

ORDINANCE NO.

AN ORDINANCE AMENDING CITY CODE CHAPTERS 2-9A, 2-9B, 2-9C, AND 2-9D RELATING TO THE MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISE PROCUREMENT PROGRAM.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 2-9A-1 (*Findings*) is amended to add a new Subsection (S), to re~~number~~letter the existing Subsection (S) as Subsection (T), and to re~~letter~~number the remaining subsections accordingly:

§ 2-9A-1 FINDINGS.

(S) In July 2013, the City engaged consultant NERA Economic Consulting to conduct an updated availability analysis and other statistical and anecdotal investigations regarding the presence of disparities in the City's marketplace. In November 2013, the city council extended the expiration date of this ordinance from December 31, 2013 to December 31, 2015 to allow time for the consultant to complete the disparity study. In November 2015, the city council extended the expiration date of this ordinance from December 31, 2015 to December 31, 2016, pending completion and release of the disparity study. The consultant completed the disparity study, entitled "Final Report on Business Disparities in the Austin, Texas Market Area," in December 2015. In January 2016, the city council received the 2015 disparity study for review and consideration. Following the consultant's presentation of the 2015 disparity study's findings and recommendations in February 2016, the city council formally accepted the 2015 disparity study's findings and conclusions in March 2016. In full acknowledgment of the strong basis in statistical and qualitative evidence regarding the construction industry established in the 2015 disparity study, the city council has incorporated and relied upon the entirety of the study in formulating the following core predicate for this ordinance:

- (1) Significant adverse statistical disparities remain in business formation rates and business owner earnings for all categories of M/WBE firms.
- (2) Significant adverse statistical disparities remain in the utilization of M/WBE prime contractors and African American, Native American, and WBE subcontractors in City construction contracts.
- (3) Significant adverse and statistically significant disparities in access to capital remain for all M/WBE types in the City's marketplace.
- (4) Extensive qualitative evidence gathered from in-depth interviews and surveys of M/WBE firms and non-M/WBE firms revealed numerous forms of discrimination affecting the City's marketplace, including, but not limited to, unequal access to bonding, stereotypical attitudes, passive participation in

private sector discrimination, double standards in performance, slow payment, predatory business practices, and “good old boy networks.”

- (5) Despite the City’s efforts to create equal opportunity in its marketplace, significant statistical disparities combined with particularized anecdotal evidence of various forms of marketplace discrimination form a strong basis in evidence for concluding that ongoing effects of marketplace discrimination continue to undermine the utilization of M/WBE firms.
- (6) The City’s current M/WBE program continues to be narrowly tailored to address identified forms of discrimination, and additional remedies and reforms will likely be necessary to fully eliminate those ongoing effects of discrimination.

PART 2. City Code Section 2-9A-3 (*Establishment of Program*) is amended to read as follows:

§ 2-9A-3 ESTABLISHMENT OF PROGRAM.

Based on ~~upon~~ the ~~foregoing~~ findings, and pursuant to the ~~foregoing~~ declaration of policy, the city council establishes ~~there hereby is established~~ a Minority-Owned and Women-Owned Business Enterprise Procurement Program for the City for construction ~~[with respect to Construction]~~.

The Annual Participation Goals for the Program administered under this Section 2-9A are as follows:

Construction Participation Goals	
African-American Owned Business Enterprises	<u>2.3%</u> [1.7%]
Hispanic-Owned Business Enterprises	<u>10.8%</u> [9.7%]
Asian-American and Native American Owned Business Enterprises	<u>1.7%</u> [2.3%]
Minority-Owned Business Enterprises	<u>14.8%</u> [13.7%]
Women-Owned Business Enterprises	<u>9.6%</u> [13.8%]

PART 3. Subsection (46) of City Code Section 2-9A-4 (*Definitions*) is amended to read as follows:

§ 2-9A-4 DEFINITIONS.

(46) WOMAN. A person, whether a citizen of the United States or a lawfully admitted resident alien, who is of the female gender, and who is presumed to be socially disadvantaged.

PART 4. City Code Section 2-9A-26 (*Sunset Provision*) is amended to read as follows:

§ 2-9A-26 SUNSET PROVISION.

This chapter of the Code expires at 5:00 p.m. on [the close of business] December 31, 2021 [2016], unless before [prior to] that date the city council reauthorizes [votes to reauthorize] the program [Program].

PART 5. City Code Section 2-9B-1 (*Findings*) is amended to add a new Subsection (S), to reletternumber the existing Subsection (S) as Subsection (T), and to renumberletter the remaining subsections accordingly:

§ 2-9B-1 FINDINGS.

(S) In July 2013, the City engaged consultant NERA Economic Consulting to conduct an updated availability analysis and other statistical and anecdotal investigations regarding the presence of disparities in the City's marketplace. In November 2013, the city council extended the expiration date of this ordinance from December 31, 2013 to December 31, 2015 to allow time for the consultant to complete the disparity study. In November 2015, the city council extended the expiration date of this ordinance from December 31, 2015 to December 31, 2016, pending completion and release of the disparity study. The consultant completed the disparity study, entitled "Final Report on Business Disparities in the Austin, Texas Market Area," in December 2015. In January 2016, the city council received the 2015 disparity study for review and consideration. Following the consultant's presentation of the 2015 disparity study's findings and recommendations in February 2016, the city council formally accepted the 2015 disparity study's findings and conclusions in March 2016. In full acknowledgment of the strong basis in statistical and qualitative evidence regarding the professional services industry established in the 2015 disparity study, the city council has incorporated and relied upon the entirety of the study in formulating the following core predicate for this ordinance:

- (1) Significant adverse statistical disparities remain in business formation rates and business owner earnings for all categories of M/WBE firms.
- (2) Significant adverse statistical disparities remain in the utilization of M/WBE prime contractors, except Asian/Pacific Island prime contractors, and in the

utilization of Native American subcontractors in City professional services contracts.

- (3) Significant adverse and statistically significant disparities in access to capital remain for all M/WBE types in the City's marketplace.
- (4) Extensive qualitative evidence gathered from in-depth interviews and surveys of M/WBE firms and non-M/WBE firms revealed numerous forms of discrimination affecting the City's marketplace, including, but not limited to, unequal access to bonding, stereotypical attitudes, passive participation in private sector discrimination, double standards in performance, slow payment, predatory business practices, and "good old boy networks."
- (5) Despite the City's efforts to create equal opportunity in its marketplace, significant statistical disparities combined with particularized anecdotal evidence of various forms of marketplace discrimination form a strong basis in evidence for concluding that ongoing effects of marketplace discrimination continue to undermine the utilization of M/WBE firms.
- (6) The City's current M/WBE program continues to be narrowly tailored to address identified forms of discrimination, and additional remedies and reforms will likely be necessary to fully eliminate those ongoing effects of discrimination.

PART 6. City Code Section 2-9B-3 (*Establishment of Program*) is amended to read as follows:

§ 2-9B-3 ESTABLISHMENT OF PROGRAM.

Based on ~~upon~~ the ~~foregoing~~ findings, and pursuant to the ~~foregoing~~ declaration of policy, the city council establishes ~~there hereby is established~~ a Minority-Owned and Women-Owned Business Enterprise Procurement Program for the City for professional services ~~[with respect to Professional Services]~~.

For purposes of this Section 2-9B, "Professional Services" means ~~shall mean~~ any professional services governed by the Professional Services Procurement Act, Tex. Gov't Code Ann. [§]Chapter 2254 and any successor statute.

The Annual Participation Goals for the Program administered under this Section 2-9B are as follows:

Professional Services Participation Goals	
African-American Owned Business Enterprises	<u>1.6%</u> [1.9%]
Hispanic-Owned Business Enterprises	<u>7.5%</u> [9.0%]

Formatted: Strikethrough

Formatted: Underline

Asian-American and Native American Owned Business Enterprises	<u>3.3%</u> [4.9%]
Minority-Owned Business Enterprises	<u>12.4%</u> [15.8%]
Women-Owned Business Enterprises	<u>6.7%</u> [15.8%]

PART 7. Subsection (47) of City Code Section 2-9B-4 (*Definitions*) is amended to read as follows:

§ 2-9B-4 DEFINITIONS.

(47) WOMAN. A person, whether a citizen of the United States or a lawfully admitted resident alien, who is of the female gender, and who is presumed to be socially disadvantaged.

PART 8. City Code Section 2-9B-26 (*Sunset Provision*) is amended to read as follows:

§ 2-9B-26 SUNSET PROVISION.

This chapter of the Code expires at 5:00 p.m. on [the close of business] December 31, 2021 [~~2016~~], unless before [prior to] that date the city council reauthorizes [~~votes to reauthorize~~] the program [~~Program~~].

PART 9. City Code Section 2-9C-1 (*Findings*) is amended to add a new Subsection (S), to renumberletter the existing Subsection (S) as Subsection (T), and to renumberletter the remaining subsections accordingly:

§ 2-9C-1 FINDINGS.

(S) In July 2013, the City engaged consultant NERA Economic Consulting to conduct an updated availability analysis and other statistical and anecdotal investigations regarding the presence of disparities in the City's marketplace. In November 2013, the city council extended the expiration date of this ordinance from December 31, 2013 to December 31, 2015 to allow time for the consultant to complete the disparity study. In November 2015, the city council extended the expiration date of this ordinance from December 31, 2015 to December 31, 2016, pending completion and release of the disparity study. The consultant completed the disparity study, entitled "Final Report on Business Disparities in the Austin, Texas Market Area," in December 2015. In January 2016, the city council received the 2015 disparity study for review and consideration. Following the consultant's presentation of the 2015 disparity study's findings and recommendations in February 2016, the city council formally accepted the 2015 disparity study's findings and conclusions in March

2016. In full acknowledgment of the strong basis in statistical and qualitative evidence regarding the nonprofessional services industry established in the 2015 disparity study, the city council has incorporated and relied upon the entirety of the study in formulating the following core predicate for this ordinance:

- (1) Significant adverse statistical disparities remain in business formation rates and business owner earnings for all categories of M/WBE firms.
- (2) Significant adverse statistical disparities remain in the utilization of M/WBE prime contractors and M/WBE subcontractors in City nonprofessional services contracts.
- (3) Significant adverse and statistically significant disparities in access to capital remain for all M/WBE types in the City's marketplace.
- (4) Extensive qualitative evidence gathered from in-depth interviews and surveys of M/WBE firms and non-M/WBE firms revealed numerous forms of discrimination affecting the City's marketplace, including, but not limited to, stereotypical attitudes, passive participation in private sector discrimination, double standards in performance, slow payment, predatory business practices, and "good old boy networks."
- (5) Despite the City's efforts to create equal opportunity in its marketplace, significant statistical disparities combined with particularized anecdotal evidence of various forms of marketplace discrimination form a strong basis in evidence for concluding that ongoing effects of marketplace discrimination continue to undermine the utilization of M/WBE firms.
- (6) The City's current M/WBE program continues to be narrowly tailored to address identified forms of discrimination, and additional remedies and reforms will likely be necessary to fully eliminate those ongoing effects of discrimination.

PART 10. City Code Section 2-9C-3 (*Establishment of Program*) is amended to read as follows:

§ 2-9C-3 ESTABLISHMENT OF PROGRAM.

Based on ~~upon~~ the ~~foregoing~~ findings, and pursuant to the ~~foregoing~~ declaration of policy, the city council establishes ~~there hereby is established~~ a Minority-Owned and Women-Owned Business Enterprise Procurement Program for the City for nonprofessional services ~~with respect to Nonprofessional Services~~.

For purposes of this Section 2-9C, "Nonprofessional Services" means ~~shall mean~~ any services not governed by the Professional Services Procurement Act, Tex. Gov't Code Ann. § Chapter 2254 and any successor statute.

Formatted: Strikethrough

Formatted: Underline

The Annual Participation Goals for the Program administered under this Section 2-9C are as follows:

Nonprofessional Services Participation Goals	
African-American Owned Business Enterprises	<u>4.3%</u> [2.5%]
Hispanic-Owned Business Enterprises	<u>9.4%</u> [9.9%]
Asian-American and Native American Owned Business Enterprises	<u>2.8%</u> [4.7%]
Minority-Owned Business Enterprises	<u>16.5%</u> [14.1%]
Women-Owned Business Enterprises	<u>15.5%</u> [15.0%]

PART 11. Subsection (47) of City Code Section 2-9C-4 (*Definitions*) is amended [to read as follows](#):

§ 2-9C-4 DEFINITIONS.

(47) WOMAN. A person, whether a citizen of the United States or a lawfully admitted resident alien, who is of the female gender, and who is presumed to be socially disadvantaged.

PART 12. City Code Section 2-9C-26 (*Sunset Provision*) is amended [to read as follows](#):

§ 2-9C-26 SUNSET PROVISION.

This chapter of the Code expires at 5:00 p.m. on [the close of business] December 31, 2021 [~~2016~~], unless before [prior to] that date the city council reauthorizes [~~votes to reauthorize~~] the program [~~Program~~].

PART 13. City Code Section 2-9D-1 (*Findings*) is amended to add a new Subsection (S), to renumber the existing Subsection (S) as Subsection (T), and to renumber the remaining subsections accordingly:

§ 2-9D-1 FINDINGS.

(S) In July 2013, the City engaged consultant NERA Economic Consulting to conduct an updated availability analysis and other statistical and anecdotal investigations

regarding the presence of disparities in the City's marketplace. In November 2013, the city council extended the expiration date of this ordinance from December 31, 2013 to December 31, 2015 to allow time for the consultant to complete the disparity study. In November 2015, the city council extended the expiration date of this ordinance from December 31, 2015 to December 31, 2016, pending completion and release of the disparity study. The consultant completed the disparity study, entitled "Final Report on Business Disparities in the Austin, Texas Market Area," in December 2015. In January 2016, the city council received the 2015 disparity study for review and consideration. Following the consultant's presentation of the 2015 disparity study's findings and recommendations in February 2016, the city council formally accepted the 2015 disparity study's findings and conclusions in March 2016. In full acknowledgment of the strong basis in statistical and qualitative evidence regarding the commodities industry established in the 2015 disparity study, the city council has incorporated and relied upon the entirety of the study in formulating the following core predicate for this ordinance:

- (1) Significant adverse statistical disparities remain in business formation rates and business owner earnings for all categories of M/WBE firms.
- (2) Significant adverse statistical disparities remain in the utilization of M/WBE vendors in City commodities contracts.
- (3) Significant adverse and statistically significant disparities in access to capital remain for all M/WBE types in the City's marketplace.
- (4) Extensive qualitative evidence gathered from in-depth interviews and surveys of M/WBE firms and non-M/WBE firms revealed numerous forms of discrimination affecting the City's marketplace, including, but not limited to, stereotypical attitudes, passive participation in private sector discrimination, double standards in performance, slow payment, predatory business practices, and "good old boy networks."
- (5) Despite the City's efforts to create equal opportunity in its marketplace, significant statistical disparities combined with particularized anecdotal evidence of various forms of marketplace discrimination form a strong basis in evidence for concluding that ongoing effects of marketplace discrimination continue to undermine the utilization of M/WBE firms.
- (6) The City's current M/WBE program continues to be narrowly tailored to address identified forms of discrimination, and additional remedies and reforms will likely be necessary to fully eliminate those ongoing effects of discrimination.

PART 14. City Code Section 2-9D-3 (*Establishment of Program*) is amended [to read as follows](#):

§ 2-9D-3 ESTABLISHMENT OF PROGRAM.

Based on ~~upon~~ the ~~foregoing~~ findings, and pursuant to the ~~foregoing~~ declaration of policy, the city council establishes ~~there hereby is established~~ a Minority-Owned and Women-Owned Business Enterprise Procurement Program for the City for commodities ~~[with respect to Commodities]~~.

The Annual Participation Goals for the Program administered under this Section 2-9D are as follows:

Commodities Procurement Participation Goals	
African-American Owned Business Enterprises	<u>1.9%</u> [0.3%]
Hispanic Owned Business Enterprises	<u>8.2%</u> [2.5%]
Asian-American and Native American Owned Business Enterprises	<u>3.7%</u> [0.7%]
Minority-Owned Business Enterprises	<u>13.8%</u> [3.5%]
Women-Owned Business Enterprises	<u>9.2%</u> [6.2%]

PART 15. Subsection (47) of City Code Section 2-9D-4 (*Definitions*) is amended to read as follows:

§ 2-9D-4 DEFINITIONS.

(47) WOMAN. A person, whether a citizen of the United States or a lawfully admitted resident alien, who is of the female gender, and who is presumed to be socially disadvantaged.

PART 16. City Code Section 2-9D-26 (*Sunset Provision*) is amended to read as follows:

§ 2-9D-26 SUNSET PROVISION.

This chapter of the Code expires at 5:00 p.m. on ~~the close of business~~ December 31, ~~2021~~ 2016, unless before ~~[prior to]~~ that date the city council reauthorizes ~~[votes to reauthorize]~~ the program ~~[Program]~~.

PART 17. This ordinance takes effect on _____, 2016.

PASSED AND APPROVED

§

§

§

_____, 2016

§ _____

Steve Adler

Mayor

APPROVED: _____ **ATTEST:** _____

Anne L. Morgan
City Attorney

Jannette S. Goodall
City Clerk