



Recommendation for Action

File #: 21-3390, **Agenda Item #:** 42.

12/2/2021

Posting Language

Approve an ordinance amending City Code Chapters 2-9A, 2-9B, 2-9C, and 2-9D extending the sunset date of the Minority-Owned and Women-Owned Business Enterprise Procurement Program.

Lead Department

Small and Minority Business Resources

Fiscal Note

This item has no fiscal impact.

Prior Council Action:

November 21, 2013 - Council approved Ordinance No. 20131121-038 extending the sunset dates in City Code Chapters 2-9A, 2-9B, 2-9C, and 2-9D ("MBE/WBE Program") date to December 31, 2015.

November 19, 2015 - Council approved Ordinance No. 20151119-059 extending the MBE/WBE Program's sunset date to December 31, 2016.

December 15, 2016 - Council approved Ordinance No. 20161215-054 extending the MBE/WBE Program's sunset date to March 31, 2017.

March 23, 2017 - Council approved Ordinance No. 20170323-047 extending the MBE/WBE Program's sunset date to March 31, 2018

March 8, 2018 - Council approved Ordinance No. 20180301-043 extending the MBE/WBE Program's sunset date to March 31, 2020.

February 20, 2020 - Council approved Ordinance No. 20200220-039 extending the MBE/WBE Program's sunset date to March 31, 2022.

For More Information:

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Council Committee, Boards and Commission Action:

November 2, 2021 - Recommended by the MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee on an 8-0 vote with Committee members Talan Tyminski, Daniel Berner and Terry Mitchell absent.

Additional Backup Information:

The City's MBE/WBE 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 January 2020, the City Council authorized execution of an agreement with Colette Holt & Associates to conduct a disparity study which would satisfy the evidence requirements identified in *Croson* to determine whether a disparity exists between the number of available MBEs, WBEs, and Disadvantaged Business Enterprises in the City's geographic and product markets and the number being utilized on City contracts. The study will also document any statistical and anecdotal evidence of continued discrimination in the marketplace and the necessity for continuing and/or amending the Program. Staff anticipates the disparity study to be submitted to the City in December 2021.

Staff is requesting an extension of City Code Chapters 2-9A, 2-9B, 2-9C, and 2-9D. The new proposed sunset date is December 31, 2022. This request is due to several factors including the impact of COVID-19 on our public engagement and MBE/WBE stakeholder process and staff including additional engagement sessions and deliverables which has added months to our initial timeline. This proposed sunset date of December 31, 2022 will allow staff sufficient time to meet and provide information sessions and briefings on the contents of the disparity study to the MBE/WBE stakeholder community, Inclusive Procurement Working Group formed in response to Resolution No. 20200326-053, MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee, the general public. This work will take place over a period of several months starting in early 2022. In addition, staff will continue to seek options and recommendations to the current MBE/WBE Procurement Program from the Inclusive Procurement Working Group and the MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee. Staff will return to Council with final recommendations prior to the proposed new sunset date for ordinance changes to the program after all stakeholder reviews have been completed.

The proposed ordinance revises the sunset date of the Program. Currently, the Program sunsets or ends on March 31, 2022, unless Council takes action.

Strategic Outcome(s):

Economic Opportunity and Affordability.