

ORDINANCE #67321
Board Bill No. 274

AN ORDINANCE IMPLEMENTING CERTAIN PROVISIONS OF THE MISSOURI DOWNTOWN AND RURAL ECONOMIC STIMULUS ACT BY ESTABLISHING A COMMUNITY DEVELOPMENT CORPORATION REVOLVING FUND (THE "FUND"); AUTHORIZING THE APPOINTMENT OF A BOARD PURSUANT TO SECTION 99.939 OF THE REVISED STATUTES OF MISSOURI, AS AMENDED, TO ADMINISTER THE FUND; AUTHORIZING THE MAYOR OF THE CITY OF ST. LOUIS, ON BEHALF OF SAID CITY, TO APPLY TO THE MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT FOR ONE OR MORE GRANTS FOR DEPOSIT TO THE FUND; AUTHORIZING THE BOARD TO ESTABLISH BY-LAWS REGARDING ITS PROCEEDINGS; AUTHORIZING THE BOARD TO PERFORM DUTIES RELATED TO THE FUND AS AUTHORIZED BY MISSOURI STATUTE; APPROVING A DISADVANTAGED BUSINESS ENTERPRISE PROGRAM; AND CONTAINING A SEVERABILITY CLAUSE

WHEREAS, the City of St. Louis, Missouri (the "City"), is a body corporate and a political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of its charter, the Constitution and laws of the State of Missouri; and

WHEREAS, the Missouri Downtown and Rural Economic Stimulus Act, Sections 99.915 through 99.1060 of the Revised Statutes of Missouri, as amended ("RSMo") (the "Act") authorizes municipalities to encourage major development initiatives within designated portions of the municipality and further directs any city not within a county to establish by ordinance a Community Development Corporation Revolving Fund to exercise the powers set forth in the Act; and

WHEREAS, the Act also makes it possible for a community development corporation to access state funding for loans and/or grants for community economic development activities implemented by such corporations; and

WHEREAS, the City desires to create a Community Development Corporation Revolving Fund (the "Fund") and establish a board to administer the Fund, all in accordance with Section 99.939 RSMo, to exercise such powers set forth in the Act to enable the benefits afforded by such Act to be made available in the City; and

WHEREAS, Section 99.993 RSMo requires that any home rule city with more than four hundred thousand inhabitants and located in more than one county, any city not within a county, and any county with a charter form of government and with more than one million inhabitants approve a disadvantaged business enterprise program to be implemented by its downtown economic stimulus authority, which program shall require all businesses, vendors, and contractors working on projects undertaken by the authority to ensure enforcement of an equal opportunity employment plan and a minority and women-owned business program that is based on population and availability that contains specific worker ethnicity goals for each such business, vendor, and contractor, in accordance with applicable state and federal laws, rules, regulations, and orders; and

WHEREAS, the City desires to approve a disadvantaged business enterprise program to be implemented by its downtown economic stimulus authority in accordance with the Act.

BE IT ORDAINED BY THE CITY OF ST. LOUIS, AS FOLLOWS:

SECTION ONE. The Board of Aldermen of the City of St. Louis adopts the foregoing recitals as findings and further finds as follows:

- A. it is and would be in the best interest of the public to consider the establishment of the Fund in accordance with the Act; and
- B. the creation and administration of the Fund would be in the interest of the City of St. Louis.

SECTION TWO. Pursuant to Section 99.939 of the Revised Statutes of the State of Missouri, as amended ("RSMO"), there is hereby established a fund to be known as the "Community Development Corporation Revolving Fund" (the "Fund"). The Comptroller of the City of St. Louis is hereby authorized and directed to establish the Fund within the accounting system of the City of St. Louis, to deposit into the Fund any monies received from the State of Missouri for the benefit of the Fund, any interest earned on and any income generated from such monies, and any other monies made available to the Fund by appropriation, gift, grant,

bequest, contribution, or otherwise to carry out the purposes of Section 99.939 RSMo. The Comptroller is further authorized and directed to make disbursements from the Fund for grants and forgivable loans to community development corporations for community economic development activities implemented by such corporations pursuant to Section 99.939 RSMo and for no other purpose, upon evidence of approval of one or more specific grant and/or forgivable loans by and pursuant to specific instructions from the Community Development Corporation Revolving Fund Board established in Section Three hereof.

SECTION THREE: Pursuant to Section 99.939 RSMo, the Fund shall be administered by a Community Development Corporation Revolving Fund Board (the "CDCRF Board"), which shall consist of six (6) members appointed by the Mayor as chief elected official of the City of St. Louis, one (1) of which shall be a member of the Downtown Economic Stimulus Authority of the City of St. Louis (the "Authority") created pursuant to Ordinance 67097, three (3) of which shall be members of the local regional community development association, and two (2) of which shall be members of local business or financial organizations. Two (2) CDCRF Board members shall have initial terms of one (1) year, two (2) shall have initial terms of two (2) years, and two (2) shall have initial terms of three (3) years, as determined by the Mayor at the time of the appointments. Thereafter, successor CDCRF Board members shall be appointed by the Mayor as provided in this Section, shall serve terms of three (3) years and shall hold office until a successor is appointed. The Mayor is further hereby authorized to appoint the chair of the CDCRF Board and the members of the CDCRF Board are hereby authorized to elect officers from the membership of the CDCRF Board. A majority of the CDCRF Board members shall constitute a quorum of such CDCRF Board for the purpose of conducting business and exercising the powers of the CDCRF Board and for all other purposes. Action may be taken by the CDCRF Board upon a vote of a majority of the CDCRF Board members present. The CDCRF Board shall adopt by-laws governing the conduct of its proceedings consistent with applicable Statutes and with this Ordinance.

SECTION FOUR. The CDCRF Board is hereby authorized to exercise those duties, powers and functions authorized by Section 99.939 RSMo, as the same may be amended or revised from time to time, which duties, powers and functions shall include but not be limited to providing grants and/or forgivable loans to community development corporations in the City of St. Louis for community economic development activities implemented by such corporations in the City of St. Louis.

SECTION FIVE. It is hereby recognized that the requirements of Missouri Statutes as pertain to the number, qualifications, terms and manner of appointment of persons to serve on the CDCRF Board may, from time to time, be revised. The Mayor and such other persons as may be authorized to act with respect to appointments to the CDCRF Board under Missouri Statutes in the future are hereby authorized to act in accordance with Missouri Statutes, as from time to time revised, so that at all times hereinafter the CDCRF Board shall be and remain legally authorized to exercise the powers of a CDCRF Board under Missouri Statutes, without further action of this Board of Aldermen.

SECTION SIX. The Mayor of the City of St. Louis is hereby authorized to make the appointments referenced in Section Three above.

SECTION SEVEN. In accordance with Section 99.933 RSMo, the Board of Aldermen hereby adopts Executive Order #28 of the Mayor of the City, dated July 24, 1997, as amended by Executive Order #39 of the Mayor of the City, dated June 7, 2006, and as further amended, and the City of St. Louis DESA Authority Workforce Policy, attached hereto as Exhibit A and incorporated herein, collectively as the disadvantaged business enterprise program to be implemented by the Authority, acting through the St. Louis Development Corporation.

SECTION EIGHT. It is hereby declared to be the intention of this Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

EXHIBIT A

[City of St. Louis DESA Authority Workforce Policy]
CITY OF ST. LOUIS DESA AUTHORITY WORKFORCE POLICY

WHEREAS, Section 99.933 of the Revised Statutes of Missouri (the "Act") requires that any home rule city with more

than four hundred thousand inhabitants and located in more than one county, any city not within a county, and any county with a charter form of government and with more than one million inhabitants shall approve a disadvantaged business enterprise program to be implemented by the downtown economic stimulus authority. The program shall require all businesses, vendors, and contractors working on projects undertaken by the authority to ensure enforcement of an equal opportunity employment plan and a minority and women-owned business program that is based on population and availability that contains specific worker ethnicity goals for each such business, vendor, and contractor, in accordance with applicable state and federal laws, rules, regulations, and orders; and

WHEREAS, the City of St. Louis has in place a disadvantaged business enterprise program and that program has been adopted by the Board of Aldermen as the program to be implemented by the downtown economic stimulus authority, but the City of St. Louis does not have in place a program that contains specific worker ethnicity goals as required by the Act and procedures associated therewith; and

WHEREAS, in order to meet the requirements of the Act, the City of St. Louis Board of Aldermen has adopted this Policy, which is intended to secure an equal opportunity for minorities to be employed in the workforces of all businesses, vendors, and contractors working on projects undertaken by the Downtown Economic Stimulus Authority of the City of St. Louis ("DESA").

DESA AUTHORITY WORKFORCE POLICY

Section 1. REQUIREMENTS. DESA shall contractually require businesses, vendors and contractors working on DESA projects (either directly or through contracts entered into with the project developers) to do the following:

- exert a good faith effort to accomplish the Utilization Goals as set forth herein;
- comply with all reporting requirements;
- contractually require each contractor, subcontractor and assignee to comply with this Policy; and
- enforce such contractual provisions.

Section 2. DEFINITIONS:

Construction Services - Activities undertaken to complete the building of Project Improvements, including environmental remediation and demolition, but excluding Professional Services.

Developer - Any person or organization which enters into a Development Agreement.

Development Agreement - Any agreement between DESA and a business organization for the implementation of a development plan.

Development Project - Any development project established pursuant to a development plan that is approved by DESA pursuant to the Act.

DESA - The Downtown Economic Stimulus Authority of the City of St. Louis, created pursuant to the Missouri Downtown and Rural Economic Stimulus Act, Sections 99.915 to 99.1060 of the Revised Statutes of Missouri, and by Ordinance of the City of St. Louis, for the purpose of holding hearings and making recommendations to the Board of Aldermen of the City of St. Louis with respect to proposed development plans, and carrying out the responsibilities delegated to it by the Board of Aldermen.

DESA Representative - A representative designated by DESA, who shall make regular reports at DESA meetings regarding Developers' compliance with this Policy.

Minorities - Persons who are citizens or lawful permanent residents of the United States and who:

- a. Have origins in any of the Black racial groups of Africa ("Black Americans");
- b. Have origins in any of the peoples of Mexico, Puerto Rico, Cuba, Central or South America, regardless of race ("Hispanic Americans");

- c. Have origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent or the Pacific Islands ("Asian Americans"); or
- d. Maintain cultural identification through tribal affiliation or community recognition with any of the original peoples of the North American continent; or those who demonstrate at least one-quarter descent from such groups ("Native Americans").

Professional Services - Advisory or consulting activities including, but not limited to, architectural, engineering, legal, accounting, marketing, environmental studies, and financial services contracted for by any Developer necessary to complete Project Improvements, but excluding Construction Services.

Project Improvements - Those activities undertaken and facilities constructed in order to implement the provisions of a Development Plan pursuant to a Development Agreement.

Utilization Goals - The goals described in Section 3 of this Policy.

Workforce - Those persons employed to perform Construction Services.

All terms not otherwise defined herein, shall have the meaning set forth in the Development Agreement or in common usage.

Section 3. WORKFORCE UTILIZATION GOALS:

The following Workforce Utilization Goals for the participation of minority and female individuals in the workforce involved in the construction of the Development Project shall be the Workforce Utilization Goals for such Development Project and are hereby expressed as a percentage of the totals of hours worked by individuals employed in the Workforce, in each category below:

Workforce Percentages:

Minority Workers-Total All Non-Hispanic Ethnicities:	20.9%
Black American:	17.7%
Native American:	0.6%
Asian American:	1.9%
Other race:	0.7%
Hispanic American:	1.47%

Section 4. RECORDS AND REPORTS:

The Developer shall maintain such records as may reasonably be required in order to demonstrate Policy compliance including, but not limited to, documenting the good faith requirements set forth below, such records to be available for audit by the DESA Representative from time to time upon reasonable notice.

The Developer shall provide monthly and cumulative reports as set forth herein. Further, when requested, additional information requested by the DESA Representative will be provided in order to verify that the percentages submitted on reports are accurate. After the approval of any Development Plan or Project by DESA, the Developer shall notify the DESA Representative no later than thirty (30) calendar days prior to the commencement of any work under a Construction Services contract in furtherance of such Development Plan or Project. Thereafter, monthly reports must be completed by the Developer and forwarded to the DESA Representative on or before the 15th day of each month for any work performed in furtherance of a Development Plan or Project in the preceding month. If no work has been performed in such preceding month, such information shall be communicated to the DESA Representative in writing. In the sole discretion of DESA, for good cause shown, waivers of the monthly reports may be granted. Each monthly report shall detail and summarize the total construction hours worked and the total construction worker hours utilizing minorities, both for the month under report and cumulatively for each Development Project.

Section 5. COMPLIANCE:

Utilization Goals: A Developer shall be presumed conclusively to be in compliance with the workforce utilization goals set forth in Section 3 of this Policy if:

1. Each of the Utilization Goals set forth in Section 3 has been met on a monthly basis for each Development Project in which Construction Services have been utilized; or
2. In the event any of the Utilization Goals have not been met, the Developer has taken the following actions:
 - a. Requested in writing the assistance of the DESA Representative with respect to efforts to promote the utilization of minorities in the Workforce and acted upon the DESA's recommendation;
 - b. Advertised in Minority Trade Association Newsletter(s) and/or minority owned media at least 15 calendar days prior to the utilization of any Construction Services for each Development Project seeking employees appropriately describing the work available, pay scale, how to apply, etc., and maintained a log or copies of such ads showing the date of publication and identifying the publication; and
 - c. Contacted minority organizations. A list of such organizations will be provided by the DESA Representative upon request.

Records and Reports. A Developer shall be conclusively presumed to be in compliance with this Policy as it relates to records and reports if all records have been kept and reports have been timely made as set forth in Section 4.

Contractors, Subcontractors and Assignees. A Developer shall be conclusively presumed to be in compliance with this Policy if all agreements with contractors, subcontractors and assignees contain a provision requiring compliance with this Policy, as it may be amended from time to time, and appropriate measures have been taken to enforce such provisions.

For good cause shown, the requirements of this Section 5 may be waived or modified by DESA.

It is the responsibility of a Developer to demonstrate compliance with this Policy. The DESA Representative will monitor each Developer's compliance and make periodic reports to DESA relative thereto. It is not the responsibility of DESA or its representative to conduct any investigation or take any other action to verify a Developer's compliance.

It is sufficient if the overall goal for minorities has been met without regard to the specific "mix" of minorities.

Section 6. REMEDIES:

In addition to remedies set forth in the Development Agreement, if DESA finds, after due notice and hearing, the Developer has not made a good faith effort to comply with the Utilization Goals set forth herein and has failed to take the actions specified in paragraph 5.2 above, DESA may take such action as it deems appropriate, including but not limited to temporarily suspending development rights, ordering a cessation of development activity, noting such non-compliance in any future application by the Developer to DESA, and/or imposing liquidated damages payments as set forth in the next paragraph of this Section.

The Developer and DESA acknowledge that minorities are third party beneficiaries to the Development Agreement with respect to compliance with this Policy. Because the amount of harm caused to minorities by the Developer not exerting good faith efforts to meet the Utilization Goals set forth herein is uncertain, if not impossible, to determine, the Developer agrees to pay to DESA, if DESA so requires, liquidated damages in an amount not to exceed the fees and expenses incurred by DESA in investigating and determining that the Developer has not complied with this Policy, plus an amount not to exceed the additional amount of money that otherwise would have been spent to employ minorities in the Workforce had the respective Utilization Goals set forth herein been attained by the Developer. The liquidated damages shall not be a reimbursable Development Cost.

To the extent the Developer is in compliance with this Policy, the reasonable and necessary administrative expenses associated with determining compliance may be reimbursed as Development Project Costs.

Section 7. DEVELOPMENT AGREEMENT PROVISIONS:

Each Development Agreement shall include a provision requiring each Developer to comply with this Policy.

Approved: November 27, 2006