.00	\$ 45,000.00
Total Salary Expense & Other Direct Cost	\$ 163,100.00	\$ 184,200.00

E. Sample Budget (High)

F. Proposed Ordinance Establishing Construction Plan  
Authority

Proposed Budget (Preliminary)  
for  
Birmingham Construction Assistance Institute

	<u>Low Annual Salary</u>	<u>High Annual Salary</u>
<b>STAFF SALARIES</b>		
Executive Director	\$ 60,000.00	\$ 60,000.00
Certification	\$ 32,000.00	\$ 36,000.00
Construction Services Coordinator	\$ 30,000.00	\$ 33,000.00
Training Program Coordinator (1)	\$ 30,000.00	\$ 33,000.00
Training Program Coordinator (2)	\$ 30,000.00	\$ 33,000.00
Administrative Assistant	\$ 20,000.00	\$ 25,000.00
Certification Clerk / Site Visitor	\$ 29,000.00	\$ 30,000.00
Record's Clerk /	\$ 16,000.00	\$ 18,000.00
Clerical Secretary /	<u>\$ 14,000.00</u>	<u>\$ 16,000.00</u>
Sub-Total	\$ 261,000.00	\$ 284,000.00
Fringe Benefits @ 20% of Staff Salaries	<u>\$ 52,200.00</u>	<u>\$ 56,800.00</u>
Sub-Total	\$ 313,200.00	\$ 340,800.00
<b>OTHER DIRECT COSTS</b>		
Rent	\$ 12,000.00	\$ 15,000.00
Communications	\$ 4,500.00	\$ 6,000.00
Travel	\$ 2,000.00	\$ 5,000.00
Automobile Cost	\$ 6,000.00	\$ 8,000.00
Cost of Plan Acquisitions	\$ 2,400.00	\$ 3,000.00
Seminars & Workshops	\$ 5,000.00	\$ 10,000.00
Training Materials	\$ 2,000.00	\$ 5,000.00
Office Supplies	\$ 3,000.00	\$ 5,000.00
Dodge Report	\$ 2,400.00	\$ 2,600.00
Miscellaneous	\$ 3,000.00	\$ 5,000.00
Outside Contracts (Recovering Payroll)	<u>\$ 7,500.00</u>	<u>\$ 10,000.00</u>
Total Other Direct Cost	\$ 49,800.00	\$ 74,600.00
Total Salary Expense & Other Direct Cost	\$ 363,000.00	\$ 415,400.00

(Recommended and Submitted by:  
Richard Arrington, Jr., Mayor)

Introduced: December \_\_, 1989

ORDINANCE NO. 89-296

AN ORDINANCE TO ESTABLISH THE BIRMINGHAM CONSTRUCTION INDUSTRY AUTHORITY, TO DEFINE THE AUTHORITY'S PURPOSE, TO PROVIDE FOR THE AUTHORITY'S MEMBERSHIP, TO DELINEATE THE AUTHORITY'S POWERS, DUTIES, MANAGEMENT, STRUCTURE, BUDGET, AND STAFF.

BE IT ORDAINED by the Council of the City of Birmingham as follows:

Section 1. There is hereby created the Birmingham Construction Industry Authority (hereinafter referred to as the "Authority"), which shall be an agency of the City of Birmingham, the purpose of which is to encourage, facilitate, and effect the full economic participation of all segments of the metropolitan Birmingham community in this economic growth, and to oversee the implementation and operation of the Birmingham Plan-Construction Industry Program (hereinafter referred to as "BP-CIP" or the "Plan").

Section 2. The Authority shall be composed of an initial eleven-member Board of Directors. These persons shall be nominated by the Mayor of the City of Birmingham, upon a recommendation of the below named sponsor entities, and shall be appointed to the Authority by the Birmingham City Council: the Associated General Contractors (AGC) Alabama Branch, two members; the Alabama Minority Contractors Association (AMC) local chapter(s), two members; the City of Birmingham, two members; the American Sub-Contractors Association (ASC), two members; The Birmingham Chamber of Commerce, one member; and, the Metropolitan Business Association one member; the Local Chapter of the Associated



Builders and Contractors, one member; and The Local Chapter of the National Association of the Surety Bond Producers, one member.

(a) Each Board member shall serve a term of office, which expires only when their sponsoring entity formally requests the Mayor and the Council that he/she be replaced with a successor on the Board, or there is a vacancy created by his/her death, resignation, or inability to perform the duties of the office due to any other good or just cause. In such event, the successor shall be nominated by the Mayor, upon recommendation of the applicable sponsor, and appointed by the Council to the Authority.

(b) Membership on the Authority's Board of Directors may be expanded to include the County of Jefferson (two members) and the University of Alabama at Birmingham (two members), provided that each said entity shall first give written notice to the Authority and the Mayor of the City of Birmingham that said entity desires to serve in the capacity of a sponsoring entity of the BP-CIP and desires to actively participate in the Plan. In such event, the entity shall recommend to the Mayor its desired two Board members, and the Mayor shall nominate those persons to the City Council for appointment to the Authority. The term of office for these Board members is the same as that specified in paragraph (a) above.

(c) In addition to the requirements enumerated above, to obtain and maintain membership on the Authority's Board of Directors, each sponsoring entity must be an active participant and/or financial supporter of the Authority's BP-CIP.

Section 3. (a) The Authority shall at its first meeting, or in adjournment thereof, adopt bylaws for the Authority, which may from time to time be amended as provided in the bylaws.

(b) The Board shall meet in accord with the bylaws, but in any event no less than four times a year. A simple majority of the existing Board of Directors shall constitute a quorum for the transaction for the business of the Authority.

Section 4. (a) The members of the Authority shall elect from among its regular members a chairman, vice-chairman, and a secretary. These offices shall be elected annually by a majority vote of the members of the Authority.

(b) The officers of the Authority shall perform those duties prescribed by this ordinance, the Authority's bylaws, and as may be further prescribed by subsequent ordinances or resolutions of the City Council.

Section 5. The members of the Authority shall receive no compensation whatsoever for their services, nor shall they receive compensation or per diem for attending meetings.

Section 6. (a) The Authority shall have the power to do all acts or things necessary to carry out the purposes and objectives set forth in this ordinance, subject to the general administrative process and procedures controlling other departments of City government; to acquire, by purchase, gift or loan, any land, premises, money, securities, objects or other property for its uses and purposes; to buy and sell and otherwise deal in property necessary to carry out its objectives; to cooperate with any public or private corporation or organization, and governmental body or organization to do the acts and things necessary to obtain private, corporate, or governmental grants or funding; to do those things to contribute to the significance of the Authority; to establish and maintain an administrative structure designed to administer the BP-CIP and to accommodate public and

private participation in the plan; to provide rules and regulations governing the BP-CIP, the Authority, and the governance of its officials, employees, and personnel under contract to it and of any premises or property which may from time to time be in its custody, provided such rules and regulations are in accordance with and do not conflict with or otherwise violate any provision of state law or other ordinances or resolutions of the City. In the exercise of its powers, the board shall have no power or authority to bind or obligate the City beyond the amount appropriated by the City Council for its purposes.

(b) As the administrative unit for the BP-CIP, the Authority shall: (i) establish policies for the program, (ii) provide and solicit sufficient funding for its support, (iii) approve its budget(s), (iv) certify eligible Minority Business Enterprises/Disadvantaged Business Enterprises (hereinafter referred to as "MBE/DBE") firms, as described below, (v) establish annual and/or short-term MBE/DBE participation goals in construction projects, (vi) resolve disputes regarding certification, (vii) monitor the program's progress, (viii) provide training programs and technical assistance for MBE/DBE firms, and (ix) issue reports on the program activities, at least on an annual basis.

Section 7. (a) The management, custody, or control of any and all property, objects and items belonging to the City which the City Council may, by resolution, place under control and management of the Authority shall be vested in the Authority, and the Authority shall exercise, subject to the control of the City Council all the powers of the City with respect to such property, objects and items.

(b) The Authority shall not have the right to sue or be sued, and all property and property interests acquired by or accruing to it shall be vested in the City and held by it for the City.

Section 8. The City of Birmingham shall be one of the "lead" financial supporters for the BP-CIP and, along with others, shall accept major responsibility to contribute to the BP-CIP. The City of Birmingham's direct annual contribution shall not exceed 50% of the Authority's approved budget for the BP-CIP, or \$100,000.00, whichever is the lesser amount. The AGC shall raise funds for the BP-CIP. AGC's annual goal for fundraising efforts will be \$50,000.00.

Section 9. (a) The Authority shall establish and staff a Construction Assistance Institute (hereinafter referred to as "CAI") patterned after the proposed organization for the Construction Assistance Institute. The CAI shall make recommendations to the Authority which assist the Authority in fulfilling its functions and shall carry out all other activities designated to it by the Authority, including, but not limited to, the certification of MBE/DBE firms, program evaluation, training programs, technical assistance to certified MBE/DBE firms (e.g., estimating, bid preparation, etc.), fundraising and marketing.

(b) Any firm or business which is certified as meeting MBE/DBE criteria by the U.S. Department of Transportation (DOT) or Urban Mass Transit Authority (UMTA) or has attained SBA-8A status will be considered for waiver of the certification process by the Authority upon presentation of its certificate of such status to the CAI Executive Director. The Executive Director will make a final and binding decision with respect to waiving the Authority's certification process. Other MBE/DBE firms may apply to the Executive Director for certification as a MBE/DBE

firm. The criteria for certification of MBE/DBE shall contain a rebuttable presumption that minority-owned and women-owned businesses are MBE/DBE firms. For the purpose of this Plan, the term "MBE/DBE" means a business at least 51% of which is owned by blacks, women or other business, at least 51% of the stock of said business is owned by blacks, women or other disadvantaged minorities. This presumption shall apply only to businesses actually owned and managed by blacks, women, or other disadvantaged minorities for a credible period of time. The Authority shall issue administrative rules and regulations which will define, among other matters, the time period necessary to constitute a "credible" period, within the meaning of this Section. Any business entity may be certified as a MBE/DBE firm upon a showing to the Authority that it has suffered discrimination or is disadvantaged in the American construction industry. There shall be, in addition to the initial certification of MBE/DBE firms, a periodic re-certification, the frequency of which shall be determined by the Authority. The Plan shall target businesses that continue to suffer a disadvantaged status in the Birmingham area. The intended beneficiaries of this Plan shall be MBE/DBE firms indigenous to the metropolitan Birmingham area at the time this ordinance is adopted, and MBE/DBE firms which establish offices (branches) and maintain a reasonable staff presence in the Birmingham area.

(c)The Authority will seek to increase minority participation in the public and private sectors. The Authority with the assistance of the CAI, shall establish goals or targets for MBE/DBE participation on an annual overall basis. In the sense that the goals may differ from year to year and project to project, they will be referred to as floating goals. Overall, however, these goals shall no be less than the historical participation of MBE/DBE in construction projects of the City of

Birmingham and its agencies, based on construction activity reports prepared by the CAI Staff. Initial consultant figures for 1988-89 construction activity show and approximate 20% minority participation. These figures (Appendix "A") are unaudited and hence unofficial and are used for demonstration purposes and for clarity of intent: for example, a progressive goal for 1990 MBE/DBE participation would be higher than what the CAI official audit showed for 1989, or in the alternative, could be a significant increase of the dollar amount awarded in 1989 for the public and private sectors combined.

In any event, the Authority shall strongly encourage legitimate joint ventures between general contractor and MBE/DBE firms.

(d) With the assistance of the CAI, the Authority shall offer training programs designed to strengthen MBE/DBE firms. Goals and areas for these programs shall be determined by market analysis within the construction industry, MBE/DBE firms availability in the latest published U.S. Census Bureau's Standard Metropolitan Statistical Analysis (SMSA) labor market for Birmingham, and other relevant criteria as determined by the Authority.

(e) Program guidelines will be as presented in Appendix "B" (attached).

(f) A fiscal manager for the BP-CIP will be designated by the Authority from among an existing fiscal management program, such as that of the AGC, the City of Birmingham, or some similarly established fiscal management program, which will volunteer such service.

(g) Aside from the sponsors referred to in Section 2 hereinabove, all entities, public and private, which engage at any time in the purchase of construction services within the metropolitan Birmingham area, are encouraged by the Authority to

become signatories to (and participants in) the BP-CIP by signing a "Participation Agreement," and paying an annual fee of \$100.00 or by paying at the time it begins a construction project a fee agreed on by it and the Authority. A signatory to the BP-CIP should honor its BP-CIP commitment, and should include its BP-CIP commitment as a part of or addendum to its bid specification documents for all of its construction projects within the Birmingham metropolitan area.

Section 10. The Authority is authorized to promulgate any additional rules and regulations as it may determine to be reasonably necessary to insure compliance with or to promote the objectives of this ordinance, provided that such rules and regulations are mutually acceptable to the Mayor and the AGC.

Section 11. If any section, or part thereof, of this ordinance shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this ordinance nor the context in which such section, or part thereof, so held invalid may appear, except to the extent an entire section, or part thereof, may be inseparably connected in meaning and effect with the section, or part thereof, to which such holding shall directly apply.

Section 12. This ordinance shall become effective immediately upon its adoption by the City Council, or upon otherwise becoming a law.