



**Report on the City of New Haven Ordinance 12½
Resident Hiring on City Funded Construction
Projects and Ordinance 12¼ Small Contractor
Development on City Funded Construction
Projects**

DRAFT

Submitted to the Task Force of the Board of Alders
on Ordinance 12½ and 12¼

**New Haven, Connecticut
April 1, 2021**



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I. Executive Summary

This report draws a list of findings and recommendations from the following inquiries:

- Study of the Ordinances, their legislative history, and the legal history underpinning their foundations.
- Participation in a Virtual Town Halls on September 29, 2020 and February 9, 2021 to hear the perspectives of various stakeholders interested in the performance of the two Ordinances.
- Post-Town Hall interviews with other stakeholders, including City employees, small and minority business owners, community leaders, union leaders, and owners of large non-minority construction firms.
- Analysis of available data describing MBE, WBE, and SBE contractor utilization and minority and women employment utilization on City of New Haven funded construction projects.
- Participation in multiple joint meetings with the 12¼ and 12½ New Haven Task Force on Ordinances 12½ and 12¼.

Initial analysis uncovered a few key indicators of Ordinance performance:

- Ordinances 12 ¼ and 12 ½ are well written and demonstrably based on the relevant principles and facts regulating best practices in similar types local government affirmative action programs circa 2000.
- New Haven Constituents hold four major concerns held as the basis for further analysis:
 - Minorities and women are not receiving a fair share of the City of New Haven construction employment.
 - Hispanic individuals are over-represented on construction worksites.
 - Non-Connecticut Hispanic individuals are taking New Haven Hispanic residents' jobs.
 - White WBEs are fronts for male relatives and thus taking contracts away from "legitimate" SCD firms.

Procurement data revealed that:

- While SCD spending is largely on par with program goals, the vast majority of SCD spending is disproportionately distributed to a few of 123 total SCD firms.
- While program performance varies year to year, a relatively small number of SCD Minority and Women Business Enterprises (M/WBE) firms successfully win contracts compared to total available opportunity. These firms account for less than 10% of total City construction spending, a main grievance of program participants.

- While the Hispanic proportion of construction employment is commensurate with their population share, Blacks and women are underutilized in construction trades.

Analysis indicated room for improvement in a few key areas:

Recommendations for Ordinance 12 ½

1. The City of New Haven should enact a bid price preference for contractors meeting goals of Ordinance 12 ½.
2. The City should implement employment training & skills development programs.
3. The City should improve enforcement of sanctions on firms not complying with Ordinance 12½.
4. The City should use Project Labor Agreements (PLAs) to create goals and objectives to winning prime contractors on large projects to increase participation of City residents in union and non-union employment opportunities.

Recommendations for Ordinance 12 ¼

1. The City should improve enforcement of sanctions on firms not complying with Ordinance 12 ¼.
2. The City should give Ordinance 12¼ programs preference to New Haven based firms and open the program to Minority firms located in other geographic areas of the state.
3. New Haven County businesses who qualify for the SCD program can participate in City of New Haven SCD opportunities. At present, there is no reciprocity for New Haven city-based firms seeking business in the county. The City should engage other municipalities in New Haven County to increase opportunities for New Haven based SCD firms in those towns.
4. The City should enhance its SCD training and development program, focusing on leadership, strategic planning, bidding, and back-office operation skills.
5. The City should better promote opportunities for SCD firms; for example, trade fairs connecting successful prime contractors with SCD firms.
6. The City should use Project Labor Agreements to assure greater utilization of SCD firms on large projects as sub-contractors.

II. Objectives of the Study

BJM Solutions is an economic consulting firm with over 30 years of experience helping large and small municipalities and large corporations improve their supplier diversity programs. We were hired by the City of New Haven to assess the performance of Ordinances 12¼ and 12½. Ordinance 12¼ sets targets for the city's utilization of minority and women-owned small businesses, and Ordinance 12½ is designed to increase the representation of minorities and women in the construction workforce.

One of the first items discussed in the 12¼ Code of Ordinances is a declaration that “The City of New Haven is committed to developing and nurturing a competitive local construction industry in which contractors for publicly financed projects provide efficient, high-quality services, pay competitive wages to their employees, and represent New Haven's ethnic diversity”.ⁱ These goals are not always easy to reach simultaneously, and it is not surprising that the City is faced with a construction industry whose small business enterprises (SBEs), especially minority-owned businesses (MBEs) and women-owned businesses (WBEs), feel as though they do not have a fair opportunity to obtain contracts, and therefore have limited room to grow. While the objective of helping small, minority-owned, and women-owned businesses and prospective employees in New Haven, Connecticut compete for city construction contracts and jobs without unfair disadvantage is notable; this challenge is further compounded by the requirement that both Ordinances comply with general principles of public governance and law. Thus, the Ordinances were crafted so as not to violate any legal restrictions that protect the rights of non-minority construction firms or non-minority workers. This report uses an understanding of this balance to assess the performance of these programs and offers feasible recommendations for improving them to reach sustained success.

III. Methodology for Assessment

In producing this report with the City of New Haven, we assessed the Ordinances from five perspectives:

- The Ordinances themselves—their wording, legislative history, and the legal history underpinning their foundations.
- Two Virtual Town Halls (held September 29, 2020 and February 9, 2021) offering the perspectives of various stakeholders interested in the performance of the two Ordinances.
- Post-Town Hall interviews with additional stakeholders including City employees, small and minority business owners, community leaders, union leaders, and owners of large non-minority construction firms.
- Joint meetings with the 12¼ and 12½ New Haven Task Force on Ordinances 12½ and 12¼.
- Analysis of available data describing MBE, WBE, and SBE contractor utilization and minority and women employment utilization on City of New Haven funded construction projects.

IV. Legislative History and Legal Analysis of Ordinances 12¼ and 12½

Ordinances 12 ½ and 12 ¼ pull predominately from a model of affirmative action plans that aim to remedy past City discrimination practices that excluded minority groups and women from participating in various employment and business contracting opportunities.¹ Court decisions emanating from legal challenges to initial affirmative action programs nationwide have forced the programs to evolve so as to promote the desired goals without infringing on the rights of non-minorities interested in government employment and business opportunities. To understand the opportunity these Ordinances present, to measure their current impact, and ultimately, to offer recommendations for continued success, it is important to understand their history and the level of authority they wield. This section briefly summarizes the development of the Ordinances and discusses some crucial legal restrictions that affect how such affirmative action plans can be designed and administered.

A. Establishing a Foundation for the Ordinances

New Haven's institutionalization of affirmative action in employment policies and, later, in City contracting with businesses follows a pattern that largely draws from national events.² In response to immense social unrest across the United States, New Haven Mayor Richard C. Lee appointed a Human Rights Committee in 1963 to explore discrimination within the City and make recommendations for the creation of an anti-discrimination Ordinance. This Committee found considerable inequality of opportunity between Whites and non-Whites arising from (1) discrimination on the basis of color, and (2) differential opportunities based on minimal technical knowledge, both understood to be legacies of past racial discrimination in which the City had been both passively and actively engaged in its contracting practices and in its public schools.ⁱⁱ In response to these findings, the Committee drafted the Equal Opportunities Ordinance, creating the Commission on Equal Opportunities. (CEO). Enacted in 1964 as Chapter 12 ½ of the New Haven Municipal Code, the Commission was charged with:ⁱⁱⁱ

- “...[taking] official local action...to promote and assure equality of opportunity for all residents of the city....”
- “...[repairing] the consequences of past denials of equal opportunities, and [preventing] such denials in the future....”

¹ Minority groups traditionally targeted for affirmative action are mostly defined on the basis of race, color, religion, creed, age, and national origin, with recent expansions to sex, marital status, ancestry, and disability status.

² Given its very public reckoning with issues of equality, the Civil Rights Movement pushed the Federal government to become a vehicle for establishing economic opportunity among historically disadvantaged communities. In 1964, President Lyndon B. Johnson signed the Civil Rights Act into law, a hallmark piece of anti-discrimination legislation. Title VII of the Act specifically prohibited employment discrimination in the form of disparate treatment (intentional racial discrimination) and disparate impact (actions with a disproportionately adverse effect on minorities, even if unintentional). Later, to more explicitly push against discrimination in the construction market, President Nixon signed Executive Order 1478, requiring both construction contractors and subcontractors of the Federal government to take and provide proof of “affirmative action” to meet broadly defined “goals” of increasing minority employment. These goals were largely in the form of “set asides,” requirements that a certain percentage of Minority Business Enterprises (MBEs) receive government contracts; a model that has since been adopted by all levels of government, including the municipality of New Haven.

- “[...][administering] and [enforcing] the city’s equal contract opportunity programs” via “a contract compliance office, headed by a contract compliance director.”

thereby forming the foundation for the introduction of Affirmative Action plans into the City’s Municipal Code.

B. Understanding the Legal Framework for the Ordinances

To understand why the current structures of the Ordinances are as they are, and to appreciate the legal context governing the kinds of recommendations that can be set forth in this report, we only need understand the 1992 Federal Court Ruling *Associated General Contractors v. City of New Haven*, which held an earlier version of Chapter 12 ¼ to be unconstitutional. Doing so, requires a brief exploration of the constitutional principles regulating affirmative action programs (Note: A fuller summary of pertinent constitutional law in this area can be found in Appendix A).

Although it is commonly acknowledged that local governments have a legitimate interest in rectifying past discrimination, there is considerable disagreement over how to achieve this goal. Court reviews of group-based hiring or business contracting policies (particularly as applied to the actions of states and localities) mandate heightened scrutiny of the programs, requiring the showing of a *strong basis in evidence* that remedial actions will serve a *compelling state interest*. State localities cannot simply establish a ‘quota’ for Minority Business Enterprises (MBEs) or Woman Business Enterprises (WBEs) as prime and subprime contractors. Nor can they do so in general employment practices. In remedying historic instances of discrimination, the City must instead utilize discretion to balance the rights to “due process” and “equal protection” afforded to both minority and non-minority groups.

When constructing affirmative action utilization programs or assessing their performance within this legal framework, vague claims of minority underutilization cannot be used to validate the use of race or gender-based quotas in the eyes of the law. Instead, grounding for these Ordinances needs to be tied to specific data and other credible evidence drawn from the New Haven region. The current Ordinances have been amended in accordance to a 1992 utilization study contracted by the City and performed by a private expert in the field. Pursuant to that study, current Ordinance goals for employment and business utilization of minorities and women are based on the measured availability of firms in the prime and subprime market. These standards should be subjected to continued review.

In response to the utilization study completed during 1992, New Haven’s Ordinance 12 ¼ was expanded to include Small and New Business Enterprises (SNBEs) of which minority business enterprises may make a sizeable part, thereby mitigating risk of failing a heightened scrutiny review because of goals based solely on race-based classifications. Further limitation on infringement of non-minority groups comes from provisions in Ordinance 12 ¼ which only reserves competitive bidding to SCD contractors on projects of certain project values; thereby limiting gubernatorial influence over competitive practices. At the same time, construction contracts must demonstrate efforts to achieve minority subcontractor goals.^{iv} The legal drafting of these Ordinances meets the demands posed by past judicial challenges and thus, our assessment is centered around concerns of whether the original intentions of their creation are preserved.

Ordinances 12 ¼ and 12 ½ are well written and demonstrably based on relevant principles and facts regulating best practices in similar types local government affirmative action programs circa 2000. We see no need for any major revisions of the Ordinances and our recommendations will focus on

City administration of the Ordinances and suggested new programs that have evolved among best government practices since 2000.

C. The Current State of the Ordinances

Article II of Section 12 ½ was enacted to focus specifically on minority participation in the construction trades. The article, originally passed in 1974, oversees procurement for public construction contracts requiring that:

- City construction projects of at least \$50,000 or an annual aggregate value of at least \$250,000 feature minority³ contractor participation.
- Subprime contracts valued at \$25,000 or more retain labor from trade unions with personnel plans in accordance with the goals stated in the Article.
- Contractors with a value of more than \$500,000 enact minority/women training programs.

To provide greater opportunities to small minority contractors, the City established a set aside program as Chapter 12 ¼ in 1990, directing construction contractors or developers to make:

"maximum practicable efforts to ensure that four (4) percent of the construction costs [where they exceed \$75,000] shall be set aside for subcontractors which are certified as [WBEs], and that ten (10) percent of the construction costs shall be set aside for subcontractors which are certified as disadvantaged business enterprises [DBEs].⁴"

However, the contract process proved cumbersome for small organizations to navigate. Thus, in 2001, in response to further research showing a need to help small, minority, and women-owned construction enterprises receive city contracts, the Board of Alderpersons adopted Section 12 ¼ of the New Haven Code of Ordinances, creating the Small Contractor Development (SCD) Program. This program helps small and minority contractors procure city construction contracts through outreach to underutilized firms, bidding opportunities, and training and support initiatives, all of which aim to help these firms grow and compete against larger firms. According to the program manager, a business must be registered and verified in order to complete work as part of the 12 ¼ program. Once verified, they must complete the procurement process, and are awarded a bid if they are the "lowest responsible bidder".^v The program is arranged to where SBEs are essentially set in a bidding bubble and only compete with one another for set asides, rather than competing against larger contractors. Currently, competitive bidding on projects is restricted to SCD contractors for projects valued under \$150,000. Within that, contracts valued under \$50,000 are subject to an informal bidding process where department heads select three contractors (2 of which must be registered MBEs or WBEs). Contracts worth more than \$50,000 but less than \$150,000 are subject to an open bid. Additionally, any construction contracts valued over \$150,000 must demonstrate efforts to achieve a 25% minority subcontractor goal. The program monitors invoices to ensure that "prompt payment... within 30 days" is received by contracted firms.^{vi}

New Haven has implemented utilization goals in order to achieve the public sector they want. As of November 2020, The City's construction contract hiring levels are:^{vii}

³ This provision initially referred to minority workers (defined as Blacks and Hispanics) and businesses but was extended to female workers and businesses in 1983. Definitions for MBEs and WBEs require they be 51% owned by minorities or women respectively.

⁴ Set-aside thresholds have since changed

- 10% of contracts and 10% of subcontracts for African American-owned firms.
- 2.5% of contracts and 6% of subcontracts for Hispanic-American owned firms.
- 11% of contracts and 15% of subcontracts for Women-owned firms.

These goals encourage prime contractors to practice “good faith efforts” and try to hire MBEs or WBEs as subcontractors, or risk being fined unless waived.^{viii}

To remain in accordance with current circumstance, these goals are expected to be revised regularly based on items such as “the percentage of minority and women group population to the total population in New Haven, the availability of minority group and women group personnel, the training requirements for potential minority group and women group construction trade workers, and conditions of the construction labor market in the New Haven area.”^{ix}

There are a few exceptions to this process. If the state or federal government funds the project, then the City must follow the structure of the state or federal governments respectively. Additionally, if there are no options available for hiring in so far as “good faith efforts” have been demonstrated. There are also exceptions for emergencies and extenuating circumstances. Lastly, the Board of Alders is allowed to make exceptions.^x

V. Stakeholder Interview Sentiment Analysis

BJM Solutions participated in two Virtual Town Halls about the Ordinances and conducted stakeholder interviews between October 2020 and November 2020 to capture a wholistic view of the Ordinances (See Appendices B and C for summaries). The stakeholder’s views expanded the understanding of how the Ordinances are applied and work in practice beyond the Ordinances’ theoretical goals. Stakeholder views and opinions on SBEs, MBEs and WBEs, as well as employment of under-represented city residents in the construction industry in the City of New Haven were analyzed using a material-semiotic framework.

A material-semiotic framework evaluates qualitative sentiments to make both rational and emotional drivers, actionable. The approach is holistic, revealing the interplay between hard goals (which are material, objective, and logical) and soft goals (which are semiotic, subjective, and emotional). This framework maps the stakeholder’s stated impact with the objective benefits of the Ordinances, providing a means of further assessing the Ordinances’ impact and opportunities. A summary of this analysis can be found in the Appendix D.

Based on the overarching themes of the interviewees’ statements, BJM categorized sentiments into three key areas: regulatory barriers, viable business entity and skilled and unskilled labor. The stakeholder interviewees were City employees, small and minority business owners, community leaders, union leaders, and owners of large non-minority construction firms.

While additional opinions and concerns shared by stakeholders can be found in the Appendices, constituent sentiment may be distilled into a few major concerns:

- Minorities and women are not receiving a fair share of the City of New Haven construction employment.

- White women are getting more than their fair share of contracts thereby taking business from black firms.
 - WBEs are fronts for their husbands, fathers, and brother (Note: this sentiment goes beyond the scope of analysis for this report)
- Hispanic individuals are over-represented on construction worksites.
- Non-Connecticut Hispanic individuals are taking New Haven Hispanic residents' jobs.

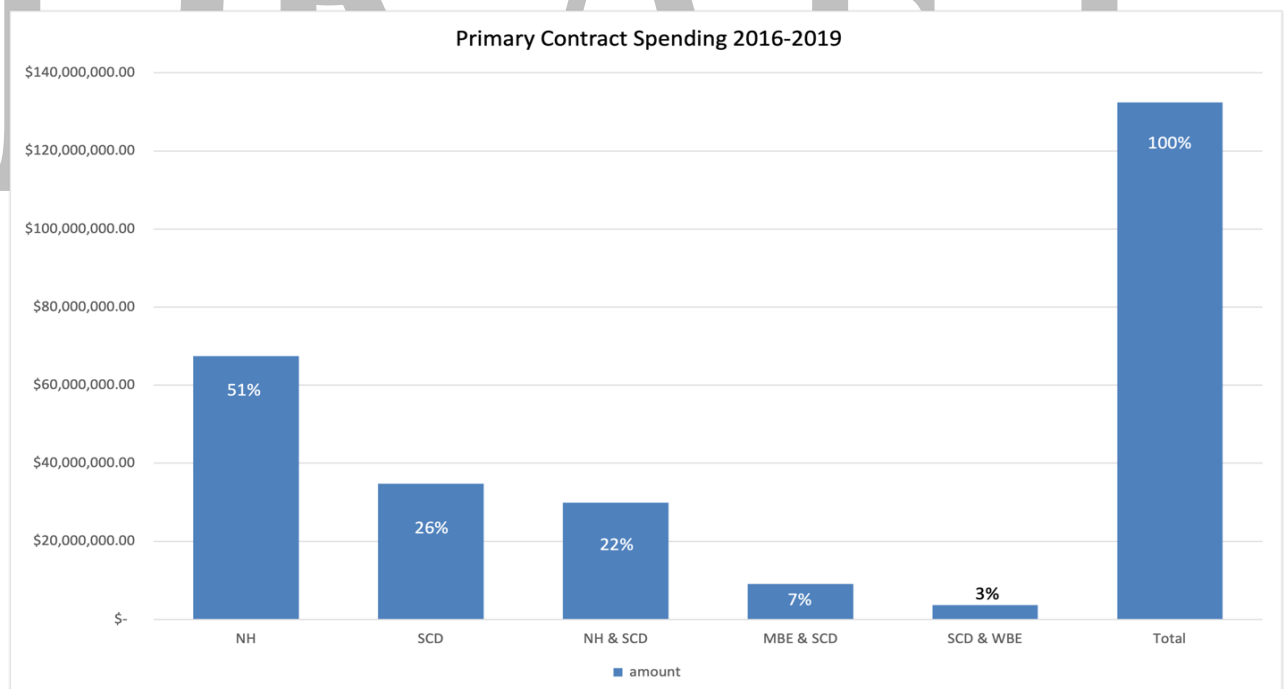
Subsequent analysis aimed to use program procurement data to explore these sentiments for their validity and root causes.

VI. Quantitative Analysis of Procurement Data

A key component of our analysis of the efficacy of the SCD program is an evaluation of contracting data provided by the City of New Haven for the years 2016-2019. The data categorizes the spending on City contracts by whether those contracts are with SCD firms or non-SCD firms, City-based firms or firms outside of the City, minority or non-minority firms, and gender of firm ownership. All of the data we used is for prime contracts. We do not have data on sub-contractors for these primes; preventing measurement of the total economic impact of City contracts with SCD firms. Thus, one important recommendation is that subcontracting data be collected and analyzed.

A. Trends in Aggregate SCD Spending

Figure 1. 2016-2019 Total Spending by Category



Between 2016 and 2019, the City spent \$132.5 million on construction contracts that were subject to the SCD program. The size of this total spend serves as an important indicator for

the potential economic impact of City construction. This spending turns into jobs, income, secondary and tertiary spending and overall improvements in City infrastructure, all of which contribute to economic activity in the City and surrounding towns. This so-called “multiplier effect” of City construction spending can be a rather significant major contributor to the economic health of minority communities within New Haven. Of the total spend, \$34.7 million (26.2 percent) was spent (directly) with SCD firms. Among these SCD firm dollars, 6.9 percent was spent with minority SCD firms and 2.8 percent was spent with SCD women owned firms (Figure 1). As a percentage of total spending, this compares favorably with the State of Connecticut’s Small and Minority Business Program which sets as a goal 25 percent of total state contracts for small businesses and 6.25 percent of total spending for certified minority and women owned enterprises. 93 percent of primary contracts from 2016 - 2019 were less than or equal to \$150,000, suggesting considerable opportunity for SCD firms.

In terms of New Haven based firms, 50.9 percent of spending went to firms located in the City (Figure 1). Of the \$67.4 million spent with City-based businesses, \$29.9 million (44 percent) was spent with City-based SCD firms. This share of total spending with New Haven based SCD firms indicates that the program is significant. However, exploring the distribution of these funds is illuminating.

There are 123 contractors in the SCD program, but the largest four SCD firms accounted for over \$26.5 million (77 percent) of the total of \$34.7 million dispersed to SCD firms. One SCD firm accounted for about 50 percent of all spending with SCD companies (Firm A in Figure 2). Among New Haven based SCD MBEs, removing the top firm reduces spending from 20.75% (Figure 2) to 8.92% (Figure 3). These patterns suggest that the number of firms participating in the SCD program as prime contractors is small, contributing to the perception (and reality) that while total spend with SCD firms is impressive, most SCD firms are not participating, at least as prime contractors. The heavy concentration of spending provides an additional reason for collecting data on subcontracting dollars.

Figure 2. Primary Contract Spending by SCD Firm. Percentage of total primary contract spending awarded to SCDs (left) as well as breakdown of allocation within SCD group (right). Over 50% of SCD spending between 2016-2019 went to one firm (“Firm A”), while New Haven-based MBE’s in the SCD program received 21% of the SCD spend.

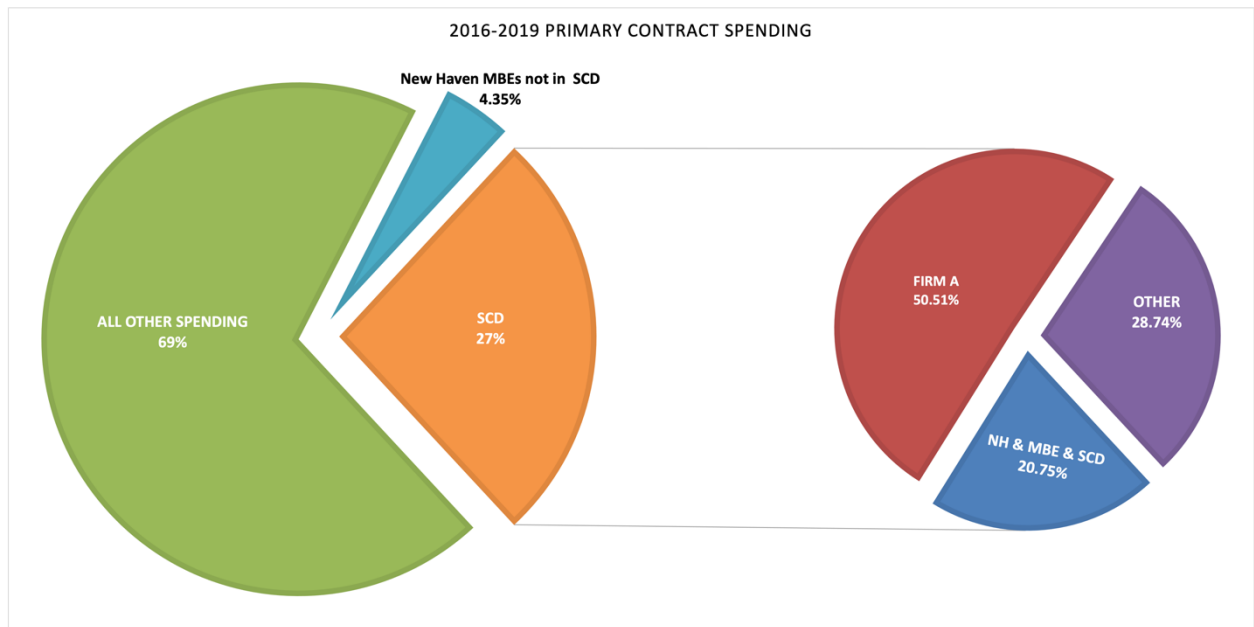
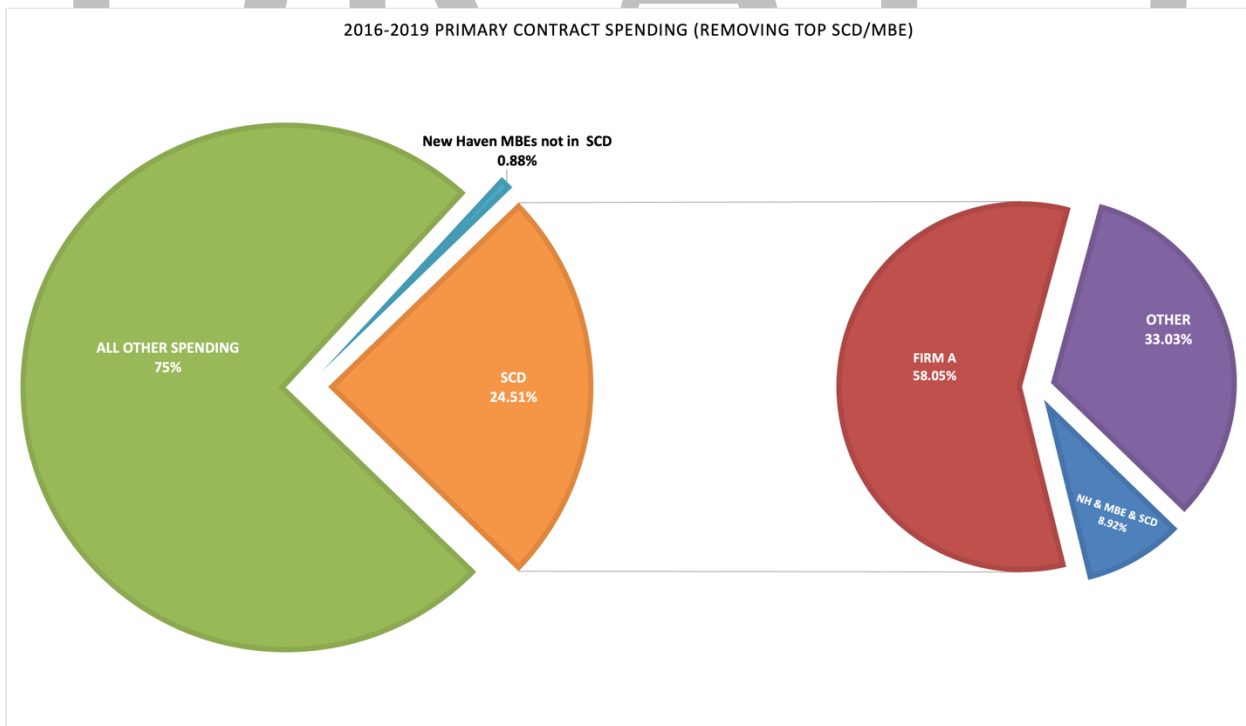


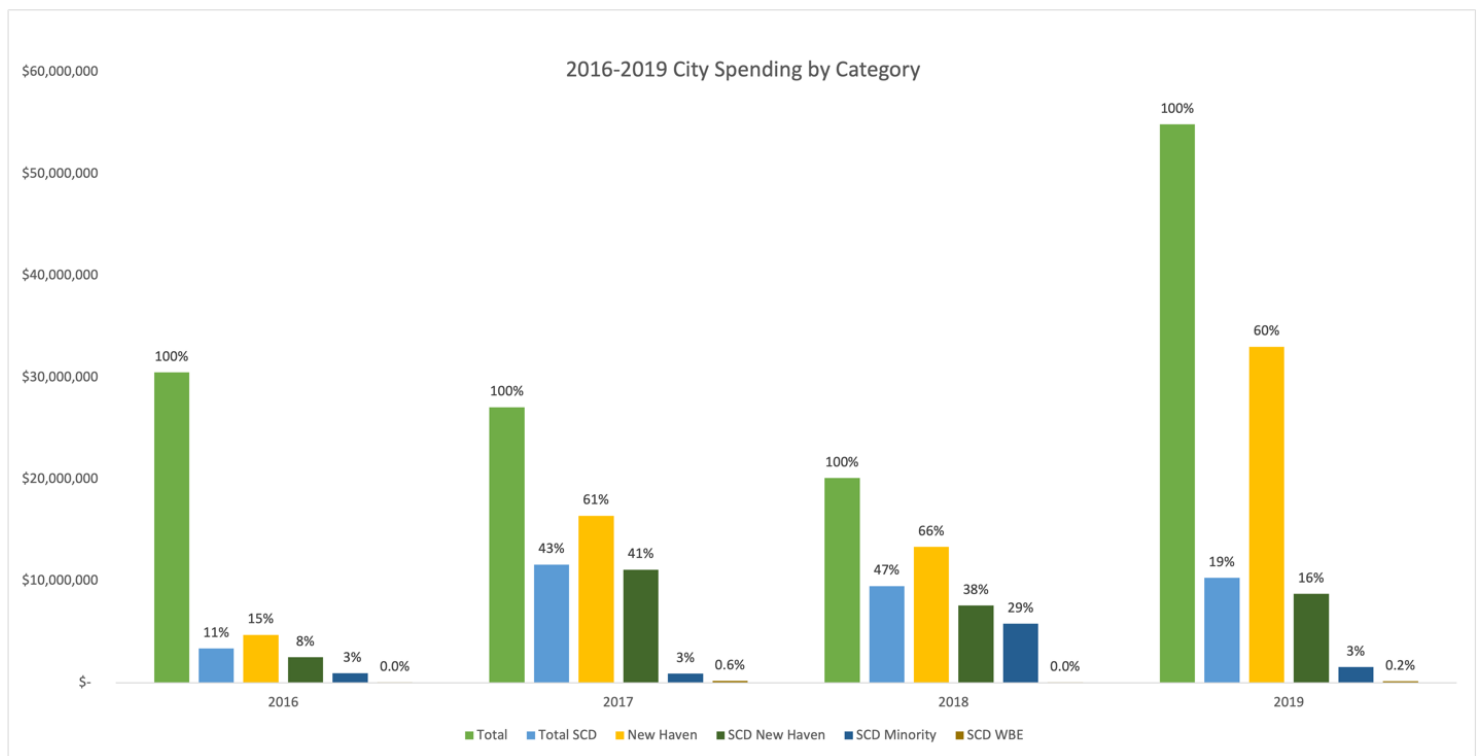
Figure 3. Primary Contract Spending by SCD Firm (removing top SCD/MBE) One firm (“Top SCD/MBE”) constituted a significant portion of New Haven SCD/MBE spending, and when removed from the data, New Haven SCD/MBEs accounted for less than 10% of all SCD spending.



B. Trends in SCD Spending by Year

While it important to understand overall spending patterns, year by year breakdowns provide additional perspective needed to examine program performance. Overall construction spending by the City declined each year over the first three years of the study period and picked up dramatically increasing by over 170 percent between 2018 and 2019 (Figure 4). Interestingly, spending with SCD firms remained constant over the last three years of the study—declining as a percentage of total spend from 47.2 percent to 18.8 percent between 2018 and 2019 (Figure 4). This was also the same trend for New Haven based SCD firms – total spending remained flat (declining from 2017) with a significant decline in share of total spending (Figure 4). This phenomenon is likely explained by one minority SCD firm who won multi-million-dollar contracts in 2018 and 2019. This phenomenon is likely explained by one minority firm who won multi-million-dollar contracts in 2018 and 2019. While the firm was in the SCD program in 2018, they graduated in 2019.

Figure 4. Year by Year Spending by Category



In addition to individual contract spending patterns, we explored spending across categories. Table 1 shows the general categories of spending by SCD firms over the study period. We can see there are deficiencies in the data reviewed. The largest category of types of business performed by SCD firms is "Missing". Additionally, that less than 50 percent of SCD spending is on construction services. This begs the question; Is SCD a construction program or a general small business program?

Table 1. 2016-2019 Top 5 Spending Categories

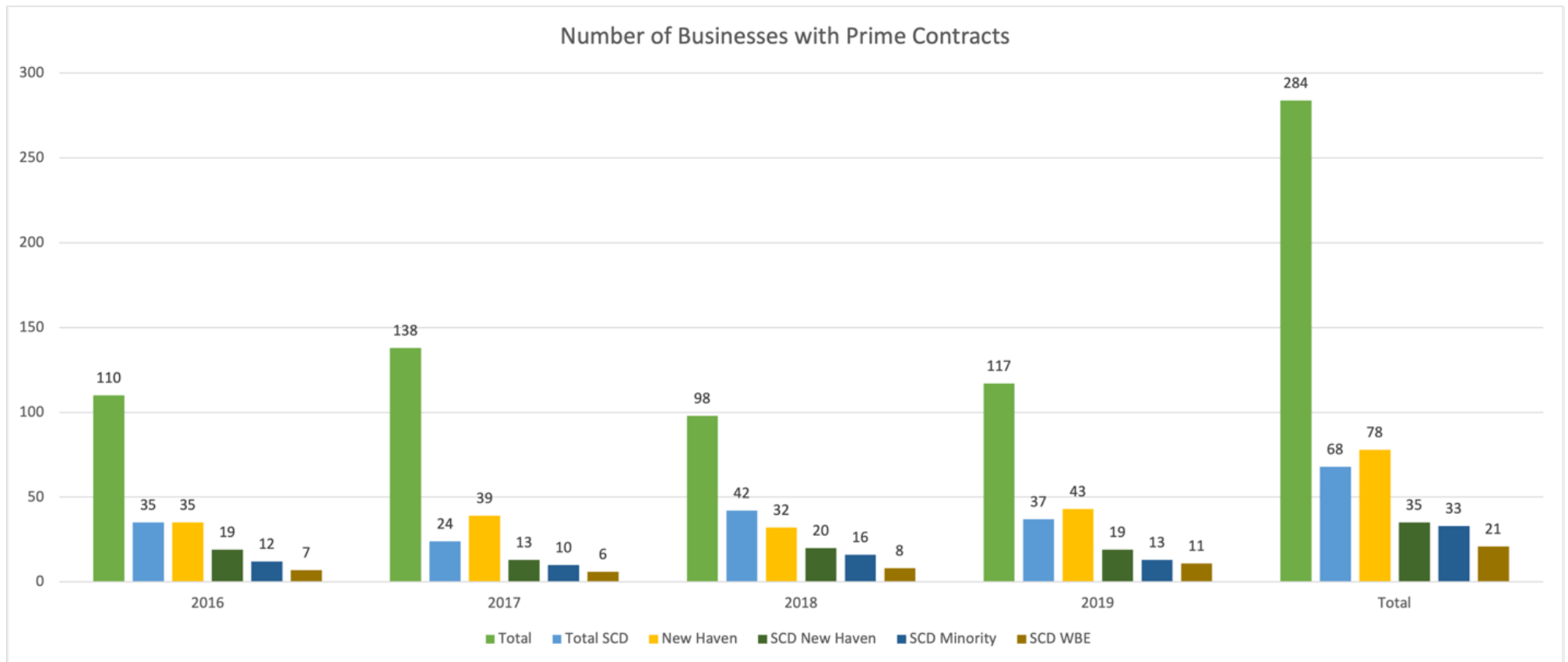
	Category	Value	Percent
99999	MISSING	\$37,096,715	28%
99025	CONSTRUCTION - OTHER	\$29,871,111	22.55%
91300	CONSTRUCTION SERVICES, HEAVY	\$19,195,585	14.49%
61625	SERVICES - PROFESSIONAL	\$9,922,621	7.49%
00005	CONSTRUCTION - BUILDINGS	\$9,238,157	6.97%
90110	SERVICES - OTHER	\$5,112,167	3.86%

C. Number and Percentage of SCD Firms Winning Contracts

There are 123 businesses in the SCD program. Figure 5 shows that 42 of all businesses (34%) won City prime contracts in 2018, a high for the period. That same year, 16 SCD minority contractors (16%) won prime contracts, also a high for the period. A total of 8 SCD WBEs (9%) won City contracts.

Over the study period, SCD program performance oscillates between meeting and not meeting utilization goals. The percentage of all contractors with City contracts that were with SCD firms ranged from 17 percent in 2017 to 43 percent in 2018. The percentage of SCD minority firms ranged from 7 percent of all contractors in 2017 to 16 percent in 2018. The percentage of SCD WBEs ranged from 4 percent in 2017 to 9 percent in 2018. The low number of minority and women owned SCD firms winning City contracts through this program is a main grievance of M/WBEs.

Figure 5. Number of Businesses with Prime Contracts, 2016-2019



VII. Comparison of Other Similar Sized Cities' W/MBE Programs

BJM solutions conducted a survey of 12 comparable programs of small contractor development in cities across the United States. This section provides a concrete basis of comparison for performance of New Haven's Small Contractor Development (SCD) Program by providing an overview of program offerings across similar American cities and identifying key patterns or activities done elsewhere that, if successfully implemented in New Haven, have potential to bolster the program's impact.

A. Survey Methodology

We wanted to explore cities that were comparable in nature to New Haven such that any of the lessons learned might be feasibly applied to the City of New Haven's programs. As such, cities were selected based on one of two dimensions:

- **Population size.** We believed population size to be a reasonable proxy for City resources (i.e., City infrastructure and budget), and as such, drive and/or capacity to implement a program or programs similar to New Haven's SCD program. 10 cities were selected using this criterion.
- **Proximity to New Haven.** We believed cities that had established an SCD-type program, were somewhat similar in size, and were located within reasonable proximity to New Haven might suggest similarity in attitudes of governance and cultural perspective that could also indicate an ability for New Haven to apply any lessons learned from analysis to its own SCD program. Two cities—Bridgeport and Hartford, Connecticut were selected for comparison under this criterion.

Program exploration consisted of reviewing City websites, media reports, and communications with program representatives.

B. City Profile

To validate the above approach and to better understand the composition and circumstance of each city, we explored their demographics. On average:

- The average Black percentage was 12.48% (ranging from 1.4% in Thousand Oaks, CA to 39.8%, in Columbia, SC). This is lower than New Haven's Black population percentage of 32.6%
- The average Hispanic population percentage was 25.4% (ranging from 2.2% in Sterling Heights, IL to 40% in Bridgeport, CT). This is comparable to New Haven's Hispanic population percentage of 31.5%.
- The average city budget was \$428 million (ranging from \$104 million in Concord, California to \$1.2 billion in Kent, Washington) This is slightly lower than the City of New Haven's budget of \$594 million.

The cities selected exhibit considerable diversity among these and other demographic categories (Table 2), indicating inherent differences in both need and appetite to invest in this type of program.

Table 2. City Demographic Profile (2019)^{xi}

Town	Pop.	% White	% Black	% Native	% Asian	% Pacific Islander	% 2+ races	% Hispanic	% NH⁵ White	High School Diploma	Bachelor's Degree	Median Household income	All firms	Women-owned firms	Minority-owned firms
Round Rock, TX	133,372	75.20%	10.50%	0.20%	6.80%	0.00%	4.60%	29.40%	50.60%	92.80%	40.00%	\$82,676	8,619	2,706	2,755
Sterling Heights, MI	132,438	83.30%	5.90%	0.30%	7.70%	0.00%	2.20%	2.20%	81.70%	86.30%	28.40%	\$64,833	11,007	3,864	1,764
Kent, WA	132,319	46.90%	12.40%	0.70%	20.60%	2.10%	7.40%	16.00%	42.70%	85.70%	25.70%	\$72,062	9,605	2,771	3,435
Columbia, SC	131,674	53.40%	39.80%	0.10%	2.70%	0.20%	2.80%	5.50%	49.20%	89.40%	43.80%	\$47,286	13,080	4,676	4,170
Santa Clara, CA	130,365	39.90%	3.00%	0.30%	43.20%	0.90%	5.20%	17.30%	31.50%	92.80%	59.90%	\$126,006	10,985	3,478	5,366
New Haven, CT	130,250	44.40%	32.60%	0.40%	5.00%	0.00%	4.40%	31.20%	29.50%	85.60%	34.90%	\$42,222	8,976	3,261	3,343
Stamford, CT	129,638	64.40%	14.10%	0.30%	8.60%	0.00%	3.20%	27.20%	49.30%	89.20%	50.10%	\$93,059	16,914	5,360	4,702
Concord, CA	129,295	62.50%	3.40%	0.50%	12.60%	0.60%	7.20%	29.90%	48.60%	88.80%	36.40%	\$89,564	10,859	3,562	4,040
Elizabeth, NJ	129,216	41.50%	19.50%	0.50%	1.90%	0.00%	3.30%	65.00%	12.20%	73.40%	13.50%	\$48,407	11,483	4,105	7,727
Athens-Clarke County, GA	126,913	63.20%	28.00%	0.10%	3.90%	0.10%	2.60%	10.90%	54.80%	87.90%	44.00%	\$38,311	<25	<25	<25
Thousand Oaks, CA	126,813	82.00%	1.40%	0.40%	9.90%	0.10%	4.10%	19.40%	66.80%	93.50%	50.80%	\$109,378	17,027	5,427	3,642
Bridgeport, CT	144,399	40.40%	35.10%	0.40%	3.40%	0.00%	4.90%	40.80%	20.10%	76.40%	64.60%	\$46,662	10,452	4,352	5,505
Hartford, CT	12,2105	31.3%	37.70%	0.40%	5.00%	0.00%	4.40%	31.20%	29.50%	85.60%	34.90%	\$36,278	7,841	3,224	4,376

⁵ Non-Hispanic

C. Program Overviews

Given differences in both city demographics and cultural makeup, it is not surprising that a review of city offerings generated a healthy diversity in program type. Of the 12 cities explored, 7 offer some type of W/MBE program. Please note that exploration was not limited only to the construction trades, as general lessons from any W/MBE programs can be applied to New Haven's SCD program. That only 50% of cities explored have such a program reflect the need for such a problem and but more striking, a desire by the City of New Haven to invest in W/MBE businesses. Overall, the cities containing such a program exhibited the following characteristics:

- **Cities with W/MBE programs tended to exhibit considerable racial/ethnic diversity.** On average, cities with such programs were 25.7 percent Black and 31.9 percent Hispanic, relative to 5.2 percent and 17.0 percent (respectively) in cities without. New Haven's population is 32.6% Black and 31.20% Hispanic, relatively on par with the cities containing such a program. This is not surprising given the legal requirement that such a city program be based in some observation of need on the part of the communities in question (Please see the main report for further discussion).
- **Median household income was lower in cities with W/MBE programs.** The average household income in cities with W/MBE programs is \$56,097, a bit higher than New Haven's counterpart of \$42,222. Cities without W/MBE programs are rather affluent with an average household income of \$92,369. Cities who have invested in these programs may recognize the "multiplier effect" that said programs may provide for their constituents.
- **Levels of educational attainment did not vary significantly across cities with and without W/MBE firms.** Percentages of the population with high school diplomas and bachelor's degrees, 83.4 percent and 32.4 percent respectively, were slightly lower, however did not vary too significantly from cities without where respective averages were 89.4% and 40.2%. These values are comparable to New Haven, where 85.60% and 34.90% of individuals have obtained a high school diploma and bachelor's degree (respectively).

This brief summary of sociodemographic statistics suggests the cities with W/MBE programs bear important resemblances to New Haven, underscoring the importance of learning and applying lessons learned where possible. What follows is an overview description of the W/MBE programs explored. Table 3 provides a high-level overview of each City's program and goals.

Round Rock, TX; Stamford, Connecticut, and Athens Clarke, Georgia

While the cities of Round Rock, Stamford, and Athens Clarke do not offer broad programs like New Haven's SCD program and the others discussed above, it is worth mentioning that they have built systems to support their respective Disadvantaged Business Enterprises on federally assisted Department of Transportation contracts (as mandated). Given the limited scope of these programs, they offer fewer lessons for the City of New Haven. Consequently, our focus remains on the four cities explored below.

Columbia, South Carolina

The City of Columbia has instituted a Columbia Disadvantaged Business Enterprise (CDBE) program in recognition of a policy that these enterprises "shall be afforded the opportunity to participate fully in its overall procurement process." The program targets subcontractors of the City,

requiring that prime contractors make “good faith efforts” to subcontract a percentage of its bid to a broad base of qualified CDBE⁶ subcontractors on projects where a CDBE utilization goal has been placed. These percentages are based on the identified subcontracting areas and the relative availability of CDBEs. Program participation is limited to residence in the County.

The guarantee of procurement opportunity for DBEs is just one pillar of support offered by the City. To bolster business success, the City also operates various outreach programs aimed at teaching DBEs how to manage and promote their businesses effectively. For example, the City proactively connects DBEs (or “Protégés”) with “Mentors” who meet quarterly to discuss the Protégé’s business plan, course of action, and/or necessary corrections. These programs, and others similar to it, are run by the City’s Office of Business Opportunities, which works hard to “support initiatives that benefit small, minority, veteran, and women-owned businesses located in or want to do business with the City of Columbia.” Examples of such initiatives include:

- *Commercial Lending*: Financial assistance to start-ups and existing businesses for growth, expansion, retention, and the creation of new jobs.
- *Technical Assistance and Advocacy*: Business assistance and courses for start-ups and existing business looking to grow covering topics such as marketing, use of social media, business plan development, finances, and legal issues.
- *Contractor and Supplier Diversity*: Initiatives designed to tangibly increase local contractor’s capacity to compete for government contracts and procurement opportunities of which the aforementioned CDBE program is a part.

The Office clearly works diligently to offer these programs, and more importantly *to make them accessible to the firms that need it*, offering multiple points of entry (City-led registration, state certification, certification by the state’s DOT, and by the National Minority Supplier Diversity Council all allow for participation in these programs), and regularly releasing promotional materials and communications via social media platforms such as Twitter, Facebook, and Instagram (see Appendix D). As such, it should serve as a model of success for New Haven.

Elizabeth, New Jersey:

While the City of Elizabeth has not formally instituted a City-level initiative, it takes part in a county-level initiative that is worth mentioning. This initiative is run through the Office of Business Development which is charged with “developing effective strategies for business attraction and retention in the County of Union; working collaboratively with organizations such as the Union County Economic Development Corporation (UCEDC), local Chambers of Commerce, and institutions of higher learning to develop and integrate strategic activities designed to attract and retain targeted industry businesses, stimulate job creation and increase the capacity of small businesses to remain competitive.” The Office of Business Development also coordinates a series of educational networking events through the “Union County Means Business Initiative”.

⁶A socially and/or economically disadvantaged business, which include Minority-Owned, Women-Owned, and/or Small Business Enterprises firms through which such certification comes from the state’s Division of Small and Minority Business Contracting and Certification

Bridgeport, Connecticut

The City of Bridgeport has established a Department of Small and Minority Business Enterprise whose mission is “ to provide the resources and information small, minority, and women-owned businesses need to compete for business opportunities with the City of Bridgeport.” The department advertises a robust list of initiatives aimed at promoting relevant business opportunities and offering technical and financial assistance to eligible firms:

General Training

- Coordinates, develops, and implements a regional minority business capacity building and training program
- Conducts capacity business training, workshops, and seminars to expand and sustain these businesses. Examples include “How to Do Business with the City of Bridgeport,” and “How to Market Your Business”

Tailored Training and Support:

- Creates partnerships between minority businesses and majority contractors to benefit minority businesses and economic development projects throughout Bridgeport, Norwalk, and Stamford
- Provides accessible computer terminals for companies to register of the City’s digital program “RFP Depot”, and online access to review bids currently available with the City of Bridgeport and surrounding towns
- Provides referrals for one-on-one consultation for business development (i.e., finances/loans, cash flow management, purchasing, strategic and tactical planning, quality control, marketing and sales strategies, business plans, and financial management)

Transparent Information and Regular Monitoring

- Disseminates bid information to MBEs, making them aware of opportunities
- Conducts project site visits and administratively monitors contracts for compliance
- Coordinates and participates in outreach efforts that publicize the City’s procurement opportunities
- Works with the City’s Finance Department to ensure timely payments
- Develops quarterly newsletters highlighting contract awards so the MBEs can be aware of possible contracting opportunities
- Publishes the City’s MBE directory

Recruitment Services

- Assists all Departments with identifying MBEs from which to purchase goods and services
- Conducts aggressive outreach and recruitment for local MBEs who can deliver competitive, high quality, and on-time products and professional services. They also work with these Departments to unbundle large contracts into small quantity contracts.
- Provides professional networking opportunities and pre-bidder’s conferences with all local developers

The list of initiatives above indicate that the Department has made a concerted effort to target firms where they are; recognizing the need to ensure contractual opportunities in the form of jobs, but also working to demolish financial and technical limitations by offering personalized assistance. Like Columbia, The City allows multiple points of entry to these resources—firms can participate as long as they are certified by one of the following offices: The State of Connecticut, the New England Minority Supplier Development Council, Southern Black Connecticut Black Chamber of Commerce, or the State’s Department of Transportation.

Hartford, Connecticut:

The City of Hartford has established an Affirmative Action Plan that oversees the employment practices of contractors, subcontractors, and individual candidates pertaining to construction work. Under the Plan, all certified small contractors, minority and women-owned businesses can participate in the City’s set-aside programs which has set goals for participation (see Table 3).

The City’s Contract Compliance Unit operates at the most formal level; it is charged with monitoring the efforts of contractors to comply with these goals, but does not appear to actively engage or promote this program in a particularly public-facing manner other than to provide a registry for Small and W/MBEs and a platform through which businesses can search for bid opportunities.

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Table 3. City W/MBE Programs

City	Has an MBE Program (Y/N)	Black Goal	Hispanic Goal	WBE Goal	Minority Goal	City Budget	# participating
Round Rock, TX	Y ⁷	The City does not use quotas	N/A	N/A	5% of value of Federal financial assistance in DOT contracts ⁸	\$420.2 million	51
Sterling Heights, MI	N	N/A	N/A	N/A	N/A	\$213.9 million	N/A
Kent, WA	N	N/A	N/A	N/A	N/A	\$1.19 billion	N/A
Columbia, SC	Y ⁹	N/A	N/A	N/A	See Round Rock	\$336 million	93
Santa Clara, CA	N	N/A	N/A	N/A	N/A	\$992 million	N/A
New Haven, CT	Y	10% contracts/10% subcontracts	2.5% contracts/6% subcontracts	11% contracts/15% subcontracts	25% subcontracts	\$570 million	98
Stamford, CT	Y ¹⁰	N/A	N/A	N/A	2.45% ¹¹	\$589 million	Not published
Concord, CA	N	N/A	N/A	N/A	N/A	\$104 million	N/A
Elizabeth, NJ	Y ¹²	See minority goal	See minority goal	N/A	N/A	\$274 million	N/A
Athens-Clark County, GA	Y ¹³	N/A	N/A	N/A	7% (DBE participation)	\$224.1 million	N/A
Thousand Oaks, CA	N	N/A	N/A	N/A	N/A	\$221.7 million	N/A
Bridgeport, CT	Y ¹⁴	6% of subcontracts	N/A	15%	15% ¹⁵	\$572 million	212
Hartford, CT	Y ¹⁶	N/A	N/A	N/A	15% (includes women) ¹⁷	\$568M	157

⁷ Only applies to federally assisted DOT contracts

⁸ Subcontracting goals are defined by contract with formula that considers "relative availability of firms" and proportion of dollars spent within industries: "Relative ability" is defined as the number of DBEs /number of firms in market area. The formula is the product of relative ability of industry*proportion of total contract dollars spent in that industry

⁹ Only applies to subcontracting

¹⁰ Only applies to federally assisted DOT contracts

¹¹ Noted as DBE participation, includes women

¹² The city does not have its own program. However, it is part of a County initiative to develop companies and workforce—considerable advertising of program by the city

¹³ Only applies to federally assisted DOT contracts utilizing subcontractors

¹⁴ Goals are for subcontracting. M/WBEs based in Bridgeport are given bid preference for prime contracts

¹⁵ At least 6% must go to Black firms

¹⁶ Hartford Affirmative Action Plan refers to employment practices of contractors, subcontractors, and candidates. The City also participates in the states' supplier diversity programs aimed at providing opportunities for MBE and WBE

¹⁷ Also requires that 30% of the total project work hours be worked by Hartford residents

Aspirational Exploration of Large American cities

We also investigated M/WBE programs in four large American cities, New York City, Los Angeles, Washington DC, and Chicago. Each of these cities have well developed M/WBE programs with strong goals and staff support (summarized in Table 4). Partly because of these strong public sector programs, a cadre of strong and sustainable M/WBEs have been developed. This suggests that promoting M/WBE participation on city projects promotes economic development and is good politics. These larger M/WBE firms have become integral to their respective cities and communities.

D. Program Themes and Recommendations

New Haven's focus on Small, W/MBE business development is notable in a landscape in which development of such a program is optional. While the bones of New Haven's SCD program already incorporate the fundamental ideas underlying many of the initiatives discussed above, there is an opportunity to capture a larger portion of potential benefit if the City invests in some of the thematic elements seen in their counterparts and in the aspirational models of larger American cities discussed below:

- **Accessible marketing will bolster program visibility advance community education and visibility.**
 - Leveraging tools such as Social Media to keep the community apprised of upcoming procurement opportunities or educational events.
 - Memorable taglines like that of Columbia, South Carolina's "*We are Columbia.... a world class city looking for world class talent*" can leverage community pride to bolster familiarity with the program.
 - Building attractive, transparent, and user-friendly websites make it easy for the targeted community to navigate the system and collect the information they need to place bids and partake in any community events
 - Hosting events in the community provides both a tangible connection point to the City and opportunities for indirect community support (e.g., hosting events at W/MBE venues and/or catering by such organizations).
- **Networking events can proactively connect SBEs and W/MBES with larger and successful firms from which they can learn or become employed.**
 - Developing partnerships between minority and majority firms (in addition to traditional training courses on various business management topics), helps facilitate a more tailored managerial education for these firms, ensuring they are properly equipped with the tools needed to not only navigate the procurement landscape but also to sustain their financial success.
- **Transparency of information will keep minority organizations aware of what they need to succeed.**
 - Publishing regular newsletters promoting success in the community allows similar firms to become aware of available programs and may help firms establish rapport with the greater community, leading to additional employment.
 - Providing data on about firms that win contracts; contact information, where they are located and bid amounts can both help those firms establish

community rapport and help similar firms gain a better understanding of what success can look like for them.

- **Low barriers to entry into the program eliminate artificial barriers to inclusion.**
 - Accepting many certifications for program participation—city-level, state-level, federal-level and/or from various associations (e.g. NMSDC)—not only sends a message of inclusivity for New Haven firms, but also means they can more easily become exposed to the programs that are designed for their benefit.
 - Offering commercial lending (loans or grants) or assistance navigating financing options can help give minority firms an important support, particularly in the initial stages of their development.
 - Explicitly focusing on the geography of program participants can help ensure proximate impact and economic stimulation. Potential options include mentions of residency in utilization goals (Hartford offers an example).

These initiatives are manageable investments that will help drive impact within New Haven's Small Contractor Development Program.

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Table 4. MBE Programs in Large American Cities

City	Population	Have an MBE Program (Y/N)	Black Goal	Hispanic Goal	WBE Goal	Minority Goal	City Budget	Number of Participating Firms
Chicago	2.7 M	Y	N/A	N/A	4%	24%	\$12.8 B	2,300+
NYC	8.3 M	Y	N/A	N/A	N/A	28% (M/WMBE)	\$88.2 B	1,624
District of Columbia	692,683	Y ¹⁸	N/A	N/A	N/A	22.19%	\$16.9 B	964
District of Columbia	692,683	Y ¹⁹	N/A	N/A	N/A	N/A	\$16.9 B	N/A
Los Angeles	2.6 M	Y (county program)	N/A	N/A	N/A	25% ²⁰	\$10.5 B	1,570 ²¹

¹⁸ Applies to federally assisted DOT contracts

¹⁹ Is not a set aside/procurement utilization program, but an office to help minority firms with business development by offering business consulting on topics such as securing capital, competing for a contract or identifying a strategic partner. The program is managed through the Minority Business Development Agency overseen by the US Department of Commerce

²⁰ Program sets considers M/WBEs and disabled veteran businesses in this goal

²¹ Includes all Los Angeles county

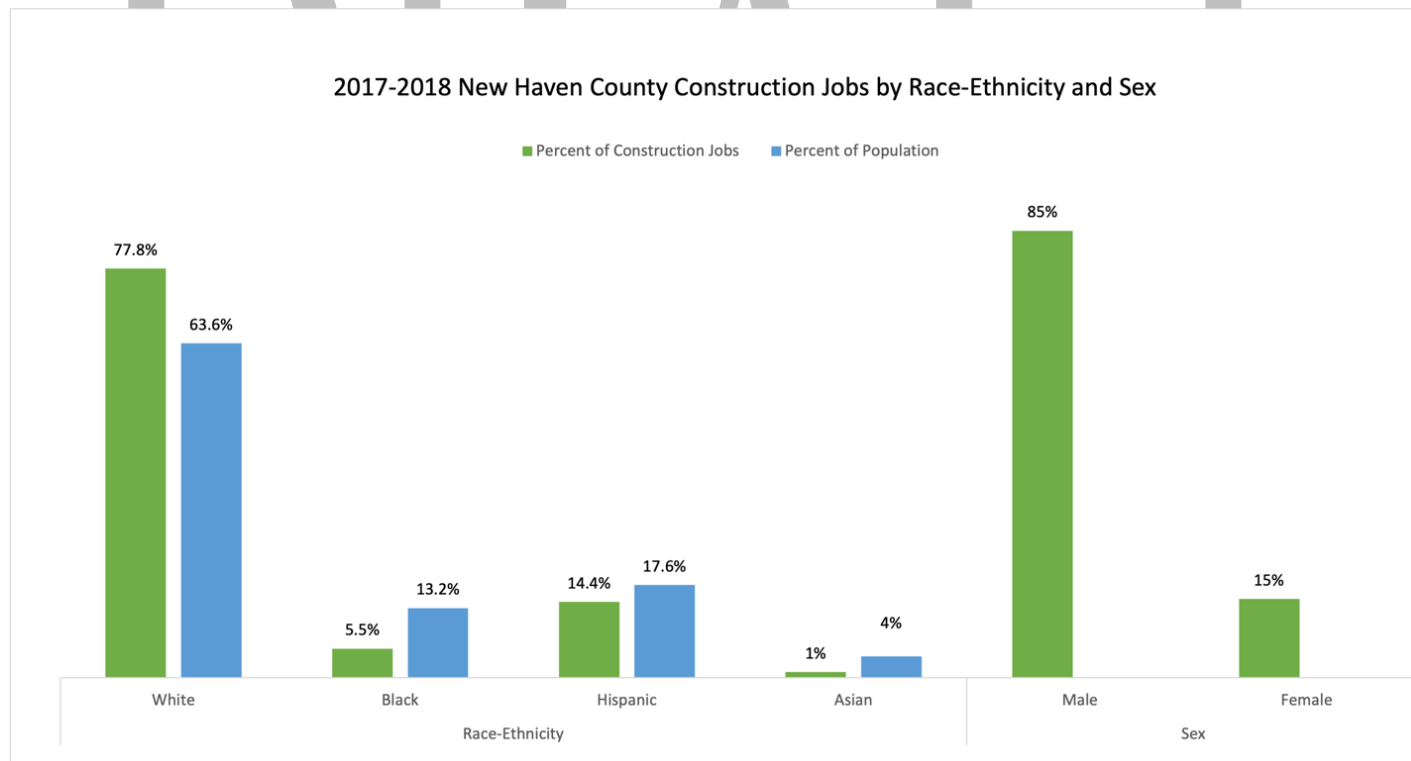
VIII. Key Findings

Through the various angles describes in this report, BJM Solution's analysis uncovered a series of key findings corresponding to each Ordinance summarized below:

A. Key Findings for Ordinance 12 ½

1. There is a widespread belief among many stakeholders that enforcement of the Ordinance has been too lax.
2. The Hispanic proportion of construction employment is commensurate with their population proportion (Figure 6).
 - a. The widespread belief that Hispanics from outside New Haven County are taking many construction jobs in the County cannot be validated with available data.
3. Blacks are underutilized in construction employment based on their population (Figure 6).

Figure 6. New Haven County Construction Jobs by Race/Ethnicity and Sex



B. Key Findings for Ordinance 12 ½

1. There are serious deficiencies in the collection and availability of data necessary to ascertain the utilization of M/WBE firms in the awarding of New Haven construction contracts that is necessary to determine if utilization goals have been met.
2. Lack of subcontracting data or inability to access it prevents the complete determination of the utilization rates of M/WBE firms in overall New Haven construction contracting.
3. Contrary to sentiments voiced by several stakeholders, WBEs are receiving a share of SCD contract awards that is smaller to their representation among SCD firms.
4. The data show that the SCD share of contract dollar awards is consistent with the goals of the program (26.2 percent).
5. MBE and WBE SCD spend totaled less than 10 percent of total spending.
6. Four M/WBE firms in the SCD program accounted for 71 percent of M/WBE spending.
7. New Haven based firms received 51 percent of New Haven Construction spending.
 - Due to lack of data, the share of New Haven construction spending going to M/WBE firms has not been determined.

VIII. Recommendations and Template for Ongoing Performance

The findings discussed above suggest room to improve performance of the Ordinances. Recommendations suggested here aim to address various pain points discussed by interviewed stakeholders, comparisons to other cities, as well as patterns uncovered through the data.

A. Recommendations for Ordinance 12 ½

1. **The City of New Haven should enact a bid price preference for contractors meeting goals of ordinance 12 ½**
 - a. The City of New Haven should enact a bid price preference (with dollar cap to be determined) given to the bids of all firms who demonstrate a continuing commitment to meet the employment goals of Ordinance 12 ½.
 - A bid price preference equal to 5% should be given to the bid of a firm whose submitted bid contains a written pledge to meet the employment goals of Ordinance 12 ½.
 - A bid price preference equal to 10% should be given to the bid of a firm whose most recent performed contract with the City met the employment goals of Ordinance 12 ½ *and* whose new bid contains a written pledge to meet the employment goals of Ordinance 12 ½.

2. The City should implement employment training & skills development programs

b. The City should broker an agreement between construction unions, major construction companies, and the City to significantly increase the number of under-represented New Haven resident apprentices in the trades.

- The focus of the connections with the unions should be with the trades throughout the distribution of jobs – from entry level jobs to high paying jobs.
- The City should implement a minority construction worker mentoring program in conjunction with the unions to support new workers in the trades.

c. The City should work with surrounding municipalities (and possibly other cities in the state) to launch a pre-construction education program for high school students.

3. The City should improve enforcement of sanctions on firms not complying with Ordinance 12½

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- a. The City should more greatly enforce existing sanctions on firms not in compliance with Ordinance 12 ½.
 - b. The City should strengthen the procedures and resources used to systematically collect data needed for enforcement of Ordinance 12 ½.
 - c. The City would benefit from more transparent public communication of procedures used to enforce the Ordinance.

4. The City should use Project Labor Agreements (PLAs) to create goals and objectives to winning prime contractors on large projects to increase participation of City residents in union and non-union employment opportunities.

- a. Under the National Labor Relations Act, construction contractors and employees have the right to choose to unionize or not to unionize. Most contractors and their employees- more than 80 percent - have voluntarily opted against unionization according to the National Right to Work Legal Defense Foundation. Under a PLA, all contractors, whether they are unionized or not are subject to union collective bargaining rules. Our recommendation to use PLAs must be matched by a collaborative and well-planned effort to increase the number and percentages of black and brown workers in the unions. Union construction workers earn significantly higher incomes than non-union workers. The City has an interest in raising the wages of black and brown workers in the trades, and this will not happen without PLAs and City support.

B. Recommendations for Ordinance 12 ¼

5. The City should improve enforcement of sanctions on firms not complying with Ordinance 12 ¼

- a. The City should increase SCD staff to improve record keeping and enforcement, particularly with regards to tracking subcontractor awards.
- b. The City should strengthen the procedures and resources used to systematically collect data needed for enforcement of Ordinance 12 ¼.
- c. The City would benefit from more transparent public communication of procedures used to enforce Ordinance 12 ¼.
- d. The City should institute procedures that hold prime contractors more responsible for meeting Ordinance requirements either during the bidding stage or post-bidding pre-work consultation with the city.
- e. The City should simplify the application procedures for becoming a Licensed M/WBE and/or provide support to those applying.
- f. The City should provide “better pre-bid meetings and post-bid information.
- g. The City should announce who bid, who won, and the awarded amount of the bid.

6. The City should give Ordinance 12 ¼ programs preference to New Haven based firms and open the program to Minority firms located in other geographic areas of the state.

7. New Haven County businesses who qualify for the SCD program can participate in City of New Haven SCD opportunities. At present, there is no reciprocity for New Haven city-based firms seeking business in the county. The City should engage other municipalities in New Haven County to increase opportunities for New Haven based SCD firms in those towns.

8. The City should enhance its SCD training and development program, focusing on leadership, strategic planning, bidding, marketing and back-office operation skills.

9. The City should better promote opportunities for SCD firms; for example, trade fairs connecting successful prime contractors with SCD firms.

10. The City should use Project Labor Agreements to assure greater utilization of SCD firms on large projects as sub-contractors.

- a. These utilization goals should be aggressive and supported by SCD training and development programs. PLAs with the support of the city can increase the number of M/WBE firms that are union shops. We believe that having more M/WBE firms as union shops gives them greater access to opportunities in New Haven and throughout the state.

C. Template for Ongoing Performance

Template for 12 ½

1. Report on the number of City residents working on City funded construction jobs
2. Report demographics of all workers working on City funded construction jobs;
3. Measure impact of union apprenticeship programs on distribution of construction jobs;
4. Measure impact of job training programs and funnels like New Haven Works on construction jobs;
5. Report on number of jobs by demographics for SCD firms with City construction (prime and sub) contracts;
6. Institute a quarterly report card highlighting key city resident employment by industry and sub-categories along with living wage statistics.
7. Mandate public job listings for all City funded construction on newhavenct.gov with a landing page link to all job openings as well as to jobs.newhavenct.gov that can be marketed to City residents.
8. Fund a City resident marketing campaign to increase the awareness of and participation in seeking construction jobs on city funded construction work

Template for 12 ¼

The SCD program can be improved by implementing the following template for monitoring ongoing performance:

1. Measure all subcontracts with SCD firms;
2. Report quarterly on utilization of SCD firms AND submit report to Board of Alders and media
3. Improve data collection procedures and upgrade data management systems to better track and synthesize SCD, MBE, and WBE utilization.
 - a. Firm Name and Number
 - b. NH, SCD, M/WBE classification
 - c. Contract amount
 - d. Contract number
 - e. Month and year contract awarded
 - f. Commodity code
 - g. Description
4. List all public-facing SCD events on the SCD website.
5. Hold a semi-annual “Doing Business with the City of New Haven Workshop.”
6. Hold a semi-annual “development” program for all current and prospective SCD firms.
7. Hold an annual event bringing together the largest City construction contractors and SCD firms (large contractors “required” to attend).
8. Develop a website page that shows and promotes all SCD firms contact and industry information and measure utilization of the website by City employees with buying authority.

9. Write an annual report on performance of the SCD program for the public and the Board of Alders.
10. Allow for multiple certifications to participate in SCD program; State of Connecticut, DOT, and GNEMSDC.
11. Automate the application process through API integration with the State of Connecticut Secretary of State business registry, State of Connecticut Commissioner of Revenue Services, Better Business Bureau, and minority, women and veteran-owned business certification bodies in order to populate key business information and to reduce burdensome data entry which exists in linkable third-party databases.
12. Mandate and create a free online business course for SCD participants to gain greater knowledge on winning bidding procedures and accounting, managing for success from bid through job completion, hiring, and contracting, etc.
13. Create a public award for companies who achieve stated contracting and hiring goals (e.g., 2022 New Haven Mayor's Gold Award for Best Construction Company Small Business Mentor).
14. Fund an SCD marketing campaign to increase the number of companies who participate in bidding on City-funded construction work.

These are manageable steps that, if taken regularly, have potential to boost program success and alleviate resident concerns and anxieties.

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IX. Appendices: Schedules of Meetings, Interviews, and Sources of Data

A. *Understanding the Constitutionality of ‘Set-asides’ and Related Affirmative Action Plans*

Arguments for and against the permissibility of these affirmative action plans rest in disputing the 5th and 14th Amendments of the United States’ Constitution, which prevent the abridgement of rights without “due process of law” and ensure “equal protection of the laws” in any actions of Federal and state governments. These clauses, respectively known as the Due Process Clause and Equal Protection Clause, have long been used to further equality concerns and affirm certain liberties. Under direction of the Supreme Court, laws drawing judicial review under these Amendments are subject to a certain standard, from “strict scrutiny” to “rational basis review”, under which the law must be evaluated. Given their association with certain, “protected classes” affirmative action plans like those presented in the Ordinances have largely been evaluated under strict scrutiny, meaning the government must show that the challenged action serves a “compelling state interest” and that any classification resulting from the action is “narrowly tailored” to serving that interest. Although, “set aside” programs seem to conflict with the guarantees of equality of the 5th and 14th Amendments, the theory of ‘disparate impact’ (in our case, understood to be the exclusion of a certain protected group from commerce) justifies providing preferential economic treatment to a group in a way that would otherwise violate the 5th and 14th Amendments. What follows is a summary of hallmark cases that have shaped the constitutionality of the Ordinances as well as their limits.

Geller v. Markham (1979).^{xii} Miriam Geller, a Connecticut schoolteacher, brought a suit against the School Board’s use of a “sixth step policy” in which only teachers below a salary threshold would be favored for recruiting. The policy disproportionately impacted teachers between age 40-65, already classified as a protected class in the state and was thus brought to court. The District Court decided that the practice had a disparate impact and was thus discriminatory; establishing that employment discrimination cases brought on charge of “disparate impact,” need not show improper motive for said discriminatory practice (as would be the case in questions of disparate treatment). This distinction is notable as the contractual hiring practices promoted by the Ordinances tread the line between disparate impact and disparate treatment. While explicit instances of disparate treatment provided in the Ordinances (in the form of favored economic treatment), may seem to run counter to Title VII, the legacies of the past have contributed to persistent disparate impacts through which these remedies are deemed permissible.

Fullilove v Klutznick (1980).^{xiii} Congress passed the *Public Works Employment Act* in 1977, requiring that at least 10% of federal funds granted for local public works projects be used to procure services or supplies from businesses owned by minority group members. Petitioners argued this provision violated the Equal Protection Clause of the 14th Amendment. The court found that this set aside did pass constitutional muster as it was in line with spending powers vested to Congress in the Constitution and was tailored to ameliorating past discrimination that kept minority businesses from participating in public works projects. The affirmation of the constitutionality of such set-aside programs bolstered confidence in similar programs within states and municipalities, New Haven included.

Wygant v Jackson board of Ed (1986)^{xiv}. A Mississippi public school board laid off workers primarily on a seniority basis, provided that the percentage of laid-off minority personnel was not greater than the percentage of minority personnel still employed. Petitioners argued this mechanism

violated the Equal Protection Clause of the 14th Amendment. The Supreme Court ruled against the School Board, arguing that societal discrimination alone did not provide a compelling state interest to justify the layoff provision, nor was it the “least” restrictive means of amelioration under “strict scrutiny” level of review, solidifying this standard for race-based classifications aimed at remedying the impact of past discrimination. This heightened level of scrutiny leveraged during the evaluation of affirmative action plans like 12 ½ and 12 ¼, has meant that considerable caution be utilized in drafting and updating set-aside programs.

City of Richmond v J.A. Croson Co (1989).^{xv} The city of Richmond, Virginia passed a plan requiring that all city contractors must subcontract 30% of the contract to a minority business enterprise (MBE). The plan was brought to the Supreme Court under violation of the Equal Protection Clause of the 14th Amendment. Reviewed under strict scrutiny, the Court found that a city may not enact a plan to provide a race-based set-aside to exclusively promote minority business enterprises, without first identifying a specific need for remedial action (i.e. specific evidence of discrimination), as this does not constitute narrowly tailored means for accomplishing a compelling state interest. This case is especially significant because the Court’s ruling on the constitutionality of Richmond, Virginia’s 30% set-aside directly impacts the affirmative action plan codified in New Haven Ordinance 12 ¼, which, similarly provides for ethnicity- and gender-based set asides. Constitutionality of this Ordinance is now largely derived from proof of economic disadvantage within protected groups.

Ricci v DeStefano (2009).^{xvi} Firefighters in New Haven, Connecticut prepared for an objective exam determining eligibility for 10 promotion slots. When the test yielded the promotion of 10 white individuals, the results were thrown out for fear of a discrimination suit by minority firefighters (on grounds of disparate impact). One firefighter sued, alleging such race-conscious action to be in violation of Title VII of the Civil Rights Act (which prohibits disparate treatment) and the Equal Protection Clause of the 14th Amendment. While, Title VII prohibits instances both of disparate treatment and disparate impact, the legislation did not provide guidance for how to balance these seemingly contradictory prohibitions. Given this tension, the Court opted for a new standard of review (as opposed to strict scrutiny), asserting that employers must have a “strong basis in evidence” that race-conscious hiring practices will have an unconstitutionally disparate impact before deciding whether or not to implement such practices. Under this new standard, it is clear that when applied to hiring practices, any race-based classification at the state or local level be grounded solidly in evidence of measured and specific discriminatory activity or outcome. In accordance with this standard, set-aside provisions in Ordinance 12 ¼ calls explicitly for the continued review of proposed set-asides against measured need.

B. Town Hall Meeting to Discuss Strengths and Weaknesses of Chapters 12 ¼ and 12 ½ of the New Haven Code of Ordinances, September 29, 2020, 6pm-7:32pm

The Meeting was opened by Alderman Charles Decker who thanked those in attendance for coming and introduced Drs Gerald D. Jaynes and Frederick W. McKinney of BJM Solutions, LLC. BJM is a consulting firm hired by the City of New Haven to assess the performance of City of New Haven Ordinances 12¼ and 12½. Ordinance 12¼ sets targets for the city’s utilization of minority-owned, women-owned, and small businesses regardless of group classification. Ordinance 12½ is designed to increase the representation of minorities and women in the construction workforce. BJM explained that the purpose of the meeting was to provide

stakeholders in New Haven contracting and employment the opportunity to voice their views on the current state of Ordinances 12¼ and 12½. BJM informed the attendees that they considered the meeting and the opportunity to hear diverse opinions one of the most important initial steps in their assessment and that the views articulated would be given great consideration in the firm's assessment and recommendations.

The virtual meeting was broken into subgroup meetings comprised of Building Trades, Minority and Women contractors, Union Representatives, and the general public. Each subgroup was asked to address members' views about any positive or negative aspects concerning the performance of the two ordinances, to recommend possible improvements in their management, and to report the discussion to the full meeting once it was reassembled.

Summary of Major Discussion Points

Cash Flow and Financial Management Issues

A consistent complaint was that the practice of making contractors/subcontractors wait "90 days to payment" puts too many MBE and WBE firms out of business. Several participants said that because payments to contractors are controlled by prime contractors who are generally able to self-finance, slow payment processing, severe cash flow problems arise for subcontractors who are frequently paid too slowly by prime contractors. A related issue is many M/WBE firms have inadequate access to financial capital and need assistance.

In addition, sometimes M/WBE firms bid too little to obtain a subcontract, "run out of money and have to be bailed out" to avert not meeting payroll. It was generally agreed that the training available to M/WBE firms seeking and doing City contracting was "inadequate." This issue overlapped with the cash flow issue, because "many small contractors need classes on financial management." Some become "overwhelmed" because of inadequate budget experience with larger contracts, and sometimes cannot meet a payroll because they did not "stagger" the cash flow properly.

Solutions, 12 ¼

It was suggested that the City needs to formulate a set of "rules" for payments. This may include:

1. Formulating rules between prime and subcontractor firms as well as rules between City and prime contractors on projects with M/WBE subcontractors.
2. Holding prime contractors more responsible for meeting Ordinance requirements at either the bidding stage or during pre-work consultation with the city.
3. The City will also need to provide training in cash flow management and contract bidding to those M/WBE firms deemed to need it.
4. Small firms need training in obtaining financial assistance (e.g. how to leverage an awarded subcontract as an ability to pay a loan).
5. Better Mentorship procedures are needed.

Problems with M/WBE Licensing Process and Firm Availability

The application process to become a listed M/WBE is “too arduous, and the City is losing potential minority contractors. Similarly, an insufficient number of New Haven minority contractors sometimes makes fulfilling Ordinance 12 and 1/4 goals difficult.

Solutions :

6. Simplify the application procedures for becoming a listed M/WBE and/or provide support to those applying.
7. Give Ordinance 12 ¼ preference to New Haven based firms, but also open up the program to minority firms located in other geographic areas of the state.

Lack of Information

Many comments were offered that more timely and accessible information about City contract awards and the operation of the Ordinances was needed. One request was for the City to provide “better pre-bid meetings. Another suggestion asked for more post-bid information announcing who bid, who won, and the amount rewarded.

Performance of Ordinance 12 ½

Enforcement of the Ordinance has been too lax and must be made “strict” so as to “hold peoples’ feet to the fire.” Problems with observation and enforcement of the Ordinance stem from the fact that data needed for enforcement was not being systematically collected. Additionally, it is unclear how the Ordinance works on projects with mixed private and public funds.

Solutions :

The City needs to strengthen the procedures and resources needed to systematically collect data needed for enforcement of Ordinance 12½.

General Comments Made after Reassembling Subgroup Meetings

At the close of the meeting, one of the more successful MBEs said, “we are sick of being constantly in training,” indicating training programs need to be better targeted to firms who actually need them. The same MBE said that “Bonfire,” the City’s online procurement system, “is confusing,” echoing the complaints of others during the subgroup meetings that City online websites are too complicated.

Note: a second virtual Town Hall Meeting to share preliminary findings and receive feedback, February 9, 2021

Attendees

Initial Attendees numbered 36, Final attendees 41, maximum attendees present 44.

Alder Charles Decker, East Rock/Fair Haven

Alder Jeanette Morrison, Dixwell

Representative Dominique Baez, Hamden City Council

Doris Dumas, President, Greater New Haven NAACP

Building Trades

Carpenters Plumbers

Painters Iron

Workers

Sheet Metal Workers

MBEs

No majority contractor firm representatives attended.

C. Interview Summaries for New Haven 12 ¼ and 12 ½ Ordinances

11/13/20: Two employees of a New Haven Employment Firm

The firm was established by the City of New Haven as a 501 C-3 in 2013 to counter the impact of the Great Recession on New Haven area workers. It provides case management for workers looking for jobs, with a department specializing in construction. The firm partners with employers, primarily Yale University, Yale New Haven Hospital, and the City of New Haven to help program participants prepare for interviews.

Challenges include:

- placing workers who are only temporarily hired and then fired.
- the demand for construction workers often requires workers be licensed for some of the higher skilled trades. The firm tries to work with graduates from Porter and Chester, and other training programs that offer certifications but not licensure. The high paid construction jobs require licenses, and these training programs are controlled by the unions.
- The firm started by working with sub-contractors who could only hire one or two program participants.
- The firm does not have “leverage” with employers to use program participants.

The firm is now working to have greater impact by working directly with developers and construction management firms who hire the subcontractors. This way, they could create more opportunities for program participants.

11/11/20: A Former Member of City of New Haven Commission on Equal Opportunity (CEO)

New Haven Ordinance 12 ½ created by Mayor Lee in the early 1960s after Mayor Lee had a meeting with President Kennedy in 196(2). Height of program was the \$1.5 billion school construction program that ended in 2010. Goal of 12 ½ was to identify NHV area residents who could work on City funded construction projects. The interviewee developed a process which included monitoring, inspecting, Davis Bacon oversight, and training.

The interviewee was able to raise grants from public (Connecticut DOL, US CBDG) and private sources to fund positions (had 15 people at height of program) to help administer the program. The interviewee or member of their team met with every contractor before they began to inform them of the Ordinance and how they could comply.

The City ran into problems with the program because New Haven Housing did not have a Section 3 program. Section 3 is a program to support resident owned businesses. Annual reports were written. There was controversy and lawsuits regarding the interviewee's separation from City in 2015. The interviewee stated that there was destruction of documents by City employees, and the City was fined for this action.

The interviewee thinks the current leadership in City does not have the passion to make 12 ½ work. "They are working on lists and not trying to build capacity."

11/11/20: President and CEO of an MBE Construction Management firm

The company is a certified minority construction management firm based in New Haven that does a lot of work for Elm City Housing (the New Haven Housing Authority) as well as Yale University.

The interviewee and the company are familiar with 12 ¼ and 12 ½. The interviewee stated that the problem with the Ordinances is that for small jobs, it is difficult if not impossible to meet the requirements because most contractors and sub-contractors already have their workforce. Additionally, requiring contractors to use NH residents or NH firms creates coordination problems.

The interviewee says that often contractors and subcontractors claim they are exempt from the Ordinances because they are union shops with Project Labor Agreements (PLAs). They *also mentioned that their experience with MBEs is that they need help estimating projects. She will often tell MBEs that their bids are too low and request that they request more money from her to complete a project. She doubts that all construction management firms will do that.*

a. *11/11/20: A City Employee*

The interviewee works with the state Disadvantaged Business Enterprise program (through the DOT). The goal of the interview was to explore differences between their program and the City of New Haven's program 12 ¼. CONNDOT uses a national certification criterion to determine eligibility for DBE status. Because CONNDOT's program is funded by federal government, DBEs

can participate on CONNDOT projects regardless of what state the DBE is domiciled. Reciprocity is easily achieved for DBEs located outside of CT seeking to work on CONNDOT projects.

Unlike the City of New Haven, CONNDOT conducts its own certification. The City of New Haven relies on certification from the State of Connecticut's Department of Administrative Services (DAS).

CONNDOT experiences similar problems as City of New Haven in matching work with the capabilities of local DBEs. DBEs often get into trouble bidding projects.

11/3/20: President of a Sub-contracted firm

The company was a subcontractor on a City of New Haven project to put rubberized ramps on street corners, "the Pedestrian Project," in New Haven. They completed five sidewalks and had not been paid by their prime. PDR was supposed to complete seven sidewalks. But because the prime refused to pay, they stopped working. The firm completed the work in September and is still awaiting and demanding payment.

The interviewee stated they will not do any more work for the City of New Haven under current conditions and asked for assistance to get paid by their prime.

11/4/20: A Union Leader

The interviewee talked about the union's training programs. They have a certification program for entry level positions and workers and more comprehensive training programs for licensed union workers. These more comprehensive programs can last for 4 years. The union pays for the cost of the program and provides trainees jobs during the training period to keep them afloat.

Skilled union workers are getting older and there is a need to replenish the supply of workers.

The interviewee explained how PLAs work in dealing with the City on projects. The PLAs allow the City to utilize non-union workers and provide resources for the unions to train residents in 12 ½ and use MBEs in the City's program as subcontractors to meet the goals of the Ordinance. The union has a good relationship with the City.

10/28/20: A Connecticut Minority Construction Council Leader

The Connecticut Minority Construction Council (MCC) is an organization of minority construction firms and corporate "members". The mission of the organization is to develop relationships between the MBEs in the MCC and the corporate construction firms and large owners in the state.

MBEs in construction need help with bonding, cash flow management, licensing, relationship building, bidding, and marketing. The MCC holds activities and events to accomplish these goals. The organization needs to be an intermediary with large owners in the private and public sector. The MCC has a relationship with the City of New Haven, but for a number of reasons, the City

views the MCC as Hartford focused. There is some hesitancy by the City to work with the MCC and its MBE members.

The interviewee talked about the distrust between the racial/ethnic MBE community and the certified women owned construction firms. The general belief by many of the MCC MBEs is that many WBEs are fronts for their husbands' businesses and take more of the public sector business than they should.

10/21/20: Connecticut Construction Industry Association leader

The Connecticut Construction Industry Association (CCIA) represents large construction firms operating in the state. The CCIA has subgroups that focus on industry segments like "horizontal" construction (roads, rails, and bridges) and vertical construction (buildings) as well as a construction material subgroup.

The CCIA is aware of 12 ¼ and 12 ½ and their member's struggle to meet the objectives of the Ordinances. The members of the CCIA are almost all white owned construction businesses. Don has made an effort to work with MCC on state legislation to promote construction in the state and to have regulations more favorable to the industry.

The interviewee spoke about the advantages of companies having the ability to provide owners with union workers. The CCIA, negotiates with the unions in Collective Bargaining Agreements (CBAs) and Project Labor Agreements (PLAs) when necessary. Right now, it looks like there is peace between the unions and the companies.

It was the CCIA that brought cases against the State of Connecticut when the state introduced its minority supplier set-aside program. It has also been the CCIA that has fought similar programs in cities in the State.

D. *Summary of Sentiment Analysis*

Regulatory Barriers

Sentiment	Material Basis	Semiotic Basis
Too many hurdles for eligibility determination to become certified as MBE, WBE or SBE	The City of New Haven relies on certification from the State of Connecticut's Department of Administrative Services (DAS)	Multiple certification boards place an undue burden on small firms. Private/Public companies and institutions rely on certification from non-profit certification bodies, whereas State of Connecticut Department of Transportation conducts its own certification. And, federally funded projects may require additional certifications to meet eligibility determination
A general belief by MBEs that certified WBE construction firms are fronts for their husband's business	Fifty-one percent ownership requirement for WBE and MBE certification with guarantee compliance by all city departments and all contractors to fully comply with the city's equal opportunity policy and hiring levels of twenty-five percent New Haven residents, twenty-five percent minorities, seven percent females, fifteen percent apprentices, and five percent veterans	The city is faced with a construction industry in which small business enterprises (SBEs), especially minority-owned businesses (MBEs), feel as though they do not have a fair share at obtaining contracts, and therefore limited room to grow.
The city disenfranchises individuals without proper identification (driver license)	OSHA-10 programs require state issued driver license to participate in training	City development programs should be more progressive to increase minority participation by seeking workarounds to regulatory restrictions.

Viable Business Entity

Sentiment	Material Basis	Semiotic Basis
Can't make money on New Haven SBE projects.	Ordinance 12 ¼ set aside projects for SBE, MBE and WBE are capped to increase participation amongst eligible lowest viable bidders	SBE, MBE and WBE low bids due to a lack of bidding knowledge or need to obtain work restricts profitability on project \$150,000 and under. The underestimation further jeopardizes SBEs ability to purchase materials and pay competitive wages
Can't receive timely payment for completed work	City of New Haven 60-day payment terms	SBE, MBE and WBE often do not have cash-on-hand nor the banking relationships for loans to maintain positive cash flow until payment is remitted by the city or a majority business when acting as a subcontractor. This may inhibit their ability to grow, employ residents or remain in business

Skilled and Unskilled Labor

Sentiment	Material Basis	Semiotic Basis
Lack of adequate labor capacity in New Haven area	Ordinance regulates the percentage of minority employees on city construction to increase resident labor participation and economic benefit to the city	The city is not effectively partnering with SBE, MBE, and WBE and majority owned businesses to increase the skilled and licensed construction labor force in New Haven

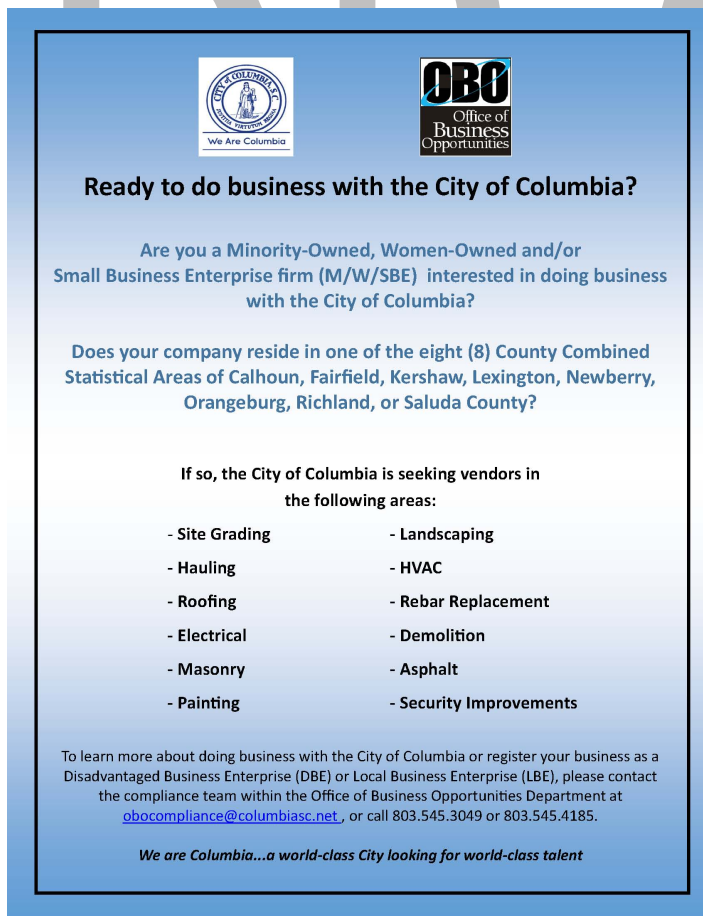
Sentiment	Material Basis	Semiotic Basis
Disjointed and apathetic system of formal and apprentice education and worker placement with employers	Ordinance 12 ½ instituted to identify New Haven area residents who could work on City funded construction projects. New Haven Works, 501 C-3 created by City of New Haven, to provide job seekers with employment placement, resume and interviewing guidance	Active coordination to bring-to-bare formal education (trade schools) and on-job trading (businesses, unions, etc.), along with private construction companies to attract, educate and retain labor force. Reinforces residents' belief majority business are unfairly exempt from hiring city residents with blanket statements of not finding available workers or work is PLAs
Majority owned businesses restricted from mentoring SBE, MBE, and WBE businesses restricting their labor participation	Ordinances set forth strict operations, partnering and ownership percentages to ensure SBE, MBE and WBE are not financially disadvantage from majority businesses	Majority owned businesses contracting construction labor who are skilled and licensed, whereas SBE, MBE, and WBE businesses subcontracting ability to hire and/or educate licensed and skilled labor are stifled.
Gaming the systems that doesn't work in practice	Ordinance 12 ½ requirement to use New Haven residents on a good faith basis for city construction projects	Medium and small companies have an employed workforce that doesn't allow for flexible employment to meet requirements

E. Examples of Other Cities' W/MBE Offerings

Shreveport, Louisiana



Columbia, South Carolina



ⁱNew Haven, Connecticut, Municipal Code, Chapter 12 ¼ (2020)

ⁱⁱⁱ"Minority and Women's Participation in the New Haven Construction Industry," Jaynes Associates, February, 1990

ⁱⁱⁱFernandez-Chavero, Angel. Rep. *Improving Affirmative Workforce Hiring and Contract Compliance: Report to Alder Working Group on 12 ¼ and 12 ½*, 2020

^{iv}"About Us | Small Contractor Development." *Official Website of the City of New Haven*, www.newhavenct.gov/gov/depts/small_contractors/about_us.htm.

^vNew Haven, Connecticut, Municipal Code, Chapter 12 ¼ (2020)

^{vi}*Ibid.*

^{vii}*Ibid.*

^{viii}*Ibid.*

^{ix}*Ibid.*

^x *Ibid.*

^{xi} U.S. Census Bureau QuickFacts.(2019). <https://www.census.gov/quickfacts>

^{xii} Geller v. Markham, 481 F. Supp. 835 (D. Conn. 1979)

^{xiii} Fullilove v. Klutznick, 448 U.S. 448 (1980)

^{xiv} Wygant v. Jackson Board of Education, 476 U.S. 267 (1986)

^{xv} City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989),

^{xvi} Ricci v. DeStefano, 557 U.S. 557 (2009)

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