

# ENROLLMENT(S)

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# COUNCIL OF THE DISTRICT OF COLUMBIA

## NOTICE

### D.C. LAW 11-267

#### **"Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Act of 1997".**

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198 "the Act", the Council of the District of Columbia adopted Bill No. 11-995, on first and second readings, December 3, 1996 and January 7, 1997, respectively. Following the signature of the Mayor on January 24, 1997, pursuant to Section 404(e) of "the Act", and was assigned Act No. 11-534, and published in the March 21, 1997, edition of the D.C. Register (Vol. 44 page 1579) and transmitted to Congress on March 6, 1997 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 11-267, effective May 7, 1997.



LINDA W. CROPP  
Acting Chairman of the Council

#### Dates Counted During the 30-day Congressional Review Period:

Mar.	6,10,11,12,13,14,17,18,19,20,21
Apr.	7,8,9,10,14,15,16,17,21,22,23,24
May	1,2,6

AN ACT

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*Codification  
District of  
Columbia  
Code  
1997 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To reenact and amend, on a temporary basis, the provisions of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1992 to establish new size standards for small business enterprise categories, require an assessment every 3 years of the continued need for the local, small, and disadvantaged programs, establish a 2 tier set-aside program for small business enterprises, establish affiliated interest standards for small and disadvantaged business enterprises, and to amend the Minority Contracting Act of 1976 to authorize board members participation at Minority Business Opportunity Commission meetings by conference telephone.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Act of 1997".

Sec. 2. Findings.

*Note, Section  
1-1152.6*

The Council of the District of Columbia finds that:

(1) It is the policy of the government of the District of Columbia ("District") to ensure full and equitable opportunities for small and disadvantaged business enterprises to participate as prime contractors, subcontractors, and joint venture partners in the award of contracts for construction, supplies, and services by the government of the District.

(2) The District's public contracting process should be used to stimulate new employment opportunities for District residents, to assist in the development of existing District businesses, and to encourage businesses to locate and remain in the District.

(3) Programs that enhance the business opportunities and entrepreneurial skills of small business enterprises, disadvantaged business enterprises, and local business enterprises will serve the public interest because the growth and development of such businesses will expand the tax base of the District, will increase employment and job training, will have other

positive effects on the economic health of the District, and will serve to give more District residents a stake in our community.

(4) Significant numbers of small business enterprises, disadvantaged business enterprises, and local business enterprises have attempted to participate in the District's procurement process. While the level of such participation is the product of the District's considerable outreach efforts, it is clear that outreach efforts alone will not result in more such businesses actually being awarded contracts for construction, supplies, and services by the government of the District.

(5) A preference mechanism for bids submitted by local business enterprises and disadvantaged businesses will further the public policy of the District by facilitating the participation of such businesses in the District's procurement process. The bid preference mechanism will not exclude any prospective contractors. Rather, it will promote competition for District contracts and assist local and disadvantaged businesses in obtaining District contracts. The bid preference mechanism will also be applicable to joint ventures between local business enterprises and either disadvantaged businesses and nonlocal or nondisadvantaged businesses. The application of the bid preference mechanism to joint ventures will encourage the participation of local businesses and disadvantaged businesses as joint venture partners or subcontractors in the bids and proposals of businesses that are not local or disadvantaged businesses.

(6) Set-asides of District contracts for small business enterprises, where competition for such contracts will be limited to small business enterprises, are a means of achieving the public policy objective of promoting the growth and development of District-based small businesses.

(7) Limitations on access to bonding and insurance have impeded the efforts of small, local, and disadvantaged businesses to participate in District government contracting, and it is in the interest of the District to waive requirements, when advisable, for small, local, and disadvantaged businesses.

(8) The small business, local business, and disadvantaged business programs established according to this subchapter will work to achieve the public policy objectives of promoting the growth and development of such businesses and promoting the overall economic health of the District.

### Sec. 3. Definitions.

For the purposes of this act, the term:

(1) "Local business enterprise" means a business enterprise with its principal office located physically in the District of Columbia and which is licensed pursuant to Chapter 28 of Title 47 or subject to the tax levied under subchapter X of Chapter 18 of Title 47.

(2) "Small business enterprise" means a local business enterprise, or a business enterprise that has satisfied the requirements established in section 7(13), which is

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independently owned, operated, and controlled and which has had average annualized gross receipts or average numbers of employees (for the 3 years preceding certification) not exceeding the following limits:

Construction:

Heavy (Street and Highways, Bridges, etc.)	\$23 million
Building (General Construction, etc.)	\$21 million
Specialty Trades	\$13 million
Goods and Equipment	\$ 8 million
General Services	\$19 million
Professional Services:	
Personal (Hotels, Beauty, Laundry, etc.)	\$5 million
Business Services	\$10 million
Health and Legal Services	\$10 million
Health Facilities Management	\$19 million
Manufacturing Services	\$ 10 million
Transportation and Hauling Services	\$13 million
Financial Institutions	\$300 million in assets.

(3) "Disadvantaged business enterprise" means a local business enterprise, or a business enterprise that has satisfied the requirements established in section 7(13), owned, operated, and controlled by economically disadvantaged individuals.

(4) "Joint venture" means a combination of the property, capital, efforts, skills, or knowledge of 2 or more persons or businesses to carry out a single project.

(5) "Owned, operated, and controlled" means a business enterprise that is one of the following:

(A) A sole proprietorship owned, operated, or controlled by a District resident;

(B) A partnership, joint venture, or corporation owned, operated, or controlled by one or more District residents who own at least 51% of the beneficial ownership interests in the enterprise and who also hold at least 51% of the voting interests of the enterprise; or

(C) A sole proprietorship, partnership, joint venture, or corporation that may be owned, operated, and controlled by a non-District resident when one of the following factors is met:

(i) The majority of the enterprise's employees are District residents;

(ii) The majority of total sales or other revenues of the enterprise are derived from the transaction of business in the District of Columbia; or

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(iii) The enterprise is a local business enterprise as defined in this act.

(6) "Commission" means the District of Columbia Minority Business Opportunity Commission established by section 4 of the Minority Contracting Act of 1976, effective March 29, 1977 (D.C. Law 1-95; D.C. Code § 1-1143).

(7) "Agency" means an agency, department, office, or instrumentality of the District of Columbia government.

(8) "Enterprise zone" means an area within the District for which an application for designation as an enterprise zone has been submitted to or has been designated by the United States Secretary of Housing and Urban Development as an enterprise zone pursuant to 42 U.S.C. § 11501 et seq., or any similar area designated by the Mayor and Council under the provisions of Chapter 14 of Title 5.

(9) "Economically disadvantaged individual" means an individual whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business where such impairment is related to the individual's status as "socially disadvantaged." An individual is "socially disadvantaged" if the individual has reason to believe the individual has been subjected to prejudice or bias because of his or her identity as a member of a group without regard to his or her qualities as an individual.

Sec. 4. District government contracting with local business enterprises; quarterly agency reports on contracts; Council review of goals.

(a) Each agency of the District, including those agencies that contract a portion of their procurement through the Department of Administrative Services unless otherwise determined by the Commission, shall:

(1) Allocate its construction contracts in order to reach a goal of 50% (or such other goal as may be determined by the Commission under the provisions set forth below) of the dollar volume of all construction contracts to be let to small business enterprises;

(2) Allocate its procurement of goods and services, other than construction, in order to reach the goal of 50% (or such goal as may be determined by the Commission under provisions set forth below) of the dollar volume to small business enterprises;

(3) Allocate 5% of its contracts to prime contractors that agree to subcontract a portion of the contract work with local or disadvantaged business enterprises; and

(4) Provide quarterly reports to the Commission within 30 days after the end of a quarter specifying with respect to the contracts and subcontracts subject to the provisions of this section:

(A) The means by which it intends to implement the programs provided in section 5 during the next 12 months;

(B) The dollar percentage of all contracts and subcontracts it has let

during the quarter which were let to local business enterprises, disadvantaged business enterprises, and small business enterprises;

(C) The dollar volume of contracts and subcontracts let during the quarter to local business enterprises, disadvantaged business enterprises, and small business enterprises; and

(D) A description of its past and current activities under section 5.

(b) Upon receipt of the semi-annual report from the Commission, the Council shall review the goals set forth under this section and consider appropriate amendments to this subchapter. Every 3 years following the effective date of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1997, the Council shall also review the goals, intent, and purpose of this act to assess the continued need for the local, small, and disadvantaged business enterprise programs.

Sec. 5. Assistance programs for local business enterprise contractors, disadvantaged business enterprise contractors, and small business enterprise contractors.

(a) To achieve the goals set forth in section 4, programs designed to assist contractors who are certified as local business enterprises, disadvantaged business enterprises, or small business enterprises shall be established by regulations issued by the Mayor pursuant to section 8. Such programs shall be implemented by each agency within 10 days of March 17, 1993. Local, small, and disadvantaged business enterprises shall not be limited to bidding only on contracts within these programs.

(b) The Mayor shall include among these programs a bid preference mechanism for local business enterprises and disadvantaged business enterprises and a two-tier small business set-aside program at the contract level, which shall include a separate set-aside program for small business enterprises with gross revenues of \$1,000,000 or less, which shall provide that a business becomes ineligible for participation in this set-aside program when the business has gross revenues in excess of \$1,000,000 for 2 consecutive years, and a separate set-aside program for all small business enterprises, and for local and disadvantaged business enterprises at the subcontracting level. In evaluating bids and proposals, agencies shall award preferences, in the form of points (in the case of proposals) or a percentage reduction in price (in the case of bids) as follows: (i) 5 points or 5% for local business enterprises; (ii) 5 points or 5% for disadvantaged business enterprises; and (iii) 2 points or 2% for businesses located in enterprise zones. A bid or proposal may be entitled to any or all of the above preferences for which it is qualified.

(c) A prime contractor certified by the Commission shall perform at least 50% of the contracting effort, excluding the cost of materials, goods, and supplies, with its own organization and resources, and if it subcontracts, 50% of the subcontracted effort excluding the cost of materials, goods, and supplies shall be with certified local, disadvantaged, or small business enterprises. The contract will include a certified statement to this effect. Waivers of the

above requirements may be given in writing by the Director of the Office of Human Rights and Minority Business Development.

(d) For construction contracts of up to \$1,000,000, a prime contractor certified by the Commission shall perform at least 50% of the on-site work with its own work force, excluding the cost of materials, goods, supplies, and equipment, and, if it subcontracts, 50% of its subcontracts, excluding the cost of materials, goods, supplies and equipment, shall be with certified local, small, or disadvantaged business enterprises. The bid document shall contain a certification form to be signed by all bidders to this effect. Waivers of the above requirements may be given in writing by the contracting officer but only with the written approval of the Director of the Office of Human Rights and Minority Business Development.

Sec. 6. Certificate of registration.

(a) Notwithstanding any other provisions of law, no enterprise shall be permitted to participate in the program established under section 5 unless it has been issued a certificate of registration under the provisions of this subchapter or has self-certified pursuant to regulations issued pursuant to this subchapter. Eligibility criteria for certification under this subchapter shall include the following:

- (1) Written evidence that the applicant is:
  - (A) A bona fide local business enterprise;
  - (B) A bona fide disadvantaged business enterprise;
  - (C) A bona fide small business enterprise; or
  - (D) A bona fide local business enterprise located in an enterprise zone;
- (2) Compliance with the regulations set forth in subsection (b) of this section;

and

(3) Fulfillment of such other criteria as the Commission may require by regulation.

(b) Any enterprise seeking to be registered as a local business enterprise, a disadvantaged business enterprise, or a small business enterprise in the District shall make and file with the Commission a written application as may be prescribed, which shall include a certification of the correctness of the information provided. The applicant shall be required to furnish evidence of eligibility, ability, character, and financial position, which may be the applicant's most recent financial statement (as of no more than 90 days prior to the application date). If the information provided in the application changes, the applicant must report the change to the Commission. If the information submitted is satisfactory to the Commission, the Commission shall issue the applicant a certificate of registration to engage in the programs established under section 5.

(c) A certificate of registration shall expire 2 years from the date of approval of the application.

(d) The Commission may revoke or suspend the certificate of registration of any



enterprise registered who is found guilty of any of the following conditions:

- (1) Fraud or deceit in obtaining the registration;
- (2) Furnishing of substantially inaccurate or incomplete ownership or financial information;
- (3) Failure to report changes which affect the requirement for certification;
- (4) Gross negligence, incompetence, financial irresponsibility, or misconduct in the practice of a trade or profession; or
- (5) Willful violation of any provision of this subchapter or regulations adopted pursuant to this subchapter.

(e) Any person may file with the Commission a complaint alleging a violation of this subchapter against any applicant for registration or contractor registered pursuant to this subchapter. The complaint shall be in writing and sworn to by the complainant. The Commission may, without a hearing, dismiss a complaint which is frivolous or otherwise without merit. Any hearing shall be heard within 3 months of the filing of the complaint. The Commission shall determine the time and place for the hearing. The Commission shall cause to be issued and served on the person or organization alleged to have committed the violation, hereinafter called the respondent, a written notice of the hearing together with a copy of the complaint at least 30 days prior to the scheduled hearing. Notice shall be served by registered or certified mail, return receipt requested, or by personal service. At the hearing the respondent shall have the right to appear personally or by a representative and to cross-examine witnesses and to present evidence and witnesses. The Commission shall have authority to issue subpoenas requiring the attendance of witnesses and to compel the production of records, papers, and other documents. If, at the conclusion of the hearing, the Commission determines that the respondent has violated the provisions of this subchapter, the Commission shall issue, and cause to be served on the respondent, a decision and order, accompanied by findings of fact and conclusions of law, requiring the respondent's registration to be revoked or suspended, or take any other action as it deems appropriate.

(f) In addition to the penalties provided in subsection (e) of this section, the Corporation Counsel may bring a civil action in the Superior Court of the District of Columbia against a business enterprise and the directors, officers, or principals that it is reasonably believed have obtained certification by fraud or deceit or have furnished substantially inaccurate or incomplete ownership information to the Commission. A business enterprise or individual found guilty under this subsection shall be subject to a civil penalty of not more than \$100,000.

(g) The Commission may at any time reissue a certificate of registration to any firm or joint venture whose certificate has been revoked, provided 4 or more members of the Commission vote in favor of reissuance. The Commission may consider whether the firm should be required to submit satisfactory proof that conditions within the company which led to the violation have been corrected.

Sec. 7. Functions of the Commission.

The Commission shall:

- (1) Establish procedures and guidelines for the implementation of the programs established pursuant to this subchapter;
- (2) Determine which local business enterprises, disadvantaged business enterprises, small business enterprises, or joint ventures will be eligible for certification under this subchapter and establish criteria to identify those enterprises and joint ventures which will be given priority consideration for government contracts;
- (3) Review the procurement plans of each agency of the District government and determine, if it deems appropriate, which contracts, or parts thereof, shall be reserved for the programs established under section 5. Where an agency has failed to meet the goals set forth in section 4, the Commission shall reserve portions of the agency's contracts to be performed in accordance with the programs established under section 5, so that such agency's failings shall be timely remedied;
- (4) Consider agency requests for adjustment of goals in particular instances, provided, that the Commission report to the Mayor and the Council, on a semi-annual basis, recommendations for changes of the goals under section 4, on an agency basis if appropriate, and accompanied by necessary supporting data;
- (5) Determine that portion of the dollar amount of a joint venture which may be attributed toward an agency's percentage goal;
- (6) Recommend that an agency waive bonding in excess of the standard waiver provided in section 1 of An act To require that contracts for construction, alteration, or repair of any public building or public work of the District of Columbia be accompanied by a performance bond protecting the District of Columbia and by an additional bond for the protection of persons furnishing material and labor, and for other purposes, approved August 3, 1968 (82 Stat. 628; D.C. Code § 1-1104), and An Act In relation to contracts with the District of Columbia, approved June 28, 1906 (34 Stat. 546; D.C. Code § 1-1107), where such a waiver is appropriate and necessary to achieve the purposes of this act;
- (7) Recommend that an agency make advance payments to a certified contractor or to subdivide a contract into smaller parts where the Commission has determined that such payments or such subdivisions are necessary to achieve the purposes of this subchapter. Subdivision may be recommended in order to fall within the \$100,000 bond exemption provided by An Act In relation to contracts with the District of Columbia, approved June 28, 1906 (34 Stat. 546; D.C. Code § 1-1107), where feasible;
- (8) Review bids in the small business enterprise set-aside arrangements established under section 5 and may authorize agencies to refuse to let a contract where the Commission determines that bids for a particular contract are excessive;
- (9) Maintain contacts with the business community (financial institutions and bonding companies) and elicit cooperation for economic development for the District;

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(10) Review contracting problems and make further recommendations that increase small, local, and disadvantaged contractor participation with the District government. Recommendations shall include, but not be limited to, improved schedules that ensure prompt payment to contractors, special geographic radii requirements on certain contracts, innovative contract advertising procedures, the encouragement of joint ventures, and advising the Mayor on methods to be utilized to ensure participation;

(11) Review and determine the continued eligibility of contractors certified by the Commission;

(12) Insert in bid solicitations for procurement of property or services, a provision limiting advance or progress payments to local, small, and disadvantaged business enterprises, to provide that payments may not exceed the unpaid contract price;

(13) Determine that a small or disadvantaged business enterprise without a principal office physically located in the District is a small or disadvantaged business enterprise, if the business enterprise meets 4 of the following criteria:

(A) The principal office of the business is located in the Washington Standard Metropolitan Statistical Area;

(B) More than 30% of the assets of the business are located in the District;

(C) More than 50% of the employees of the business are residents of the District;

(D) The owners of more than 50% of the business are residents of the District;

(E) More than 30% of the total sales or other revenues are derived from the transactions of the business in the District; or

(F) Other factors evidencing close economic ties to the District.

(14) Determine according to rules adopted by the Mayor that a small business enterprise affiliated with other business enterprises through common ownership, management, or control is a small enterprise if:

(A) The consolidated financial statements of the affiliated companies do not exceed the limits established by section 3(2); and

(B) In the event of a parent-subsidary affiliation, the parent company qualifies for certification as a small business;

(15) Determine according to rules adopted by the Mayor that a disadvantaged business enterprise affiliated with other business enterprises through common ownership, management, or control is a disadvantaged business enterprise, provided that, in the event of a parent-subsidary affiliation, both enterprises meet the requirements of section 3(3); and

(16) Whenever a small business enterprise is affiliated with a business that is in a different line of business, paragraph (14) of this subsection shall not be applicable, and such affiliates shall be eligible for certification as a small business enterprise if it meets the

requirements of section 3(2).

Sec. 8. Rules and regulations by Mayor.

The Mayor shall issue regulations to implement this act, including rules that establish a procedure to provisionally certify, self-certify, or to challenge the certifications that a business enterprise is a small, local, or disadvantaged business enterprise.

Sec. 9. Section 5 of the Minority Contracting Act of 1976, effective March 29, 1977 (D.C. Law 1-95; D.C. Code §1-1144), is amended as follows:

(a) The last sentence in subsection (c) is amended by striking the phrase "those present" and inserting the phrase "the members participating at the meeting" in its place.

"(c-1) "The Commission may permit members to participate in meetings for the certification of joint ventures by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the members to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time, and members of the public attending the meeting are able to hear any member of the Commission who speaks during the meeting.".

Sec. 10. Fiscal impact statement.

(a) A general statement of the effects the measure will have on the operating and capital budgets for the current and next (5) fiscal years: NONE.

(b) A quantitative estimate of the expenditures needed to implement the measure: NONE.

(c) An identification of the revenues and funds currently available, or likely to be available from existing revenue sources to implement the measure if it is to be implemented within the current fiscal year: NONE.

(d) A statement of the extent to which current appropriations are available to finance implementation of the measure if it is to be implemented within the current fiscal year: NOT APPLICABLE.

(e) An identification of the specific source of revenues to be recommended in the forthcoming fiscal years to implement the measure if the cost of implementation is estimated to exceed \$100,000: NOT APPLICABLE.

Sec. 11. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995

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(109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 255 days of its having taken effect or upon the effective date of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1997, whichever occurs first.

A handwritten signature in black ink, appearing to read "Charles Allen Turner", is written over a horizontal line.

Chairman Pro Tempore  
Council of the District of Columbia

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Mayor  
District of Columbia



## COUNCIL OF THE DISTRICT OF COLUMBIA

## COUNCIL PERIOD TWELVE

## RECORD OF OFFICIAL COUNCIL VOTE

Docket No.

B11-995

| | ITEM ON CONSENT CALENDAR

|X ACTION &amp; DATE

ADOPTED FIRST READING, 12-3-96

|X VOICE VOTE

APPROVED

RECORDED VOTE ON REQUEST

ALL PRESENT

ABSENT

| | ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - Indicates Vote AB - Absent NV - Present not Voting

CERTIFICATION RECORD

*[Signature]*  
Secretary to the Council

*January 13, 1997*  
Date

| | ITEM ON CONSENT CALENDAR

|X ACTION &amp; DATE

ADOPTED FINAL READING, 1-7-97

|X VOICE VOTE

APPROVED

RECORDED VOTE ON REQUEST

CHAIRMAN CLARKE

ABSENT

| | ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Evans					Smith, Jr.				
Allen					Jarvis					Thomas, Sr.				
Brazil					Mason									
Chavous					Patterson									
Cropp					Schwartz									

X - Indicates no AB - Absent NV - Present not voting

CERTIFICATION RECORD

*[Signature]*  
Secretary to the Council

*January 13, 1997*  
Date

| | ITEM ON CONSENT CALENDAR

| | ACTION &amp; DATE

| | VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT

| | ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Evans					Smith, Jr.				
Allen					Jarvis					Thomas, Sr.				
Brazil					Mason									
Chavous					Patterson									
Cropp					Schwartz									

X - Indicates Vote AB - Absent NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date