

ORDINANCE NUMBER: 2134

AMENDING CHAPTER 3

ORDINANCE AMENDING CHAPTER 3 OF THE CHARLOTTE CITY CODE
ENTITLED "ANIMALS"

BE IT ORDAINED, by the City Council of the City of Charlotte, North Carolina
that:

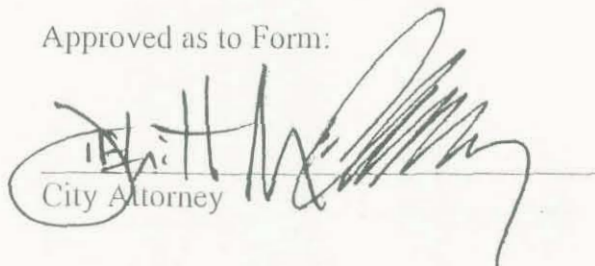
Section 1. Section 3-26 of Chapter 3, entitled "Restraint of Animals" is amended to
include and read as follows:

(c) *Public Parks.* It shall be unlawful for any person owning or having
possession, charge, custody or control of any dog to take the dog in or allow the
dog to enter any public park without being at all times under the restraint of a
leash except while in designated off-leash areas, in accordance with the rules and
regulations pertaining to such off-leash areas.

Section 2. All other provisions of this Chapter shall remain in full force and effect.

Section 3. This ordinance shall become effective September 23, 2002.

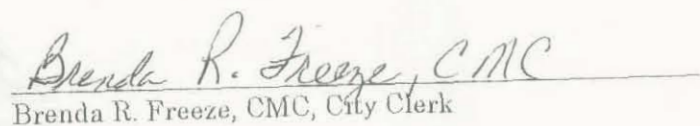
Approved as to Form:


City Attorney

CERTIFICATION

I, Brenda R. Freeze, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the
foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North
Carolina, in regular session convened on the 23rd day of September, 2002, the reference having been made in
Minute Book 118, and recorded in full in Ordinance Book 51, Pages 761.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 26th day of
September, 2002.


Brenda R. Freeze, CMC, City Clerk

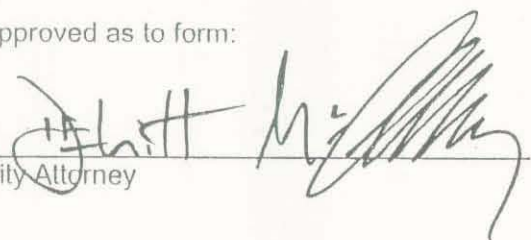
ORDINANCE NO. 2135-X
0-13

AN ORDINANCE TO AMEND ORDINANCE NUMBER 2091-X, THE 2002-2003 BUDGET ORDINANCE, PROVIDING AN APPROPRIATION FOR THE CONSTRUCTION OF AN AIRCRAFT HANGER.

BE IT ORDAINED, by the City Council of the City of Charlotte;

- Section 1. That the sum of \$1,330,000 is available from Airport Excluded Centers Fund Balance.
- Section 2. That the sum of \$1,330,000 is hereby appropriated to the Airport Capital Projects Fund 2073 - 56318.
- Section 3. That the existence of the project may extend beyond the end of the fiscal year. Therefore, this ordinance will remain in effect for the duration of the program and funds are to be carried forward to subsequent fiscal years until all funds are expended.
- Section 4. All ordinances in conflict with this ordinance are hereby repealed.
- Section 5. This ordinance shall be effective upon adoption.

Approved as to form:




City Attorney



CERTIFICATION

I, Brenda R. Freeze, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 23rd day of September, 2002, the reference having been made in Minute Book 118, and recorded in full in Ordinance Book 51, Pages 762.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 26th day of September, 2002.



Brenda R. Freeze, CMC, City Clerk

CITY OF CHARLOTTE
COMMERCIAL NON-DISCRIMINATION ORDINANCE

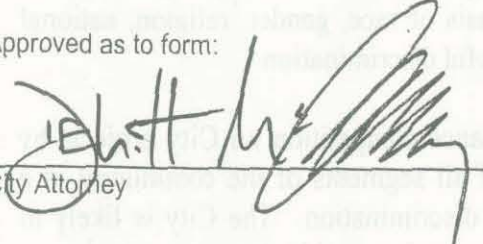
ORDINANCE NO. 2136-X

0-14

AN ORDINANCE TO AMEND ORDINANCE NUMBER 2091-X, THE 2002-2003 BUDGET ORDINANCE, APPROPRIATING AIRPORT DISCRETIONARY FUNDS FOR THE CONSTRUCTION OF A PARKING LOT.

BE IT ORDAINED, by the City Council of the City of Charlotte;

- Section 1. That the sum of \$498,880 is hereby estimated to be available from Airport Discretionary Funds. These funds will be repaid from the proceeds of future General Airport Revenue Bonds.
- Section 2. That the sum of \$498,880 is hereby appropriated to the Airport Capital Projects Fund 2087 - 529.41.
- Section 3. That the existence of the project may extend beyond the end of the fiscal year. Therefore, this ordinance will remain in effect for the duration of the program and funds are to be carried forward to subsequent fiscal years until all funds are expended.
- Section 4. All ordinances in conflict with this ordinance are hereby repealed.
- Section 5. This ordinance shall be effective upon adoption.


Approved as to form:


City Attorney

CERTIFICATION

I, Brenda R. Freeze, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 23rd day of September, 2002, the reference having been made in Minute Book 118, and recorded in full in Ordinance Book 51, Pages 763.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 26th day of September, 2002.



Brenda R. Freeze, CMC, City Clerk

ORDINANCE NO. 2137

From Restructuring Government Committee

CITY OF CHARLOTTE

COMMERCIAL NON-DISCRIMINATION ORDINANCE

Recitals

THIS ORDINANCE establishes a **Commercial Non-Discrimination Policy with investigation and enforcement provisions for firms that engage in business with the City of Charlotte.** The purposes of this Ordinance are: (a) to establish a clear policy against discrimination in business on the basis of race, gender, religion, national origin, ethnicity, age, or disability; (b) to establish a clear policy for the City not to enter into *contracts* with *business firms* that discriminate in the solicitation, selection, or treatment of vendors, suppliers, subcontractors, or *commercial customers*; and (c) to establish a formal complaint process and investigation process for alleged violations of this policy, providing due process for hearing evidence, rendering findings, and imposing sanctions for policy violations.

The City Council finds that in order to avoid becoming a passive participant in private sector commercial discrimination, it is necessary to establish and firmly enforce a clear policy against discrimination in business on the basis of race, gender, religion, national origin, ethnicity, age, or disability. Under this policy, the City shall not *contract* with *business firms* that discriminate in the solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, or *commercial customers*. Such a commercial non-discrimination policy approach has been favorably commented upon by the United States Supreme Court in City of Richmond v. J. A. Croson, 488 U.S. 469, 509-510 (1989), and by other federal courts.

The City Council has further determined that it has a compelling interest in assuring that public funds do not serve to finance private prejudice on the basis of race, gender, religion, national origin, ethnicity, age, disability, or any other form of unlawful discrimination.

It is in the best interests of the City of Charlotte to enhance competition on City projects by promoting equal opportunity and the full participation of all segments of the community in a marketplace environment that is free from the effects of discrimination. The City is likely to benefit from a discrimination-free marketplace through lower prices and higher revenues.

Through enactment of this Ordinance, the City of Charlotte provides a formal mechanism for receiving, investigating, and resolving complaints of *discrimination* filed against businesses that have submitted a bid or proposal for, have been selected to engage in, or are engaged in providing goods or services to the City. The City also gives fuller meaning and effect to the goals and objectives of this Ordinance by including enforcement provisions that may subject violators of the Ordinance to possible contract termination, disqualification from participation in City contracts and projects, or other remedial actions.

September 23, 2002
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SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CHARLOTTE, That the following "Commercial Non-Discrimination Policy" is enacted with the stipulation that it not go into effect until the North Carolina General Assembly has enacted legislation approving the following two policy components: (a) defining "discrimination" to include discrimination that is based on race, gender, religion, national origin, ethnicity, age or disability, but that may not be unlawful under existing state or federal law; and (b) providing that a business may be disqualified from participating in City contracts for violation of the Ordinance. Be it further ordained that within thirty days after the enactment of such legislation by the North Carolina General Assembly, the following provisions shall be added to the Charlotte City Code as "Chapter 2 Administration, Article V – Commercial Non-Discrimination Policy."

**Charlotte City Code
Chapter 2 Administration
Article V – Commercial Non-Discrimination Policy**

ARTICLE V. COMMERCIAL NON-DISCRIMINATION POLICY.

Section 2.87. Policy statement.

It is the policy of the City of Charlotte not to enter into a *contract* with any *business firm* that has discriminated in the solicitation, selection, hiring or treatment of vendors, suppliers, subcontractors or *commercial customers* on the basis of race, gender, religion, national origin, ethnicity, age, or disability, or on the basis of any otherwise unlawful use of characteristics regarding such vendor's, supplier's, or *commercial customer's* employees or owners; provided that nothing in this Commercial Non-Discrimination Policy shall prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that has occurred or is occurring in the marketplace.

Section 2.88 Purpose and Intent.

It is the intent of the City to avoid becoming a passive participant in private sector commercial discrimination by refusing to procure goods and services from *business firms* that *discriminate* in the solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, or *commercial customers* on the basis of race, gender, religion, national origin, ethnicity, age or disability by providing a procedure for receiving, investigating, and resolving complaints of *discrimination* filed against *business firms* that have submitted a bid or proposal for, have been selected to engage in, or are engaged in providing goods or services to the *City*.

Section 2.89. Definitions.

For purposes of this Article V, the following terms have the meanings indicated unless the context clearly requires a different meaning.

(A) *Business firm.*

"*Business firm*" means: (a) any person, firm, sole proprietorship, partnership, corporation, limited liability company, or other business entity or combination thereof, including any *financial institution*, developer, consultant, prime contractor, subcontractor, supplier, or vendor, that has submitted a bid or proposal for, has been selected to engage in, or is engaged in providing goods or services to the City, including selling or leasing supplies or goods, or providing construction, real estate development, financial, insurance, professional, or other services, in return for a fee or any other form of compensation paid by the City; and (b) any *subcontractor*. The term "business firm" does not include other government entities.

(B) *City*.

"*City*" means the City of Charlotte, North Carolina, which is a North Carolina municipal corporation.

(C) *City Manager*.

"*City Manager*" means the City Manager of the City of Charlotte, or his/her designee.

(D) *Commercial Customer*.

"*Commercial Customer*" means a business entity that procured or attempted to procure goods or services from a *business firm* for business as opposed to personal use. As used in this definition, "services" includes construction, real estate development, financial, insurance, professional and other services.

(E) *Commercial Non-Discrimination Policy*.

"*Commercial Non-Discrimination Policy*" means the regulations contained in Section 2, Article V of the Charlotte City Code, and any regulations or documentation requirements adopted by the City Manager pursuant to Article V.

(F) *Contract*.

"*Contract*" means an agreement with any *business firm* let by or on behalf of the City for that *business firm* to sell or lease supplies, or goods, or to provide construction, real estate development, financial, insurance, professional, or other services to the City, in return for a fee or any other form of compensation to be paid by the City.

(G) *Director*.

"*Director*" means the Director of the Equal Business Opportunity Office.

(H)

(I) *Discrimination.*

"*Discrimination*" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or treatment of a vendor, supplier, subcontractor or *commercial customer* on the basis of race, gender, religion, national origin, ethnicity, age or disability, or on the basis of any otherwise unlawful use of characteristics regarding such vendor's, supplier's, or commercial customer's employees or owners; provided that nothing in this definition or Article shall prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that has occurred or is occurring in the marketplace.

(J) *Economic Development Project*

"*Economic Development Project*" means a real estate development, construction or renovation project that the City provides funding, land, road improvements, tax credits, a below market purchase price or other financial assistance to for the purpose of promoting economic development. For purposes of this definition, the terms "funding" and "financial assistance" do not include payments in exchange for goods or services, as long as such payments do not exceed the reasonable value of such goods or services.

(K) *Financial Institution.*

"*Financial Institution*" means any person or entity engaged in the business of lending money, guaranteeing loans, extending credit, securing bonds, providing venture or equity capital, or that offers financial services in connection with *City* projects or the administration of *City* government. *Financial Institution* includes banks, savings and loans, venture capital companies, insurance companies, bonding companies, mortgage companies, credit unions, and brokers.

(L) *Office.*

"*Office*" means the Equal Business Opportunity Office.

(M) *Procurement Services Director.*

"*Procurement Services Director*" means the Director of the Procurement Services Division of the City's Business Support Service Key Business

(N) *Retaliate.*

"*Retaliate*" means to take any action that has a material negative effect against any person, business or other entity for reporting any incident of *discrimination* testifying as a witness at a hearing, or providing requested assistance to the Office in any investigation of an incident of discrimination pursuant to this Commercial Non-Discrimination Policy.

(O) *Subcontract.*

"*Subcontract*" means an agreement for the performance of a particular portion of work to be performed under a *contract* with the *City*, where: (i) the party providing the service is on reasonable notice that the work is to be performed under a *City contract*; and (ii) the amount to be paid for such service is material with respect to the overall amount of the *contract*.

(P) *Subcontractor.*

"*Subcontractor*" means the party providing service under a *subcontract*.

Section 2.90. Scope.

(A) *In general.*

This Commercial Non-Discrimination Policy applies to all *business firms* as defined in Section 2.89(A) of this Article. It also applies to those *economic development projects* as provided in Section 2.90(B) of this Article.

(B) *Economic development projects.*

As a condition of participating in an *economic development project*, the City will require the governmental agency, quasi-governmental agency, corporation, developer, or contractor that receives assistance from the City to comply with this Commercial Non-Discrimination Policy in administering the *economic development project*, and in awarding contracts to manage or perform the work entailed in the *economic development project*. Each contract and subcontract awarded in connection with the *economic development project* shall contain the non-discrimination clause set forth in Section 2.101 of this Article V. Any *discrimination* claims relating to the *economic development project* shall be subject to investigation and adjudication by the City in accordance with this Commercial Non-Discrimination Policy.

(C) *Exclusions*

This Commercial Non-Discrimination Policy shall not apply to the following:

- Any real property acquisition by the City (including but not limited to condemnation), other than a lease of real estate for the City's use
- Settlement of litigation
- Settlement of judicial/administrative enforcement proceedings by or on behalf of the City (excluding proceedings to enforce this Commercial Non-Discrimination Policy)
- Agreements concerning standards for locating facilities in City right of way when business firm has statutory right to be in the right of way

- Agreements with non-profit agencies for the purpose of having the non-profit agencies perform functions which the City is authorized by law to perform

Section 2.91. Rules of construction.

The provisions of this Commercial Non-Discrimination Policy are to be liberally construed to accomplish its policies and purposes. The City Manager shall be authorized to construe the provisions of this Commercial Non-Discrimination Policy for purposes of administration, subject to judicial review under Section 2.100.

Section 2.92. Short title.

Article V of Section 2 of the Charlotte City Code may be cited as the "*Commercial Non-Discrimination Policy*". The term "*Commercial Non-Discrimination Policy*" also includes any regulations or documentation requirements adopted by the City Manager pursuant to Article V of Section 2.

Section 2.93. Complaints of discrimination.

Any adult person, business entity, association, organization, or government agency may file an administrative complaint with the *Director* stating facts showing or tending to show that a *business firm* has within the preceding three year period engaged in *discrimination* or *retaliation*. Within ten business days, the *Director* shall notify the *business firm* against whom the complaint was filed that a complaint has been received.

Section 2.94. Investigation of complaints.

The *Office* shall be responsible for investigating *discrimination* and *retaliation* complaints filed under this subsection. In conducting its investigation, the *Office* may enlist the assistance of one or more individuals who have been selected by the City Manager to participate in the Volunteer Expert Pool as described in Section 2.107. The role of such witnesses shall be to help the *Office* evaluate the claim by providing information regarding industry custom and practice in a particular area of business. The *Office* may request that the City Manager provide such additional City personnel and/or outside consultants as may be reasonably necessary or appropriate to conduct such investigations.

The *Office* shall exercise reasonable judgment in seeking relevant evidence from the complainant, the respondent *business firm* and, as necessary, external sources. However, nothing in this Article shall require the City to fund the cost of: (a) having City staff or others travel outside the Charlotte MSA to investigate any claim under this Article, or (b) having witnesses travel to Charlotte for the purpose of investigating any claims or testifying at any hearing or proceeding in connection with this Article. The *Office* shall exercise reasonable discretion in determining the extent of the investigation required to support the Director's initial findings and recommendations pursuant to Section 2.95.

The *Office* shall have no obligation to investigate complaints relating to discrimination that occurred outside the Charlotte Metropolitan Statistical Area ("MSA"), provided that the *Office* may do so if the complainant provides evidence of a nexus between the *discrimination* that occurred and the potential for *discrimination* in the Charlotte MSA.

In determining whether *discrimination* occurred under this Article and in evaluating the factors set forth in Section 2.95(A), the *Office* may consider evidence relating to acts or omissions that occurred during or prior to the three year period before the complaint was filed.

Section 2.95. Initial findings and recommendations.

(A) In determining whether to further proceed with an investigation and in making findings, the *Office* may consider any evidence provided by the complainant or the respondent *business firm* as to the following factors: (i) whether there was an intent to *discriminate* on the part of the respondent *business firm*; (ii) whether there was a pattern and practice of *discrimination* on the part of the respondent *business firm*; (iii) any actions taken by the respondent *business firm* to remedy the alleged *discrimination*; (iv) the effectiveness of any prior attempts by respondent *business firm* to remedy the discrimination; (v) whether the respondent *business firm* has procured goods or services from or otherwise engaged in business with persons or entities of the same protected class as the complainant to an extent sufficient to demonstrate that the respondent *business firm* has not discriminated against such protected class in the overall context of its business; and (vi) any other evidence deemed relevant by the *Director*.

(B) Based upon the investigative unit's review and investigation, the *Director* shall make an initial finding of each allegation stated in the complaint, that either:

- (1) The investigation produced sufficient evidence to find that the alleged *discrimination* or *retaliation* did take place ("sustained");
- (2) The investigation failed to produce sufficient evidence to find whether the alleged *discrimination* or *retaliation* took place ("not sustained");
- (3) The investigation produced sufficient evidence to find that the alleged *discrimination* or *retaliation* did not take place ("unfounded");
- (4) The investigation produced sufficient evidence to establish that the complainant knowingly made one or more false or frivolous allegations, and further investigation did not appear likely to produce sufficient evidence that the alleged *discrimination* or *retaliation* did take place ("false or frivolous");
- (5) The allegation has been settled or otherwise resolved with the agreement of the respondent *business firm*, the complainant, and the *City* ("settled"); or

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(6) The allegation has been withdrawn with the approval of the Director ("withdrawn"). The Director shall approve the withdrawal of an allegation unless the Director determines that permitting the withdrawal is not in the City's best interests. In such an instance, the Director may continue the investigation without the complainant's participation as a party.

(C) The *Director* shall recommend to the City Manager the appropriate action to be taken. That action may include additional investigation of the complaint, sanctions, remedies or other action consistent with this subsection. In recommending appropriate action on a *discrimination* claim, the Director may take into account any evidence provided or uncovered in the course of the investigation regarding: (i) the impact of the discrimination on affected parties; (ii) the impact of any authorized remedy on the City or any other party; (iii) actions taken by the respondent *business firm* to remedy the alleged *discrimination*; (iv) the effectiveness of any prior attempts by respondent *business firm* to remedy the discrimination; (v) whether the respondent *business firm* has procured goods or services from or otherwise engaged in business with persons or entities of the same protected class as the complainant to an extent sufficient to demonstrate that the respondent *business firm* has not discriminated against such protected class in overall context of its business; (vi) the number and scope of prior violations of this policy by the respondent *business firm*; and (vii) any other evidence deemed relevant by the *Director*.

(D) The Director shall make the initial findings and recommendations within 120 calendar days of receipt of the complaint. The City Manager may extend this time limit at the request of the *Director* for good cause or if the parties agree to mediate a settlement to the complaint.

(E) The *Director* shall notify the complainant and the *business firm* within five business days of the issuance of the initial findings and recommendations, including an explanation of the reasons justifying the initial findings.

(F) Failure by a party to produce documents or other evidence relevant to an investigation under this Article within thirty days after such documents are requested by the Director shall constitute a violation of the Commercial Non-Discrimination Policy. In the event of such violation, the Director may recommend any remedy, sanction or combination thereof authorized by this Article for a violation of the Commercial Non-Discrimination Policy.

Section 2.96. Arbitration.

(A) If the *Director* determines that one or more allegations are sustained, the *business firm* against whom the allegations were made shall be entitled to submit the matter to an arbitration administered by the Commercial Arbitration and Mediation Center for the Americas ("CAMCA") in accordance with its rules.

(B) If the *business firm* against whom allegations of *discrimination* or *retaliation* were made contends that one or more allegations was false or frivolous and the Director does not make such a finding, the *business firm* shall be entitled to submit the matter to an arbitration administered by the Commercial Arbitration and Mediation Center for the Americas ("CAMCA") in accordance with its rules.

(C) If the Director determines that the allegations of *discrimination* or *retaliation* were not sustained, were unfounded or were false or frivolous under Section 2.95(B)(2), (3) or (4), or if the complainant contends that the Director has not used reasonable judgment in seeking relevant evidence from the *business firm*, the complainant shall be entitled to submit the matter to an arbitration administered by CAMCA in accordance with its rules. Notwithstanding the forgoing, the complainant shall not be entitled to an arbitration based on the alleged failure of Director to use reasonable judgment in seeking relevant evidence unless at least three days prior to issuance of the Director's findings, the complainant has submitted to the Director a written request for the evidence in question.

(D) As a condition to doing business with the City and as a condition to filing a complaint under this Policy, the *business firm*, the complainant and the City all agree to faithfully observe the CAMCA rules and procedures for commercial arbitration (subject to the exceptions stated in this Policy), and further agree that a judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof, subject to modification by the City Manager as provided in this Policy. Unless otherwise ordered by the arbitrator, the *business firm*, the complainant and the City shall each pay their own respective attorneys fees and other costs associated with the arbitration.

(E) To submit a matter to arbitration under this Policy, the *party seeking the arbitration* must request arbitration by filing a written notice with CAMCA, the other party and the Director within fifteen calendar days of notice of the initial findings and recommendations. The notice must contain the following information:

- a. a demand that the matter be referred to arbitration;
- b. the names, addresses and telephone numbers of the *party seeking arbitration*, the Director and the other party; and
- c. a reference to this Commercial Non-Discrimination Policy and the Director's findings and recommended actions that are being submitted to arbitration.

The notice delivered to CAMCA shall also contain a copy of: (i) this Commercial Non-Discrimination Policy, complete with any amendments as of the date arbitration is requested; (ii) the Director's findings and recommended actions or lack thereof that are being submitted to arbitration; and (iii) if the complainant

contends that the Director has not used reasonable judgment in seeking relevant evidence from the *business firm*, the complainant shall also include with the notice a list of the relevant evidence requested by the complainant that the Director has refused to request from the *business firm*.

If neither the *business firm* nor the complainant properly requests an arbitration, the *Director's* initial findings and recommendations shall become the final administrative decision of the *City* subject to approval by the City Manager as set forth in Section 2.96(H).

(F) For all arbitrations conducted under this Policy:

- a. the parties to the arbitration shall be the *business firm*, the complainant and the City;
- b. the number of arbitrators shall be one;
- c. the place of arbitration shall be Charlotte North Carolina;
- d. the substantive law applicable to the dispute shall be: (i) the City of Charlotte's Commercial Non-Discrimination Policy and, (ii) for any matters not addressed by the Commercial Non-Discrimination Policy, the law of North Carolina;
- e. the language of the arbitration shall be English;
- f. the arbitrator shall be an attorney licensed to practice law in the United States of America;
- g. If the *Director* determines that the allegations of *discrimination* or *retaliation* were sustained or that the allegations of *discrimination* were false or frivolous, the City shall have the burden of proof to establish that the *Director's* findings and recommendations are appropriate under this Policy;
- h. If the *business firm* seeks arbitration on a claim that one or allegations of *discrimination* or *retaliation* against it were false or frivolous but the *Director* did not make such a finding, the *business firm* shall have the burden of proof with respect to any claims that all or part of the allegations made against it are frivolous; and
- i. If the complainant seeks arbitration based on a claim that the *Director* improperly determined that the allegations of *discrimination* or *retaliation* were not sustained or were unfounded, or if the complainant seeks arbitration based on a claim that the Director has not used reasonable

judgment in seeking relevant evidence from the *business firm*, the complainant shall have the burden of proof with respect to all such claims.

(G) For all arbitrations conducted under this Policy, the following exceptions to CAMCA rules shall apply:

a. Article 3, Subsections 1 and 2 are deleted and replaced with the following:

Within thirty (30) days after notice to the parties of the commencement of the arbitration by CAMCA, the *party seeking the arbitration* shall file a written response to the *Director's* findings and recommended actions, along with any claims that the *party seeking the arbitration* may have under the Commercial Non-Discrimination Policy. The response shall state in detail all grounds on which the *party seeking the arbitration* contends that the *Director's* findings or recommendations are not appropriate under the Commercial Non-Discrimination Policy.

b. Article 7, Subsection 2 is revised to provide that the list of arbitrators to be provided by CAMCA shall include only attorneys licensed to practice law in the United States of America.

c. Article 21, Subsection 2 is revised to add the following sentence at the beginning of the Subsection:

At least twenty days prior to the hearing, each party shall provide to the other parties copies of all documents that such party intends to introduce as evidence at the hearing.

d. Article 22 is revised to add the following as subsections at the end of the Article:

7. The arbitrator shall be authorized to enter such orders as are reasonably necessary or convenient to: (a) govern the conduct of the hearing and the parties so that the purposes of this Commercial Non-Discrimination Policy are achieved; (b) require the production of any additional documents or information that the arbitrator deems relevant to the complaint or the arbitration; (c) conclude such hearings and issue decisions within a reasonable time; and (d) conduct such hearings in a manner that is consistent with this Commercial Non-Discrimination Policy and such due process rights as each party may have. The hearing shall afford the parties an opportunity to: present witnesses, conduct direct and cross-examination of witnesses, introduce relevant evidence and submit briefs and present oral argument.

8. The arbitrator may issue such protective orders for good cause as are lawful and as the arbitrator determines to be appropriate to: (i) limit, or otherwise impose conditions upon, access by any person to any document in the possession of a party, including without limitation any document in the City's possession or in the record of the hearing that is not a public record; and (ii) close all or any portion of the hearing, or otherwise impose conditions upon access thereto by any person. Without limiting the scope of the arbitrator's authority to issue protective orders, it is understood that the arbitrator may limit, or otherwise impose conditions upon, a party's access to records or presence during the hearing only to the extent such limits or conditions can be imposed in a manner that is consistent with such right, if any, as a party may have to access such records or be present during the hearing under applicable law, including, without limitation, express provisions of this *Commercial Non-Discrimination Policy*.

- e. Article 27, Subsection 1 is revised to add the following sentence to the end of the subsection:

Such experts may include experts in the Volunteer Pool of Experts appointed by the City Manager under the Commercial Non-Discrimination Policy.

- f. Article 29, Subsections 1 and 2 are deleted and replaced with the following:

Based upon the evidence presented at the arbitration, and within thirty calendar days of the hearing, the arbitrator shall prepare a written decision of award. Such decision may affirm or reject the initial findings and recommendations, may substitute different findings and shall recommend any appropriate remedies, or may continue the hearing and return the case to the *Director* for further investigation and findings and report to the arbitrator on the results of such investigation within such time as the arbitrator may specify. The arbitrator's award decision shall be based upon a preponderance of the evidence and shall reflect the evidentiary basis for its findings. In the event the arbitrator returns the case to the *Director* for further investigation and findings, the City shall pay its own cost in conducting such further investigation and making such findings.

- g. Article 33 is revised to add the following provision to the end of the Article:

Notwithstanding anything contained herein to the contrary, unless the arbitrator finds that one or more allegations giving rise to the *Director's* findings or the *business firm's* or complainant's challenge to such findings was frivolous or knowingly false when made or when pursued in

arbitration, each party shall bear the cost of its own legal representation and expert witness fees. If the arbitrator finds that one or more allegations giving rise to the *Director's* findings or the *business firm's* or complainant's challenge to such findings was frivolous or knowingly false when made or when pursued in arbitration, the arbitrator shall be entitled to require the party who made such frivolous or knowingly false allegations or challenge to bear all or a portion of the other parties' respective legal fees and expert witness fees.

h. The Expedited Procedures set forth in Article 39 shall not apply to arbitrations under this Policy.

(H) The *business firm*, the *Director* and the complainant shall all cooperate in good faith to have the arbitration conducted within ninety days after the party seeking arbitration issues its notice of intent to arbitrate.

(I) During the arbitration, the Director or the arbitrator may call as witnesses one or more individuals who have been selected by the City Manager to participate in the Volunteer Expert Pool as described in Section 2.107. The role of such witnesses shall be to provide information regarding industry custom and practice in a particular area of business.

(J) Failure by a party to produce documents or other evidence relevant to an arbitration under this Article within thirty days after such documents are requested by the Director or the arbitrator shall constitute a violation of the Commercial Non-Discrimination Policy. In the event of such violation, the arbitrator may recommend any remedy, sanction or combination thereof authorized by this Article for a violation of the Commercial Non-Discrimination Policy.

(K) If no timely arbitration is requested, the City Manager may vacate the Director's recommended remedy on written notice to all parties within five business days after the time for requesting arbitration has expired. In the absence of such notice, the City Manager shall be deemed to have approved the Director's recommended remedy. If the City Manager vacates the Director's proposed remedy, the City Manager shall initiate an arbitration by filing a notice of intent to arbitrate in compliance with the requirements of this Policy.

(L) The scope of the arbitration provided under this Policy shall be limited to whether this Policy has been properly applied. Any challenges to the legality of the Policy itself must be brought in a court of competent jurisdiction.

Section 2.97. Remedies.

When an allegation is sustained in an arbitration under this Policy, the arbitrator may take additional evidence on the appropriate remedy to be recommended, including evidence

relating to factors set forth in Section 2.95(C) of this Article, and any other evidence deemed relevant by the arbitrator. In such instances, the arbitrator shall recommend that the City Manager order any one or more of the following actions (listed in the order of severity):

- (A) Any remedy that is agreed to by the respondent *business firm*, the complainant, and the *Director*; provided that, if the complainant objects to such remedy as may be agreed to by the respondent *business firm* and the *Director*, such remedy may be considered as approved by the City only if the City Manager approves such remedy after affording the complainant an opportunity to address the City Manager either in writing or in person regarding the merits or lack thereof of the proposed remedy;
- (B) Finding that the respondent *business firm* is not a "responsible bidder" within the meaning of the North Carolina bid statutes with respect to specific *contracts* that the City has put out for bids or intends to put out for bids;
- (C) Exercise of any other rights or remedies available to the City under any current contract between the respondent *business firm* and the City other than rescission, suspension or termination of the contract, including but not limited to liquidated damages;
- (D) Rescission, suspension or termination of any current *contract* between the respondent *business firm* and the *City* under the terms thereof; or
- (E) Disqualification of the respondent *business firm* from bidding and contract awards on *City* projects and from participating in *City* contracts as a subcontractor, vendor or supplier for a period of not more than three years, according to the procedures set forth in Section 2, Article 3;
- (F) Referral of the matter for criminal prosecution of fraud and other violations under North Carolina law if appropriate under the circumstances.

Section 2.98. Sanctions for the filing of a false or frivolous complaint.

If the *Director* determines that one or more allegations of a complaint are false and that the complainant knew them to be false when filed or at the time the complainant requested arbitration, or that one or more of the allegations of a complaint are so frivolous that they are wholly without merit, the *Director* may refuse to review or investigate any complaint filed under this subsection by the same complainant for a period of up to three years. The *Director* may also recommend to the City Manager or the arbitrator: (a) that monetary sanctions be imposed against the complainant in the amount of the costs incurred by the City and the *business firm* in the investigation and review of the false or frivolous complaint (including reasonable attorney's fees); and/or (b) that the complainant be disqualified from bidding and contract awards on *City* projects for a period of not more than three years. The City Manager and the arbitrator shall have authority and discretion to impose one or more of such remedies when, in their

view, the totality of the evidence reflects such a measure is clearly necessary to deter future abuse of this policy and process.

Section 2.99. Final decision.

(A) The arbitrator's decision with respect to the Director's findings shall become the final decision, subject to such judicial review of arbitration awards as may be allowed by law. The arbitrator's recommended remedy shall become final unless: (i) review is given by the City Manager or (ii) the *business firm* or complainant against whom an allegation was sustained files a request for a review in writing with the City Manager within fifteen calendar days from service of the notice of the recommended decision. The City Manager shall within ten calendar days of receipt of the request for review, notify all parties and the arbitrator that a review has been requested. The arbitrator shall transfer the entire record of the investigation and arbitration to the City Manager in advance of the review. Within forty -five calendar days of receipt of the request for review, the review shall be completed and the City Manager shall render a final administrative decision regarding the remedy to be enforced under this Policy. In reaching a decision, the City Manager shall have the authority to reduce but not to increase the severity of any remedy or remedies imposed by the arbitrator.

(B) The City Manager shall be authorized to enter such orders as are reasonably necessary or convenient to: (i) govern the conduct of the review and the parties so that the purpose of this Commercial Non-Discrimination Policy are achieved; (ii) conclude such review and issue final decisions within a reasonable time; and (iii) conduct such review in a manner that is consistent with this Commercial Non-Discrimination Policy and such due process rights as each party may have. The review shall be conducted in a manner that provides an opportunity for all parties to submit written briefs and oral argument in support of their respective positions. All briefs and arguments are to be based solely upon the record of evidence presented during the arbitration hearing. No additional evidence may be presented or considered during the review. At the review, the *Director* or the *Director's* designee shall be responsible for presenting the justifications for its recommended remedies as previously sustained or modified by the arbitrator. Upon thorough review of the record, briefs, and arguments, the City Manager shall issue a final, written decision to all interested parties either sustaining or not sustaining the arbitrator's recommended remedy or remedies.

Section 2.100. Judicial Review.

Any party who, after having exhausted all administrative remedies available, is aggrieved by a final decision of the arbitrator may seek judicial review of such decision in a proceeding allowed by applicable law for the challenge of arbitration awards.

Any party who, after having exhausted all administrative remedies available, is aggrieved by a final decision of the City Manager may seek judicial review of such decision in a proceeding in the nature of a petition for a writ of certiorari, based upon the established

administrative record, to the appropriate court within 30 days of the issuance of that final decision of the City Manager.

Section 2.101. Mandatory nondiscrimination contract clause.

Every *contract* and *subcontract* shall contain a nondiscrimination clause that reads as follows:

As a condition of entering into this Agreement, the Company represents and warrants that it will fully comply with the City's Commercial Non-Discrimination Policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or *commercial customers*, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Company understands and agrees that a violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the Company from participating in City contracts or other sanctions.

Section 2.102 Contractor bid requirements.

All requests for bids or proposals issued for *City contracts* shall include the following certification to be completed by the bidder:

The undersigned Bidder hereby certifies and agrees that the following information is correct:

1. In preparing its bid on this Project, the Bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in *discrimination* as defined in Section 2.
2. For purposes of this section, *discrimination* means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor, supplier or *commercial customer* on the basis of race, ethnicity, gender, age, religion, national origin, disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, *discrimination* also includes retaliating against any person or other entity for reporting any incident of *discrimination*.
3. Without limiting any other provision of the solicitation for bids on this Project, it is understood and agreed that, if this certification is false, such

false certification will constitute grounds for the City to reject the bid submitted by the Bidder on this Project, and terminate any contract awarded based on such bid.

4. As a condition of contracting with the City, the Bidder agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of subcontractors. Failure to maintain or failure to provide such information constitutes grounds for the City to reject the bid submitted by the Bidder and terminate any contract awarded on such bid.
5. As part of its bid or proposal, Bidder shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Bidder in a legal or administrative proceeding alleging that Bidder discriminated against its subcontractors, vendors, suppliers, or *commercial customers*, and a description of the status or resolution of that complaint, including any remedial action taken.
6. As a condition of submitting a bid or proposal to the City, the Bidder agrees to comply with the City's Commercial Non-Discrimination Policy as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder.

Section 2.103 Contract disclosure requirements.

Every *contract* that the *City* enters into shall include the following language:

As a condition of entering into this Agreement, the Company agrees to: (a) promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Agreement; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Company has used in the past five years on any of its contracts that were undertaken within the Charlotte City Metropolitan Statistical Area, including the total dollar amount paid by Contractor on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Commercial Non-Discrimination Policy as set forth in Section 2, Article V of the City Code, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy. The Company understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in contract termination, disqualification of the City from participating in City contracts and other sanctions.

Section 2.104. Other legal remedies.

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Ordinance Book 51, Page 781

The remedies provided by this subsection are in addition to any other statutory, legal, or equitable remedies that may be available and are not intended to be prerequisite to or exclusive of any other remedies.

Section 2.105. Non-interruption of performance.

The filing, investigation, hearing, and appeal of a complaint under this Commercial Non-Discrimination Policy shall not hinder or affect the award of, performance of, or payment on a *contract* prior to a final administrative decision that establishes a violation.

Section 2.106. Policies and procedures.

The City Manager shall recommend and City Council shall approve such additional rules and regulations as may be required from time to time to implement this subsection. The City Manager shall be entitled to establish documentation and reporting requirements to further the purpose and intent of the Commercial Non-Discrimination Policy, and such requirements shall be deemed part of this Policy.

Section 2.107. Volunteer Expert Pool.

Within sixty days after this Policy is adopted, the City Manager shall appoint a pool of volunteers to serve as advisors to the Director in investigating *discrimination* claims and expert witnesses in hearings under this Article. (the "Volunteer Expert Pool"). The role of the Volunteer Experts shall be to: (i) assist the *Office* in evaluating alleged violations of the Commercial Non-Discrimination Policy in light of industry practice, and (ii) provide testimony at hearings under this Article on matters relating to industry custom and practice in a particular line of business. Such services shall be provided from time to time as requested by the *Director* or the Arbitrator.

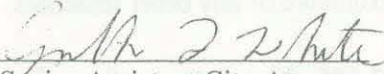
Notice of volunteer opportunities in the Volunteer Expert Pool shall be posted in local newspapers at least fifteen days prior to the deadline for submitting applications. The Volunteer Expert Pool shall be limited to fifteen individuals, provided that the City Manager may increase the number of Volunteer Experts in the Pool from time to time to provide specific expertise that may potentially be needed to assist in evaluating *discrimination* claims in certain types of City contracts.

Section 2.108. Effective Date.

This Commercial Non-Discrimination Policy shall take effect on the thirtieth (30) day after the North Carolina General Assembly has enacted legislation approving the following policy components: (a) defining "discrimination" to include discrimination that is based on race, gender, religion, national origin, ethnicity, age or disability, but that may not be unlawful under existing state or federal law; and (b) providing that a business may be disqualified from participating in City contracts for violation of the Ordinance. *Discrimination* that occurs before the effective date shall not be actionable under this Policy.

AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 30th day after the date it is enacted.

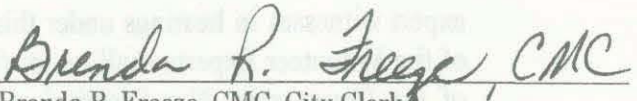
Approved as to Form:


Senior Assistant City Attorney

CERTIFICATION

I, Brenda R. Freeze, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 23rd day of September, 2002, the reference having been made in Minute Book 118, and recorded in full in Ordinance Book 51, Pages 764-782.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 9th day of October, 2002.


Brenda R. Freeze, CMC, City Clerk

September 23, 2002
Ordinance Book 51, Page 783

ORDINANCE NUMBER: 2138-X

0-15

AN ORDINANCE TO AMEND ORDINANCE NUMBER 2091 - X, THE 2002-2003 BUDGET ORDINANCE, PROVIDING A SUPPLEMENTAL APPROPRIATION FOR THE TROLLEY PROJECT.

BE IT ORDAINED, by the City Council of the City of Charlotte;

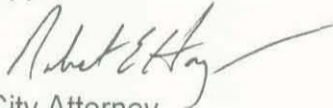
Section 1. That the sum of \$4,300,000 is hereby available from the Convention Center Tax Fund (0132) fund balance.

Section 2. That the sum of \$4,300,000 is hereby appropriated to the Convention Center Capital Projects Fund 2013; 239.01 - Convention Center/Trolley.

Section 3. All ordinances in conflict with this ordinance are hereby repealed.

Section 4. This ordinance shall be effective immediately.

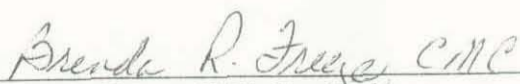
Approved as to Form:


City Attorney

CERTIFICATION

I, Brenda R. Freeze, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 23rd day of September, 2002, the reference having been made in Minute Book 118, and recorded in full in Ordinance Book 51, Pages 783.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 26th day of September, 2002.


Brenda R. Freeze, CMC, City Clerk