

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 renumber the existing Subsection (S) as Subsection (T), and to renumber the remaining subsections accordingly:

(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.

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

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

19 **§ 2-9A-3 ESTABLISHMENT OF PROGRAM.**

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

24 The Annual Participation Goals for the Program administered under this Section 2-
25 9A are as follows:

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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%]

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

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

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

8 **§ 2-9A-26 SUNSET PROVISION.**

9 This chapter of the Code expires at 5:00 p.m. on [~~March~~] December 31, 2021
 10 [~~2017~~], unless before that date the city council reauthorizes the program.

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

14 (S) In July 2013, the City engaged consultant NERA Economic Consulting to conduct
 15 an updated availability analysis and other statistical and anecdotal investigations
 16 regarding the presence of disparities in the City's marketplace. In November 2013,
 17 the city council extended the expiration date of this ordinance from December 31,
 18 2013 to December 31, 2015 to allow time for the consultant to complete the
 19 disparity study. In November 2015, the city council extended the expiration date

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

- 13 (1) Significant adverse statistical disparities remain in business formation rates
14 and business owner earnings for all categories of M/WBE firms.
- 15 (2) Significant adverse statistical disparities remain in the utilization of M/WBE
16 prime contractors, except Asian/Pacific Island prime contractors, and in the
17 utilization of Native American subcontractors in City professional services
18 contracts.
- 19 (3) Significant adverse and statistically significant disparities in access to capital
20 remain for all M/WBE types in the City's marketplace.
- 21 (4) Extensive qualitative evidence gathered from in-depth interviews and
22 surveys of M/WBE firms and non-M/WBE firms revealed numerous forms
23 of discrimination affecting the City's marketplace, including, but not limited
24 to, unequal access to bonding, stereotypical attitudes, passive participation in
25 private sector discrimination, double standards in performance, slow
26 payment, predatory business practices, and closed business systems.
- 27 (5) Despite the City's efforts to create equal opportunity in its marketplace,
28 significant statistical disparities combined with particularized anecdotal
29 evidence of various forms of marketplace discrimination form a strong basis
30 in evidence for concluding that ongoing effects of marketplace
31 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:

§ 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%]
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:

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

5 **§ 2-9B-26 SUNSET PROVISION.**

6 This chapter of the Code expires at 5:00 p.m. on [~~March~~] December 31, 2021
7 [~~2017~~], unless before that date the city council reauthorizes the program.

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

11 (S) In July 2013, the City engaged consultant NERA Economic Consulting to conduct
12 an updated availability analysis and other statistical and anecdotal investigations
13 regarding the presence of disparities in the City's marketplace. In November 2013,
14 the city council extended the expiration date of this ordinance from December 31,
15 2013 to December 31, 2015 to allow time for the consultant to complete the
16 disparity study. In November 2015, the city council extended the expiration date
17 of this ordinance from December 31, 2015 to December 31, 2016, pending
18 completion and release of the disparity study. The consultant completed the
19 disparity study, entitled "Final Report on Business Disparities in the Austin, Texas
20 Market Area," in December 2015. In January 2016, the city council received the
21 2015 disparity study for review and consideration. Following the consultant's
22 presentation of the 2015 disparity study's findings and recommendations in
23 February 2016, the city council formally accepted the 2015 disparity study's
24 findings and conclusions in March 2016. In full acknowledgment of the strong
25 basis in statistical and qualitative evidence regarding the nonprofessional services
26 industry established in the 2015 disparity study, the city council has incorporated
27 and relied upon the entirety of the study in formulating the following core
28 predicate for this ordinance:

29 (1) Significant adverse statistical disparities remain in business formation rates
30 and business owner earnings for all categories of M/WBE firms.

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

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

22 **§ 2-9C-3 ESTABLISHMENT OF PROGRAM.**

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

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

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> [2.5%]
Hispanic-Owned Business Enterprises	<u>9.4%</u> [9.9%]
Asian-American and Native American Owned Business Enterprises	<u>2.8%</u> [1.7%]
Minority-Owned Business Enterprises	<u>16.5%</u> [14.1%]
Women-Owned Business Enterprises	<u>15.5%</u> [15.0%]

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

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

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

10 **§ 2-9C-26 SUNSET PROVISION.**

11 This chapter of the Code expires at 5:00 p.m. on [~~March~~] December 31, 2021
12 [~~2017~~], unless before that date the city council reauthorizes the program.

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

16 (S) In July 2013, the City engaged consultant NERA Economic Consulting to conduct
17 an updated availability analysis and other statistical and anecdotal investigations
18 regarding the presence of disparities in the City's marketplace. In November 2013,
19 the city council extended the expiration date of this ordinance from December 31,

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

- 15 (1) Significant adverse statistical disparities remain in business formation rates
16 and business owner earnings for all categories of M/WBE firms.
- 17 (2) Significant adverse statistical disparities remain in the utilization of M/WBE
18 vendors in City commodities contracts.
- 19 (3) Significant adverse and statistically significant disparities in access to capital
20 remain for all M/WBE types in the City's marketplace.
- 21 (4) Extensive qualitative evidence gathered from in-depth interviews and
22 surveys of M/WBE firms and non-M/WBE firms revealed numerous forms
23 of discrimination affecting the City's marketplace, including, but not limited
24 to, stereotypical attitudes, passive participation in private sector
25 discrimination, double standards in performance, slow payment, predatory
26 business practices, and closed business systems.
- 27 (5) Despite the City's efforts to create equal opportunity in its marketplace,
28 significant statistical disparities combined with particularized anecdotal
29 evidence of various forms of marketplace discrimination form a strong basis
30 in evidence for concluding that ongoing effects of marketplace
31 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:

§ 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:

- (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:

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PART 17. This ordinance takes effect on_____, 2017.

_____, 2017

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APPROVED: _____
Anne L. Morgan
City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk