Winston-Salem City Council
APPROVED
November 2, 2026

Ordinance #26-0446
2026 Ordinance Book, Page 89

AN ORDINANCE AMENDMENT PROPOSED BY THE CITY OF WINSTON-SALEM AMENDING VARIOUS ORDINANCE PROVISIONS RELATING TO M/WBE

BE IT ORDAINED by the Mayor and City Council of the City of Winston-Salem as follows:

Section 1. Chapter 2 is hereby amended as follows:

CHAPTER 2, ARTICLE I – IN GENERAL

Sec. 2-3. Disqualification of contractors to bid on construction or repair contracts.

(a) *Authority of city manager; grounds.* The city manager or his designee may disqualify a contractor(s) from bidding on city construction or repair contracts for any of the reasons listed below using the procedures outlined in subsection (c). For purposes of this section, the term "city" includes any city department, city board, agency, commission or a joint (interlocal) board, agency or commission which the city administers.

(1) Unsatisfactory progress in completing work within contract time limits and/or meeting required quality levels.

(2) Defaulting on current or past contracts.

(3) Current uncompleted contracts which would hinder or prevent the timely completion of additional work.

(4) The submission of more than one bid from an individual, partnership, joint venture, limited liability company or corporation under the same or different names for the same work.

(5) Evidence of collusion among bidders. Each participant in such collusion would be disqualified.

(6) Failure to furnish a non-collusion affidavit upon request.

(7) Failure to comply with current or past contract requirements, including, but not limited to, those contained in project special provisions, bid documents, specifications and drawings, general and supplementary conditions, Division 0 and Division 1 general requirements, instructions and special instructions to bidders, warranties, and any other contract documents, as well as failure to make timely payments to subcontractors, on more than one occasion within a five year period looking back from the current failure, with the same or a different subcontractor and on the same or a different city project, without a reasonable basis, as determined by the city, for withholding or delaying such payments.

(8) The contractor becomes bankrupt or insolvent; or files, or has filed against it, in any court pursuant to any statute, either of the United States or of any state, a petition for bankruptcy or insolvency, or for reorganization, or for any arrangement or for appointment of a receiver or trustee for its affairs; or a receiver, guardian, trustee, or liquidator is appointed to administer the contractor's affairs; or the contractor makes an assignment for the benefit of creditors.

(9) Failure to comply with a written order of the city engineer as provided in the specifications if such failure is of sufficient magnitude to warrant disqualification.

(10) Failure to satisfy contractual ~~M/WBE~~ Small Business Enterprise requirements.

(11) If the city has not received the amount due under a bid bond forfeited by the contractor.

(12) Failure to return overpayments when directed by the city.

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(13) Failure to submit documents as required by the contract.

(14) Lack of evidence of ability or experience to perform the type of work required by the contract.

(15) The assessment of liquidated damages against the bidder on more than one contract with any public entity within three years from the city's project bid opening.

(16) Participation in any outstanding lawsuit or claim against the city on any other project within three years of the city's project bid opening provided the lawsuit or claim or the city's response thereto raises an issue(s) regarding the contractor's skill, judgment, integrity or ability to perform a city contract.

(17) Establishment, by a criminal or civil proceeding, of the contractor's:

a. Commission of fraud in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;

b. Violation of federal or state antitrust statutes relating to the submission of bids;

c. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, tax evasion, making false statements or receiving stolen property; or

d. Commission of any other offense or action indicating a lack of business integrity or business honesty that materially affects the present responsibility of a contractor or subcontractor.

(18) A violation of the city's ethics policy.

(19) A violation of any local, state or federal law, ordinance, or regulation applicable to the contract or the services rendered or provided in accordance therewith.

(20) Debarment by a federal, state or local government, a public authority or other agency or entity subject to public procurement laws.

(21) Unauthorized payments, gifts or other valuable consideration to any person having any official duties, direct or indirect, in connection with the bidding upon, awarding of or performing of city contracts in violation of the city's ethics policy.

(22) Discrimination in the bidder's or contractor's employment or business practices on the basis of race, color, creed, national origin, disability, sex, ethnicity, religion, sexual orientation, gender identity, gender expression, pregnancy, veteran status, age, marital status, familial status, protected hairstyle or political affiliation in violation of the city's nondiscrimination ordinance, state or federal law.

(23) Failure to maintain the insurance coverage required by the contract.

(b) *Prequalification with state agency.* In addition to subsection (a) of this section, the city manager or his designee may disqualify contractors from bidding on construction contracts of the city, if the contractor has been removed, for any reason, from the list of prequalified bidders for the North Carolina Department of Transportation or any other state agency.

(c) *Notice to contractor; filing of appeal.* If any of the factors listed in subsection (a) or (b) of this section apply to a contractor, the city manager or his designee may in his discretion, disqualify such contractor from bidding on city construction contracts. Any contractor disqualified from bidding on city construction contracts shall be so notified in writing by certified mail or personal delivery by the city manager or his designee. Upon receipt of the notification, as evidenced by the certified mail return receipt or affidavit describing personal delivery, the disqualified contractor shall have ten days to appeal in writing its disqualification to the city council. The city manager or his designee shall notify the city council of the contractor's disqualification. The decision of the city manager or his designee to disqualify a contractor from bidding shall become final if there is not timely appeal to the city council.

(d) *Hearing by city council; disqualification period.* After proper appeal, the matter shall be placed for hearing on the city council's agenda. The council shall then review the disqualification of the contractor consistent with

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the factors set forth in subsections (a) and (b) of this section. Notice of the hearing date before the council shall be sent to the contractor at least ten days before the hearing by first class mail at the contractor's last known address. At the hearing before the council, the city manager or his designee will present the factual basis for his determination based upon the factors set forth in subsections (a) and (b) of this section. The contractor will be offered an opportunity to present evidence showing that the factors resulting in disqualification have been removed, changed or become inapplicable. The contractor may also present evidence related to his ability to perform satisfactorily. The council shall, at that meeting or at a subsequent meeting, make a decision on the contractor's appeal. The council can either affirm, reduce or reverse the disqualification decision of the city manager or his designee. The council's decision will be final. The disqualification period shall be for up to three years from the date of notification to the contractor by the city manager or his designee.

(e) *Request for requalification.* The disqualified contractor may seek requalification before the expiration of the disqualification period by contacting the city manager or his designee in writing and showing how the disqualifying action or cause has been removed, changed or become inapplicable. Appeal from the decision of the city manager or his designee concerning requalification is to the city council in the manner described in subsection (d) of this section. A disqualified contractor may request requalification only once absent special circumstances.

(f) *Responsible for conduct of another.* The fraudulent, criminal, or other improper conduct of:

(1) Any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence;

(2) A contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct; and

(3) One contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(Code 1975, § 2-2.1; Ord. No. 4368, § 1, 8-21-00; Ord. of 1-6-03, § 1; Ord. No. 4738, § 1, 11-21-11; Ord. No. 4832, § 1, 1-20-15; Ord. No. 2997, § 4, 6-18-18; Ord. No. 2021-15, § 1, 6-21-21)

CHAPTER 2, ARTICLE III, DIVISION 1 – GENERALLY

Sec. 2-63. Public bodies designated; meetings.

(a) *Public bodies designated.* The city council, adopting the following to comply with G.S. 143-318.9 et seq., determines that the following authorities, boards, commissions, committees, councils or other bodies, or any of their committees or subcommittees under its authority, constitute public bodies within the meaning of G.S. 143-318.9 et seq.:

(1) Bicycle/pedestrian/active mobility advisory committee.

(2) Citizen police review board.

(3) Citizens' budget advisory council.

(4) Citizens' organizational efficiency review committee.

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(5) City/county planning board.

(6) City/county utility commission.

(6.5) Civil service board.

(7) Coalition for drug abuse prevention.

(8) College advisory board.

(9) Community agency allocation committee.

(10) Community appearance commission.

(11) Community sustainability program committee.

(12) Creative corridors design review committee.

(13) Downtown Winston-Salem Business Improvement District Advisory Committee.

(14) Fair planning committee.

(15) Firemen's relief fund/board of trustees.

(16) Forsyth County Historic Resources Commission.

(17) Forsyth County Local Emergency Planning Committee.

(18) Forsyth County Tourism Development Authority.

(19) Housing advisory committee.

(20) Housing authority.

(21) Human relations commission.

(22) Loan committee.

(23) ~~M/WBE~~ Small Business Enterprise advisory committee.

(24) Medical review board.

(25) Outstanding women leaders program committee.

(26) Piedmont Triad airport authority.

(27) Police officers' retirement commission.

(28) Public assembly facilities commission.

CHAPTER 2, ARTICLE III, DIVISION 6 – DOWNTOWN WINSTON-SALEM BUSINESS IMPROVEMENT DISTRICT ADVISORY COMMITTEE

Sec. 2-177. Reports.

The Downtown Winston-Salem Business Improvement District Advisory Committee shall submit to the mayor and city council quarterly financial statements, an annual audit, and an annual report of its activities, including documentation of efforts to promote diversity and adhere to city and state ~~M/WBE~~ Small Business Enterprise requirements. The committee shall submit to the budget and evaluation office, no later than April 15th of each year, a statement of its expenditures to date for the current fiscal year and its requested budget for the next fiscal year.

(Ord. No. 4804, § 2, 11-25-13)

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CHAPTER 2, ARTICLE III, DIVISION 13 – MWBE ADVISORY COMMITTEE

DIVISION 13. ~~M/WBE~~ SMALL BUSINESS ENTERPRISE ADVISORY COMMITTEE

Sec. 2-289. Creation; purpose.

There is hereby created a committee, to be known as the ~~M/WBE~~ Small Business Enterprise advisory committee (hereinafter " committee"), which is charged with overall responsibility of continually reviewing the city's ~~M/WBE~~ Small Business Enterprise program and making periodic reports and recommendations to the mayor and city council regarding program enhancements. Additionally, the committee will evaluate good faith efforts on the part of contractors that may be applicable in carrying out the small business enterprise program. ~~with whom the city has engaged to perform a city building construction project in excess of $300,000.00 and make appropriate recommendations to the city council. Building construction projects include the erection, construction, alteration or repair of any building pursuant to G.S. 143-128.2. The city's M/WBE participation goals apply to building construction projects for which the city receives state appropriations or other state grant funds of $100,000.00 in accordance with G.S. 143-128.2.~~

(Ord. No. 29188, § 1, 6-19-17)

Sec. 2-290. Membership; term of members; officers.

The committee shall consist of seven members. The members of the committee will be appointed by the city council after recommendation by the mayor and will serve two-year terms. The ~~advisory~~ committee will choose from its number a chairman and vice-chairman to serve one-year terms in those offices. When making recommendations to the city council for committee members, the mayor will seek candidates who have personal or professional backgrounds in the following areas:

(1) Construction;

(2) Legal services;

(3) Financial services; and

(4) Experience with ~~minority- and women-owned businesses~~ small businesses.

Recommended committee candidates are not required to have the above background/experience history. If the mayor identifies candidates that do not possess one or more of the four experience areas above, the mayor is free to recommend any candidate deemed suitable. Additionally, all members of the committee shall be residents of the city or maintain business ownership with a physical address within the city limits. Post office boxes do not constitute city residency or a physical business location. Members cannot be employees of the city.

(Ord. No. 29188, § 1, 6-19-17; Ord. No. 24-0505, § 1, 11-4-24)

Sec. 2-291. Consecutive terms.

(a) No person may serve more than two consecutive terms on the committee. A person who has served two consecutive terms shall be eligible for appointment to a different board or commission or for reappointment to the same board or commission after a lapse in service. For purposes of this section, service of less than 50 percent of a normal term shall not be deemed a term, and service for more than 50 percent shall be deemed a term.

(b) For purposes of subsection (a) the term "lapse in service" shall mean a period equal to one full term for reappointment to the same board or commission and a period of one year for appointment to a different board or commission. However, if the board and commission application process does not yield a sufficient pool of applicants from which to make an appointment or reappointment recommendation(s) consistent with the above lapse in service requirement, then the lapse in service requirement may be temporarily suspended for that appointment or reappointment provided all efforts to enhance the applicant pool have been sufficiently documented.

(Ord. No. 29188, § 1, 6-19-17)

Sec. 2-292. Removal of members.

Members of the committee shall serve at the pleasure of the city council, and may be removed by the city council. In order for the committee to carry out its duties and responsibilities, it is necessary for all members to attend the meetings. If any member is absent for two consecutive regular meetings, without excuse granted by the committee, the chair shall notify such member in writing of such member's absences, and if such member fails to attend the next regular meeting, the committee may, by majority vote of the remaining members, request that the position be vacated and a replacement be appointed by the city council. Committee members shall abide by the city's ethics policy. If it is determined that a committee member has a prohibited interest or relationship, or has failed to abide by the city's ethics policy, said member shall be removed from the committee by the city council.

(Ord. No. 29188, § 1, 6-19-17)

Sec. 2-293. Meetings.

(a) *Generally.* The committee shall establish its own meeting schedule but in no event shall meet less frequently than once a quarter. All meetings and hearings of the advisory committee shall be open to the public, and reasonable notice of the time and place thereof shall be given to the public in accordance with all applicable statutes regarding open meetings and public records.

(b) *Records.* The committee shall maintain a record of member attendance, actions taken, findings, and recommendations.

(c) *Quorum and voting.* A quorum to conduct business shall consist of at least four members. Official action by the committee shall require a majority vote of those present and qualified to vote. The chairperson shall be entitled to vote.

(d) *Rules of procedure.* The committee is authorized to adopt by-laws, rules, regulations and operating procedures necessary to conduct the affairs of the committee, provided the same are not inconsistent with the provisions of the codes of the city and state law.

(Ord. No. 29188, § 1, 6-19-17; Ord. No. 24-0505, § 2, 11-4-24)

Sec. 2-294. Staff support.

Staff from the office of ~~business inclusion and advancement~~ economic development will provide staff support to the committee.

(Ord. No. 29188, § 1, 6-19-17)

Sec. 2-294.1. Temporary authority for internal ~~M/WBE~~ Small Business Enterprise staff committee.

When the ~~M/WBE~~ Small Business Enterprise advisory committee has fewer than four members or has been unable to establish a quorum for a combination of at least two regular or special meetings, the city manager is hereby authorized to empower internal ~~M/WBE~~ staff ~~committee~~ to engage in the duties normally fulfilled by the ~~citizen~~ ~~M/WBE~~ Small Business Enterprise advisory committee including reviewing and scoring programs and determining good faith efforts for consideration by city council in place of the ~~citizen~~ ~~M/WBE~~ Small Business Enterprise advisory committee. This authority shall remain in effect until repealed.

(Ord. No. 2021-24, § 1, 9-20-21; Ord. No. 24-0505, § 3, 11-4-24)

Editor's note(s)—Ord. No. 2021-24, § 1, adopted September 20, 2021, set out provisions intended for use as § 2-295. For purposes of classification, and at the editor's discretion, these provisions have been included as § 2-294.1.

Section 2. These ordinance amendments shall be effective upon adoption.