

**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

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

3 (5) Despite the City’s efforts to create equal opportunity in its marketplace,  
4 significant statistical disparities combined with particularized anecdotal  
5 evidence of various forms of marketplace discrimination form a strong basis  
6 in evidence for concluding that ongoing effects of marketplace discrimination  
7 continue to undermine the utilization of M/WBE firms.

8 (6) The City’s current M/WBE program continues to be narrowly tailored to  
9 address identified forms of discrimination, and additional remedies and  
10 reforms will likely be necessary to fully eliminate those ongoing effects of  
11 discrimination.  
12

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

15 **§ 2-9A-3 ESTABLISHMENT OF PROGRAM.**

16 Based on ~~upon~~ the ~~foregoing~~ findings, and pursuant to the ~~foregoing~~ declaration  
17 of policy, the city council establishes ~~there hereby is established~~ a Minority-Owned and  
18 Women-Owned Business Enterprise Procurement Program for the City for construction  
19 ~~[with respect to Construction]~~.  
20  
21

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

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

24  
25 **PART 3.** Subsection (46) of City Code Section 2-9A-4 (*Definitions*) is amended to read  
26 as follows:

27 **§ 2-9A-4 DEFINITIONS.**  
28  
29

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

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

6  
 7 **§ 2-9A-26 SUNSET PROVISION.**

8  
 9 This chapter of the Code expires at 5:00 p.m. on [the close of business] December  
 10 31, 2021 [2016], unless before [prior to] that date the city council reauthorizes [votes to  
 11 reauthorize] the program [Program].

12  
 13 **PART 5.** City Code Section 2-9B-1 (*Findings*) is amended to add a new Subsection (S), to  
 14 reletternumber the existing Subsection (S) as Subsection (T), and to renumberletter  
 15 the remaining subsections accordingly:

16  
 17 **§ 2-9B-1 FINDINGS.**

- 18  
 19 (S) In July 2013, the City engaged consultant NERA Economic Consulting to conduct  
 20 an updated availability analysis and other statistical and anecdotal investigations  
 21 regarding the presence of disparities in the City's marketplace. In November 2013,  
 22 the city council extended the expiration date of this ordinance from December 31,  
 23 2013 to December 31, 2015 to allow time for the consultant to complete the disparity  
 24 study. In November 2015, the city council extended the expiration date of this  
 25 ordinance from December 31, 2015 to December 31, 2016, pending completion and  
 26 release of the disparity study. The consultant completed the disparity study, entitled  
 27 "Final Report on Business Disparities in the Austin, Texas Market Area," in  
 28 December 2015. In January 2016, the city council received the 2015 disparity study  
 29 for review and consideration. Following the consultant's presentation of the 2015  
 30 disparity study's findings and recommendations in February 2016, the city council  
 31 formally accepted the 2015 disparity study's findings and conclusions in March  
 32 2016. In full acknowledgment of the strong basis in statistical and qualitative  
 33 evidence regarding the professional services industry established in the 2015  
 34 disparity study, the city council has incorporated and relied upon the entirety of the  
 35 study in formulating the following core predicate for this ordinance:
- 36 (1) Significant adverse statistical disparities remain in business formation rates  
 37 and business owner earnings for all categories of M/WBE firms.
  - 38 (2) Significant adverse statistical disparities remain in the utilization of M/WBE  
 39 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> <del>[1.9%]</del>
Hispanic-Owned Business Enterprises	<u>7.5%</u> <del>[9.0%]</del>

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

**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

1 2016. In full acknowledgment of the strong basis in statistical and qualitative  
 2 evidence regarding the nonprofessional services industry established in the 2015  
 3 disparity study, the city council has incorporated and relied upon the entirety of the  
 4 study in formulating the following core predicate for this ordinance:

- 5 (1) Significant adverse statistical disparities remain in business formation rates  
 6 and business owner earnings for all categories of M/WBE firms.  
 7 (2) Significant adverse statistical disparities remain in the utilization of M/WBE  
 8 prime contractors and M/WBE subcontractors in City nonprofessional  
 9 services contracts.  
 10 (3) Significant adverse and statistically significant disparities in access to capital  
 11 remain for all M/WBE types in the City's marketplace.  
 12 (4) Extensive qualitative evidence gathered from in-depth interviews and surveys  
 13 of M/WBE firms and non-M/WBE firms revealed numerous forms of  
 14 discrimination affecting the City's marketplace, including, but not limited to,  
 15 stereotypical attitudes, passive participation in private sector discrimination,  
 16 double standards in performance, slow payment, predatory business practices,  
 17 and "good old boy networks."  
 18 (5) Despite the City's efforts to create equal opportunity in its marketplace,  
 19 significant statistical disparities combined with particularized anecdotal  
 20 evidence of various forms of marketplace discrimination form a strong basis  
 21 in evidence for concluding that ongoing effects of marketplace discrimination  
 22 continue to undermine the utilization of M/WBE firms.  
 23 (6) The City's current M/WBE program continues to be narrowly tailored to  
 24 address identified forms of discrimination, and additional remedies and  
 25 reforms will likely be necessary to fully eliminate those ongoing effects of  
 26 discrimination.  
 27

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

30 **§ 2-9C-3 ESTABLISHMENT OF PROGRAM.**

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

35 For purposes of this Section 2-9C, "Nonprofessional Services" means ~~shall mean~~ any  
 36 services not governed by the Professional Services Procurement Act, Tex. Gov't Code Ann.  
 37 §[Chapter] 2254 and any successor statute.  
 38  
 39

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

Nonprofessional Services Participation Goals	
African-American Owned Business Enterprises	<u>4.3%</u> [ <del>2.5%</del> ]
Hispanic-Owned Business Enterprises	<u>9.4%</u> [ <del>9.9%</del> ]
Asian-American and Native American Owned Business Enterprises	<u>2.8%</u> [ <del>1.7%</del> ]
Minority-Owned Business Enterprises	<u>16.5%</u> [ <del>14.1%</del> ]
Women-Owned Business Enterprises	<u>15.5%</u> [ <del>15.0%</del> ]

5  
6 **PART 11.** Subsection (47) of City Code Section 2-9C-4 (*Definitions*) is amended to read  
7 as follows:

8  
9 **§ 2-9C-4 DEFINITIONS.**

10  
11 (47) WOMAN. A person, whether a citizen of the United States or a lawfully admitted  
12 resident alien, who is of the female gender, and who is presumed to be socially  
13 disadvantaged.

14  
15 **PART 12.** City Code Section 2-9C-26 (*Sunset Provision*) is amended to read as follows:

16  
17 **§ 2-9C-26 SUNSET PROVISION.**

18 This chapter of the Code expires at 5:00 p.m. on [~~the close of business~~] December  
19 31, 2021 [~~2016~~], unless before [~~prior to~~] that date the city council reauthorizes [~~votes to~~  
20 reauthorize] the program [~~Program~~].

21  
22 **PART 13.** City Code Section 2-9D-1 (*Findings*) is amended to add a new Subsection (S),  
23 to renumber the existing Subsection (S) as Subsection (T), and to renumber the remaining  
24 subsections accordingly:

25  
26 **§ 2-9D-1 FINDINGS.**

27  
28 (S) In July 2013, the City engaged consultant NERA Economic Consulting to conduct  
29 an updated availability analysis and other statistical and anecdotal investigations

1 regarding the presence of disparities in the City's marketplace. In November 2013,  
2 the city council extended the expiration date of this ordinance from December 31,  
3 2013 to December 31, 2015 to allow time for the consultant to complete the disparity  
4 study. In November 2015, the city council extended the expiration date of this  
5 ordinance from December 31, 2015 to December 31, 2016, pending completion and  
6 release of the disparity study. The consultant completed the disparity study, entitled  
7 "Final Report on Business Disparities in the Austin, Texas Market Area," in  
8 December 2015. In January 2016, the city council received the 2015 disparity study  
9 for review and consideration. Following the consultant's presentation of the 2015  
10 disparity study's findings and recommendations in February 2016, the city council  
11 formally accepted the 2015 disparity study's findings and conclusions in March  
12 2016. In full acknowledgment of the strong basis in statistical and qualitative  
13 evidence regarding the commodities industry established in the 2015 disparity study,  
14 the city council has incorporated and relied upon the entirety of the study in  
15 formulating the following core predicate for this ordinance:

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

37  
38 **PART 14.** City Code Section 2-9D-3 (*Establishment of Program*) is amended [to read as](#)  
39 [follows](#):  
40

1 **§ 2-9D-3 ESTABLISHMENT OF PROGRAM.**

2  
3 Based on ~~upon~~ the ~~foregoing~~ findings, and pursuant to the ~~foregoing~~ declaration  
4 of policy, the city council establishes ~~there hereby is established~~ a Minority-Owned and  
5 Women-Owned Business Enterprise Procurement Program for the City for commodities  
6 ~~[with respect to Commodities]~~.

7 The Annual Participation Goals for the Program administered under this Section 2-  
8 9D are as follows:

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

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

12  
13 **§ 2-9D-4 DEFINITIONS.**

14  
15 (47) WOMAN. A person, whether a citizen of the United States or a lawfully admitted  
16 resident alien, who is of the female gender, and who is presumed to be socially  
17 disadvantaged.

18  
19 **PART 16.** City Code Section 2-9D-26 (*Sunset Provision*) is amended to read as follows:

20  
21 **§ 2-9D-26 SUNSET PROVISION.**

22 This chapter of the Code expires at 5:00 p.m. on ~~[the close of business]~~ December  
23 31, 2021 ~~[2016]~~, unless before ~~[prior to]~~ that date the city council reauthorizes ~~[votes to~~  
24 reauthorize] the program ~~[Program]~~.

25  
26 **PART 17.** This ordinance takes effect on \_\_\_\_\_, 2016.

