



# King County

**MOTION 2021-0391**

**INTRODUCED BY COUNCILMEMBER GIRMAY ZAHILAY**

**TUESDAY, OCTOBER 12, 2021**

**PASSED UNANIMOUSLY BY KING COUNTY COUNCIL**

**TUESDAY, OCTOBER 26, 2021**

**Title**

A MOTION declaring that race- and gender-conscious affirmative action practices in the county are urgently needed to combat discrimination that race- and gender-neutral measures have failed to eliminate in King County.

**Body**

**WHEREAS**, from 1970 through 1977, Washington state Governor Daniel J. Evans first enacted race- and gender-conscious affirmative action policies through a series of executive orders which resulted in nearly thirty years of increased participation of women and Black, Indigenous and People of Color ("BIPOC") communities in public employment, public contracting and public education, and

**WHEREAS**, in 1985, the Washington state Legislature passed legislation adopting Governor Evans' affirmative action executive orders into statutory law, now codified as chapter 49.74 RCW, and

**WHEREAS**, in 1998, Washington state voters passed Initiative Measure 200 ("I-200"), which stated in the November 3, 1998, Washington state voters' pamphlet, that I-200 does not end all affirmative action programs, but only prohibits those programs that use race and gender to select a lesser qualified applicant over a more deserving applicant for a public job, contract or admission to a state college or university, and

**WHEREAS**, before I-200's passage, the Washington state Attorney General at that time, Christine Gregoire, established that I-200's effect would be determined, not just by the words of the initiative, but by how its provisions are interpreted and applied, and

**WHEREAS**, in 2003, the Washington state Supreme Court in *Parents Involved in Community Schools v. Seattle School District No.1* held that RCW 49.60.400 did not prohibit the consideration of race and gender in government actions or decisions but was limited in its application to prohibiting the state's use of race or gender to select a less qualified candidate over a more qualified candidate, and

**WHEREAS**, since 1998, Washington state has implemented Governor's Directive Number 98-01, which for twenty-three years has misinterpreted I-200, now codified as RCW 49.60.400, as a race- and gender-neutral affirmative action policy by erroneously stating that neither race nor gender could ever be used as factors to select candidates for public college or university admissions, public employment or a public contract, and

**WHEREAS**, in 2017, Washington state Attorney General Bob Ferguson issued Opinion 2017 No. 2 which concluded that I-200 does not categorically prohibit all uses of race- or

gender-conscious measures in state contracting but allows the use of measures that take race or gender into account in state contracting without elevating a less-qualified contractor over a more-qualified contractor. The Attorney General also opined that under narrow circumstances when evidence of race or gender discrimination exists and race- and gender-neutral measures have been insufficient to remedy the discrimination, then race- or gender-conscious measures may be allowed to remedy that disparity, and

**WHEREAS**, on January 26, 2018, the Director of the Washington state Office of Minority and Women Business Enterprises ("OMWBE") reported to the Washington state Senate Committee on State Government, Tribal Relations & Elections Committee that since the 1998 passage of I-200, Washington's small, minority- and women-owned businesses had lost an estimated \$3.5 billion in state public contracting opportunities, and

**WHEREAS**, the 2019 state's Office of Minority and Women Business Enterprise Disparity Study found that minorities and women continue to suffer discriminatory barriers to full and fair access to contracts and associated subcontracts in the state's market area and the lack of intervention in the wake of I-200 perpetuated these inequities and some remedial action is warranted and necessary to ensure antidiscrimination in state contracting activities, and

**WHEREAS**, in June 2021, the county auditor issued a report entitled Contracting Inequities Persist in Race-Neutral Environment, which concluded that contracting inequities persist in the county and provided fourteen recommendations to reduce racial disparities in awarding county contracts, and

**WHEREAS**, in response to the county auditor report, the executive issued Executive Order CON-7-28-EO entitled Pro-equity Contracting to direct the implementation of most of the recommendations included in the county auditor report, and

**WHEREAS**, action was already taken on one of the county auditor recommendations by the enactment of Ordinance 19326 to implement a reciprocal certification process to allow businesses that are certified through the OMWBE to be automatically county small contract supplier certified to expand opportunities for minority and women business enterprises to bid for county contracts;

**NOW, THEREFORE, BE IT MOVED** by the Council of King County:

The council declares that race- and gender-conscious affirmative action practices in the county are needed to combat discrimination that race and gender neutral measures have failed to eliminate. In furtherance of this policy, the council:

A. Urges Governor Jay Inslee to immediately sign an executive order rescinding Governor's Directive 98-01 and restore race- and gender-conscious affirmative action practices in the state of Washington, consistent with the Washington state Supreme Court's ruling in *Parents Involved in Community Schools v. Seattle School District No.1* and as used by the United States federal government and the vast majority of state governments across the country;

B. Supports including an item in the council's 2022 legislative agenda to advocate for any legislation necessary to timely and fully implement an executive order that would rescind Governor's Directive 98-01 and implement race- and gender-conscious affirmative action where appropriate;

C. Supports the recommendations included in the county auditor's June 2021 report, *Contracting Inequities Persist in Race-Neutral Environment*, to reduce racial disparities and inequities in awarding county contracts;

D. Supports county Executive Order CON-7-28-EO entitled Pro-equity Contracting that directs the implementation of most of the recommendations included in the county auditor report;

E. Supports exploring the benefits of reestablishing a minority and women business enterprises office or program in the county to ensure consistency in contracting processes and criteria across county agencies and departments to eliminate ambiguities regarding the county's commitment to eliminating racial disparities and inequities in awarding county contracts; and

F. Supports setting measurable countywide goals for spending with minority and women's business enterprises to further the progress of eliminating racial disparities and inequities in awarding county contracts.