

A G E N D A



Recommendation for Council Action

Austin City Council	Item ID	65155	Agenda Number	54.
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Meeting Date:	12/15/2016	Department:	Small and Minority Business Resources
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Subject

Approve an ordinance amending City Code Chapters 2-9A, 2-9B, 2-9C and 2-9D to add findings, revise the annual participation goals and extend the sunset date for the Minority-Owned and Women-Owned Business Enterprise Procurement Program.

Amount and Source of Funding

Fiscal Note

There is no anticipated fiscal impact. A fiscal note is not required.

Purchasing Language:	
Prior Council Action:	March 3, 2016 – Council approved Resolution No. 20160303-016 accepting the disparity study.
For More Information:	Tamela Saldana, (512) 974-7844
Council Committee, Boards and Commission Action:	November 1, 2016 - Recommended by the MBE /WBE and Small Business Enterprise Procurement Program Advisory Committee on a 6-0 vote with Committee Members Burciaga, Espinosa, Liao, and Worlds absent.
MBE / WBE:	
Related Items:	

Additional Backup Information

The City's Minority-Owned Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE) Program (Program) is based on a series of disparity studies that were conducted in response to the 1989 U.S. Supreme Court decision, *City of Richmond v. J. A. Croson Co.* The *Croson* decision held that a local government may redress race discrimination in its contracting activities if it can demonstrate through relevant evidence a compelling governmental interest sought to be remedied, and if the remedies adopted are narrowly tailored to remedy the discrimination identified by way of the collected evidence.

In 2013, the City Council authorized an agreement with National Economic Research Associates, Inc. (NERA) to conduct a disparity study to determine whether a disparity exists between the number of available MBEs, WBEs, Disadvantaged Business Enterprises, and veteran-owned businesses in the City's geographic and product markets and the number being utilized on City contracts, and to document any statistical and anecdotal evidence of continued discrimination in the marketplace and the necessity of the Program. NERA completed its study and provided a

presentation to the Economic Development Council Committee on January 11, 2016. The disparity study has been available to the public since January 8, 2016 on the City's website. The disparity study and its findings were adopted by City Council on March 3, 2016, and further directed the City Manager to take the necessary steps to continue the Program.

Anecdotal and statistical evidence gathered by NERA demonstrates that MBEs and WBEs were underutilized in contracting opportunities on City contracts as a result of private sector discrimination. NERA has found there is sufficient evidence of discrimination to continue the City's MBE /WBE Program under the legal standards set forth in the *Crosen* decision.

Staff has worked with outside legal counsel in drafting the proposed ordinance before Council. The proposed ordinance accomplishes four objectives as follows: (1) adds and documents the findings of Council into each of the four Code chapters that govern the Program; the findings are similar to those added to the Code in the past and substantiate the need for continuation of the Program; (2) amends the definition of a "woman," consistent with the definition of a "minority;" (3) revises the annual participation goals based upon the disparity study; and (4) revises the sunset date of the Program. Currently, the Program sunsets or ends at the end of this year. The amendment continues the Program based on the demonstrated needs described in the disparity study for another five years until the year 2021. There is also minor clean-up of the Code language.

The Small Minority Business Resources department (SMBR) anticipates bringing forth recommendations to programmatic ordinance changes to City Council in 2017.