



Recommendation for Action

File #: 22-3152, Agenda Item #: 35.

10/27/2022

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.

December 2, 2021 - Council approved Ordinance No. 2011202-042 extending the MBE/WBE Program's sunset date to December 31, 2022.

For More Information:

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Council Committee, Boards and Commission Action:

September 13, 2022 - The MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee approved extending the MBE/WBE Program's sunset date to May 31, 2023 on an 6-0 vote. Committee Members Schiller Liao, Terry Mitchell, and Talan Tyminski were absent. Committee Members Daniel Berner and Tina Cannon were not present at the time of the vote.

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.

The disparity study was finalized during summer 2022 and its findings and recommendations have been shared with stakeholder groups and the community. Staff has continued to work with the Inclusive Procurement Working Group in August and through September 2022, to finalize the working group's recommendations. Once its recommendations are final, SMBR will begin working on applying modifications to the ordinances and program administrative rules, which will include a public comment period.

Staff is requesting an extension of City Code Chapters 2-9A, 2-9B, 2-9C, and 2-9D, which are slated to sunset December 31, 2022. The new proposed sunset date is August 31, 2023. This request will ensure there is adequate time for public engagement and MBE/WBE stakeholder input. Staff have also included additional engagement sessions and deliverables, which has added months to our initial timeline. This proposed sunset date of August 31, 2023 will allow staff sufficient time to meet and provide comprehensive information sessions and briefings on the contents of the revised ordinances and program administrative rules to the MBE/WBE stakeholder community, MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee, and the general public.

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

Strategic Outcome(s):

Economic Opportunity and Affordability.