

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

MARCH 5, 2012

TITLE:

PUBLIC HEARING - LOCAL BUSINESS PREFERENCE ORDINANCE

CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED

- As Recommended
- As Amended
- Ordinance on 1st Reading
- Ordinance on 2nd Reading
- Implementing Resolution
- Set Public Hearing For _____

CONTINUED TO _____

FILE NUMBER _____

RECOMMENDED ACTION

1. Adopt an ordinance amending the Santa Ana Municipal Code to provide Santa Ana and Orange County businesses a percentage preference for all requests for proposals, contracts and bids where the City is not otherwise restricted from offering such a preference.
2. Adopt a resolution providing Santa Ana Businesses with a seven percent preference and Orange County businesses a four percent preference for all requests for proposals, contracts and bids where the City is not otherwise restricted from offering such a preference.

BACKGROUND

In 2010, the City released 57 requests for proposals or bids to provide goods, materials or professional services to the City. The total value of these contracts totaled more than \$6.5 million dollars.

In response to general direction from the City Council an interdepartmental committee including: the Planning and Building Agency, Public Works Agency, City Attorney's Office, Finance and Management Services Agency and the Community Development Agency was formed to research and analyze local preference as a method to continue the City's support and promotion of local businesses.

A local business preference allows the City to promote local businesses, as well as benefit from enhanced economic activity as dollars re-circulate in the local economy by way of multiplier effects. Multiplier effects have been shown to benefit the community in three unique ways:

1. Direct effects – Benefits the local economy by directly investing money through the awarding of a City contract to a local business.
2. Indirect effects – Indirect effects occur when money awarded to a local business results in inter-industry purchases of materials, supplies, goods and services. Another potential indirect effect is the increase in employment associated with greater workloads/demands.

A Study in Phoenix, Arizona by the economic consulting firm Civic Economics found that when using a local vendor, 33.4 percent of the total contract revenue remained in the community compared to only 11.6 percent when using a national vendor¹. For a \$100,000 contract, this results in an additional \$21,800 dollars staying in the local economy in addition to the initial contract amount. A similar study from Austin, Texas found that for every \$100 dollars spent locally, \$45 dollars remained in the local economy, compared to only \$13 dollars spent at a "big box" vendor². Another study by the Center for Economic Research and Education of Central California found in the City of Fresno that while the proposed local preference program would cost the City \$243,565 in higher contract amounts, it would result in over \$3.3 million dollars in output via multiplier effects in the community³.

3. Induced effects – Induced effects are the increases in household income as a result of both the direct and indirect effects. Increases in household income have been found to modify spending patterns and increase consumption.

In these ways, the benefits to the City of awarding a contract to a local business extend beyond the value of the initial contract. While the exact value of multiplier effects are difficult to predict, various studies regarding local sourcing of materials, supplies and services have found a consistent increase in the amount of money that remains in the local economy when a local vendor is utilized. This increase in money has also been correlated with increases in employment, as well as taxable transactions for the City.

The City has for many years used a one percent bid preference for Santa Ana businesses. The rationale for this preference is that the City receives one percent of the sales tax captured on taxable sales, which offsets the costs. Recent analysis by the Finance and Management Services Agency indicates, however, that this preference amount has had little or no effect on the actual number of Santa Ana businesses becoming the lowest bidder and thus being awarded City contracts.

DISCUSSION

Sections 421 and 422 of the City's Charter outline purchasing regulations and requirements for Public Works and Non-Public Works contracts and thus structure how local preference can be implemented (Exhibit 1). A review of the City's charter language by the City Attorney's Office has concluded that local preference may not be given for Public Works construction involving "the erection or improvement of public buildings, streets, drains, sewers or parks." Contracts involving maintenance and repair of these facilities would be eligible for a preference. In addition to charter restrictions, several funding sources including Caltrans, HUD, State and Federal grants contain language that precludes the use of a local preference. Given these limitations, the proposed local preference program will apply to all contracts and bids not otherwise restricted by the funding source, the City charter, State or Federal law.

¹ Dan Houston, "Procurement Matters: The Economic Impact of Local Suppliers," Civic Economics (November 2007).

² Dan Houston and Dr. Michael Oden, "Big Box Retail and Austin: An Independent Review," Civic Economics (October 2004)

³ Dr. Antonio Avalos and Dr. Edward Birdyshaw, "Assessing the Economic Impact of a Local Preference Ordinance in the City of Fresno," Center for Economic Research and Education of Central California (January 2007).

Additionally, it is recommended that the local preference ordinance only apply to eligible contracts up to \$100,000. This recommendation is based on a review of other cities parameters, as well as an analysis of the City's most typical contracts. For example, a comparison of other cities local preference ordinance showed indicated a range from \$30,000 up to \$1,000,000, with a majority in the \$100,000 dollar range (Exhibit 2). Further, an analysis of City of Santa Ana bids/RFP's in 2010 showed a mean contract value of \$126,122 and a median contract value of \$53,130. This lower median value indicates that a majority of City contracts are below the proposed \$100,000 threshold and thus would be eligible for local preference.

Tiered Preference System

Santa Ana lies in the center of urban Orange County. As such, the Santa Ana economy is to a large degree tied to the regional economy, similar to how the City is tied to the region in terms of air quality, water quality, regional transportation, etc. To balance the City's goal to promote Santa Ana businesses while being mindful of the City's place within the regional economy, a tiered preference level is proposed. This tiered system is proposed to provide Santa Ana businesses with a seven percent preference and other Orange County businesses with a four percent preference.

The recommended seven percent preference best balances the costs of doing business (sales tax, business license tax, etc.) with providing local businesses with an advantage in winning city contracts. Analysis of a 20-contract sample of Santa Ana contracts indicated that a seven percent preference would have resulted in approximately 25 percent of contracts being awarded to local businesses. The proposed preference levels are also consistent with several nearby cities that have recently adopted local preference ordinances, including the City of Los Angeles (8%) and the City of Long Beach (10%).

Administration/Implementation

In an effort to minimize additional burdens on local businesses staff proposes to use the California Department of General Services Small Business Certification program. This State administered program, will ensure that businesses in the City and County that are competing for City contracts meet the definition of a small local business while not overly burdening local businesses with complicated forms and applications (Exhibit 3). Once a local business is certified by the state it is cataloged in an online database that can be used by the City when determining whether a business qualifies for the City's local preference program. The use of the State Department of General Services for certification is also used by the City of Los Angeles as part of their local preference program.

The California Department of General Services essentially functions as the business manager and procurement office for the state and is the primary administrator of the Small Business Services certification program. This program certifies small businesses in order to assist them in receiving

State Contracts. Becoming a certified small business can be done online through the state's e-procurement website free of charge. Once a business is certified it will be electronically notified of available state bid solicitations as well as receive a five percent preference on State contracts.

There are currently 128 Santa Ana businesses already certified by the California Department of General Services as a Small Business.

The local preference ordinance will give preference to businesses during the procurement for both bids for materials, supplies, labor and equipment and requests for proposals for professional services. The following are examples of how the local preference ordinance will apply in these two scenarios:

Example 1. Bid for materials, supplies, labor and equipment:

	Santa Ana Business	Orange County Business	Other Lowest Bid
Bid Amount	\$95,000	\$93,000	\$90,000
	7% local preference	4% local preference	N/A
Amount used for selection of contract awarded	\$88,350	\$89,280	\$90,000

In the above scenario, the Santa Ana business would be awarded the contract. The contract amount would be the original bid of \$95,000.

Example 2. Requests for proposals for professional services:

In a Request for Proposal (RFP) for professional services price alone may not be criterion upon which a contract is awarded. In this example, the local preference will increase the total evaluation points a business receives. These evaluations are typically done on a 0 to 100 point scale.

	Santa Ana Business	Orange County Business	Other Highest Evaluation
Original evaluation points received	91	95	97
	7% local preference	4% local preference	N/A
Total evaluation points after local preference added	97.4	98.8	97

In this scenario the Orange County business would be awarded the contract as its total evaluation points would become the highest with the local preference. As in scenario number one above, the use of local preference will not affect the final contract amount.

Modifications/Adjustments

It is recommended that the local preference program be adopted by ordinance, and the percent of preference be adopted by Resolution with seven percent for local businesses and four percent for Orange County businesses. Adopting the specific percentage preference levels by resolution will allow the City Council to modify preference levels as it deems appropriate.

Outreach Efforts

Recognizing that the final measure of effectiveness for the proposed ordinance will depend on the extent that it is utilized by the local businesses community; staff reached out to local chambers of commerce as well as the Orange County Business Council to seek their input on the proposed ordinance. A summary of the proposed ordinance was sent to the Santa Ana Chamber of Commerce, the Hispanic Chamber of Commerce, the Vietnamese American Chamber of Commerce, the Black Chamber of Commerce and the Orange County Business Council for their review. Responses received to the proposed ordinance were supportive with an official letter of support from the Orange County Business Council (Exhibit 4).

Should the proposed ordinance be adopted, additional marketing and outreach will be undertaken to ensure that local businesses are aware of the opportunities provided by this ordinance. One example of this additional outreach would be the creation of an online business registry through the City's website where local businesses could sign up to receive RFPs or bid requests for particular categories of goods or services. Categories in the registry could include: engineering services, financial services, environmental services, office supplies, fleet, information technology and tools/equipment. The City would then send RFP's or bid requests to all businesses that expressed an interest in a particular category.

FISCAL IMPACT

Based on the information available regarding bids for materials, supplies, labor and equipment and requests for proposals, the estimated fiscal impact would be \$26,000 annually (Exhibits 5 & 6). It is important to note that while this fiscal impact represents the direct cost to the City as a result of paying higher contracts; it does not account for the numerous economic benefits that local preference ordinances have been shown to have on the local economy.

Based on 2010 contract information, a 25 percent increase in local vendors being awarded City contracts would have resulted in approximately \$280,000 additional dollars circulating in the local economy as a direct effect, with additional money entering the local economy through indirect and induced effects as discussed above.

APPROVED AS TO FUNDS AND ACCOUNTS:



Jay M. Trevino
Executive Director
Planning & Building Agency



Francisco Gutierrez
Executive Director
Finance & Management Services Agency

MF:rb

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- Exhibits
1. Charter Excerpt
 2. Local Preference Contract Value Restrictions
 3. Department of General Services Eligibility Requirements for Small Business Certification
 4. Letter of support from Orange County Business Council
 5. Fiscal Impact Calculations
 6. Fiscal Impact Comparisons

City Charter Excerpt

Sec. 421 – Non-public works contracts.

- (a) The City shall not be bound by any contract, unless the same shall be made in writing by order of the City Council, except as hereinafter provided, and signed by an officer on behalf of the City who has been authorized to do so by the City Council. The approval of the form of all contracts shall be endorsed thereon by the City Attorney, or his or her designated representative.
- (b) The City Council may by ordinance authorize the City Manager to bind the City on contracts for such amounts as may be established from time to time. At least quarterly, the City Manager shall place on the City Council agenda for information, a report of contracts let by the City Manager pursuant to authority granted hereby. That report shall include the identities of contractors and amounts of each contract.
- (c) The City Council shall establish by ordinance rules and procedures for competitive bidding for purchases of, or contracts for materials, supplies, equipment, or services, including exceptions from formal bidding as the City Council may deem appropriate, including providing for emergencies. Nevertheless, such rules and procedures shall provide, where feasible, for review of such alternative sources of such materials, supplies, equipment, or services, including professional services, as may be available in competition with one another and selection therefrom on the basis of obtaining maximum quality goods, services, or performance at minimum cost, and may provide for use of other public agency bidding and contracting processes where found to be otherwise consistent with this Charter. Nothing herein contained shall authorize any person to bind the City on any such contract if the same be a portion of a larger purchase or series of purchases which, in the aggregate, exceed the authority set by the City Council hereunder.

(Ord. No. NS-1405, 3-13-78, approved at election 6-6-78; Ord. No. NS-1642, 8-2-82, approved at election 11-2-82; Ord. No. NS-2715, 7-3-06, approved at election 11-7-06)

Sec. 422 – Public works contracts

- (a) For purposes of this section, "public works construction" shall be deemed to mean a project for the erection or improvement of public buildings, streets, drains, sewers, or parks. Maintenance and repair of public buildings, streets, drains, sewers, or parks shall not be considered as public works construction.
- (b) Every contract for public works construction in excess of that amount set from time to time by ordinance of the City Council pursuant to (c) below, shall be made by the City Council with the lowest and best bidder after publication for at least two (2) days in a newspaper of general circulation in the City of notice calling for bids and fixing a period during which such bids will be received, which shall be for not less than ten (10) days after the first publication of said notice, except where alternate contracting procedures are utilized pursuant to (c), below.
- (c) The City Council shall adopt by ordinance rules and procedures for competitive bidding for all public works contracts, which rules and procedures shall establish limits for public works contracts approved by the City Manager. Such rules and procedures shall establish criteria for thresholds for formal and informal bidding, and notice requirements therefor; standards for rejection of bids and dispensing with bidding; criteria and procedures for prequalifying bidders and contractors; and utilization of alternate project delivery systems such as design-build contracts. For purposes of this Article, "design-build" means a range of methods of procuring design and construction from a single source, where the selection of the single source occurs before the development of complete plans and specifications. Notwithstanding the foregoing, any rule permitting dispensing of bidding and/or performing work with City forces for any reason including an emergency shall require the affirmative votes of at least two-thirds (2/3) of the members of the City Council.

(Ord. No. NS-2715, 7-3-06, approved at election 11-7-06)

EXHIBIT 1

75B-7

Local Preference Contract Value Restrictions

City	Local Preference	Contract Amount Restrictions
San Francisco	5% - 15%	Under 10 Million
Long Beach	10%	100,000
Los Angeles	8%	1,000,000
Costa Mesa	5%	100,000
Concord	5%	100,000
Fresno	5%	500,000
Hayward	5%	Under \$200,000 = \$5,000
		\$200,000 - \$400,000 = \$7,500
		\$400,000 - \$750,000 = \$8,750
		over \$750,000 = \$10,000
San Juan Capistrano	3%	No limit
San Jose	5%	100,000
Santa Cruz	3%	Over \$10,000 and within 3% of lowest price
Thousand Oaks	5%	100,000
Lansing		500,000
Phoenix	2.5% - 5%	5% for contacts up to \$250,000
		2.5% for \$250,000 - \$500,000
Detroit	6% - 10%	10% for purchases up to \$10,000
		8% up to \$100,000
		6% up to \$500,000
Boise		Contracts over \$50,000
Kethickan, AK	10%	100,000

EXHIBIT 2

75B-8

California Department of General Services

Eligibility Requirements

In order for a small business to be eligible for certification, the small business must meet the following requirements:

- Be independently owned and operated;
- Not dominant in field of operation;
- Principal office located in California;
- Owners (officers, if a corporation) domiciled in California; and,
- Including affiliates, be either,
 - A business with 100 or fewer employees; an average annual gross receipts of \$14 million or less, over the last three tax years;
 - A manufacturer* with 100 or fewer employees; or,
 - A microbusiness. A small business will automatically be designated as a microbusiness, if gross annual receipts are less than \$3,500,000; or the small business is a manufacturer with 25 or fewer employees.

* For Small Business Certification purposes, a manufacturer is a business that is both of the following:

1. Primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products.
2. Classified between Codes 31 to 339999, inclusive, of the North American Industrial Classification System (NAICS) Manual, published by the United States Census Bureau, 2007 edition.

EXHIBIT 3

75B-9



**ORANGE COUNTY
BUSINESS COUNCIL**

2 Park Plaza, Suite 100 | Irvine, CA 92614-5904 | P 949.476.2242 | F 949.476.0443 | www.ocbc.org

January 26, 2012

RECEIVED
JAN 30 2012
SANTA ANA PLANNING DEPT

Mr. Jay Trevino
City of Santa Ana
Planning and Building Agency
20 Civic Center Plaza, M20
Santa Ana, CA 92702

Mr. Trevino:

On behalf of the Orange County Business Council (OCBC), I am writing to you regarding the City of Santa Ana's Local Preference Ordinance scheduled to be heard for the City Council's consideration on March 6, 2012.

I want to commend staff for their outside the box and innovative approach to promoting economic development on a local level. Through initiatives such as OCBC's "Turning Red Tape into Red Carpet Awards", OCBC has sought to honor and recognize the hard work of local governments throughout the county who have cut through red tape to create a more business-friendly environment in Orange County

As communicated to OCBC, the Santa Ana Local Preference Ordinance would establish a 4% preference for small Orange County Businesses, and a 7% preference for small Santa Ana businesses on all qualifying bids for materials, supplies, labor, equipment, or services. In addition, the local preference would only apply to all proposals/contracts between \$5,000 and \$100,000 where the City is not otherwise restricted from offering a preference due to funding source, the City Charter, State or Federal Law.

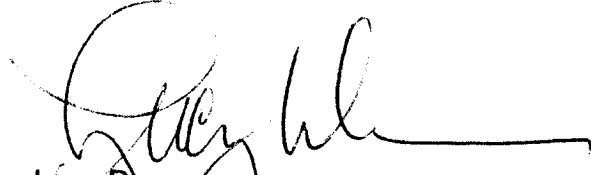
OCBC strives to champion a vibrant and competitive economic climate, particularly when it comes to the use of taxpayer dollars in the procurement process by public agencies. As such, OCBC would be supportive of an Ordinance which would allow for the use of local preference in occasions where competitive bids and proposals are deemed to be equal and meet all requirements set forth by the City.

EXHIBIT 4

Mr. Jay Trevino
January 26, 2012
Page 2

We applaud staff's efforts to promote local businesses in working to bolster economic activity in the Orange County community.

Sincerely,



Lucy Dunn
President and CEO
Orange County Business Council

LD:MP:bb

Local Preference Ordinance

- The City released **57** bids for materials, supplies, labor and equipment or requests for proposals in 2010.
- Of these, **31** would have been eligible for local preference based on the criteria established in the proposed ordinance
- Based on the analysis of a 20-contract sample by the Finance and Management Services Agency, a local preference of 7% would result in approximately 25% of contracts going to local businesses.

Fiscal Impact Calculations:

$$\frac{\text{Number of eligible contracts (31)}}{\text{Total value of eligible contracts (\$1,446,609)}} = \text{Average price per contract (\$46,664.81)}$$

$$\$46,664.81 \times 7\% \text{ preference} = \text{Average additional cost per contract (\$3,266.54)}$$

$$\# \text{ of eligible contracts (31)} \times \text{Estimated \% to local businesses (25\%)} = \mathbf{8 \text{ contracts}}$$

$$\begin{array}{rcl} \text{Number of local} & & \text{Average additional} \\ \text{business contracts} & \times & \text{City cost per contract} \\ (8) & & (\$3,266.54) \\ & & = \\ & & \text{Estimated additional cost per year} \\ & & \text{for Local Preference Program} \\ & & (\$26,132.32) \end{array}$$

* - Examples of contracts that would not be eligible include: Contracts over \$100,000, Public Works Construction contracts, cancelled bids, etc.

EXHIBIT 5

75B-12

Fiscal Impacts

Maximum Contract Amount	Number of qualifying contracts	Fiscal Impact
\$100,000	31	\$26,132.32
\$150,000	34	\$34,264.17
\$250,000	39	\$52,217.90

EXHIBIT 6

75B-13