



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Vice Mayor Chappie Jones

**SUBJECT: PROPOSITION 16 ON
NOVEMBER 3, 2020 CALIFORNIA
GENERAL ELECTION BALLOT**

DATE: August 24, 2020

Approved

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RECOMMENDATION

1. Accept staff recommendation and supplemental memo of Mayor Liccardo, myself, Council Members Peralez, Carrasco, and Davis to adopt a support position for Proposition 16 on the November 3, 2020 California General Election Ballot.
2. Contingent to the passage of Proposition 16 in November 2020, direct City Manager to return to Council in January 2021 with analysis, evaluation and recommendation of new procurement programs that facilitate participation of Women-owned Business Enterprises (WBE), Minority-owned Business Enterprises (MBE), and Disadvantage Business Enterprises (DBE).

BACKGROUND

The City of San Jose is one of the most diverse cities in California. Our residents come from many different backgrounds, and it is important that we uphold our commitment to equality and justice as a city. Recent national events have reminded us of the systemic racism and sexism that exists in many of our institutions and of the inequality that pervades the country. We must all do our part in identifying inequality that exists on the state and local level and supporting practices and programs that will work to eliminate it.

As it stands, it is difficult to implement programs and collect valuable data that target communities and groups that have historically suffered from inequality due to limitations that were imposed 24 years ago. These limitations contribute to educational, and employment inequality, which as a result, contributes to economic inequality.

In 1996, California voters approved Proposition 209, which added Section 31 to Article I of the State Constitution. Under Proposition 209, state and local governments may not “discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting”. The intent of this policy 24 years ago was to create race blind systems in California. This, however, has had unintended consequences on education. Since 1996, UC admissions of African American, Latinx, and Native American students have declined by 30%, which correlates to lost economic opportunity.

It is a false belief that Proposition 209 only impacts the University of California admission system. On the contrary, Proposition 209 impacts many state and local government programs, not just college admissions. Once Proposition 16 is enacted, the state and local governments would be able to collect crucial data on public employment practices and search for any trends of gender or racial discrimination, in addition to providing educational and procurement opportunity. These two areas alone are instrumental in helping to ensure long-term equality in our State.

In the past, the City of San Jose had programs that addressed employment inequality. Past programs encouraged and created an avenue for minority and women-owned contracting businesses to bid for City contracts. However, the California Supreme Court struck down this inclusionary effort in *Hi-Voltage Wire Works, Inc. v. City of San Jose (2000)*. This created new barriers and discouraged minority and women-owned businesses from competing for contracts, which negatively impacted small business creation, expansion, and survival.

By supporting Proposition 16, we support eliminating the legal constraints of the past and leveling the playing field for all businesses. The City currently has programs for disadvantaged and local business enterprises, a Public Works Construction Academy, and a Minor Contract Prequalification Program that provide education and procurement opportunities for disadvantaged businesses. However, according to staff’s report on Contracting with Local and Small Business in FY 2018-19, it was noted that the program saw a five-year low in the number of contracts awarded to local and small businesses and that data was not available to determine the reasons for the decline. Granted several of these programs began in 2019, there is now potential opportunity to do more. Should Proposition 16 pass, I recommend for City staff to evaluate the implementation of procurement programs, such as Women-owned Business Enterprise (WBE), Minority-owned Business Enterprise (MBE), Disadvantage Business Enterprise (DBE), and others as appropriate, to ensure a pathway for small businesses to participate in the City’s procurement opportunities.

The City of San Jose has already demonstrated its steadfast commitment to ensuring equality and equity for its residents. By supporting Proposition 16, we will join a vast coalition of supporters that include the UC Board of Regents, League of California Cities, Asian Law Alliance and many others who support these necessary steps towards equity, equality, and justice.