

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

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

§ 2-9A-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 construction ~~[with respect to Construction]~~.

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

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%]

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

§ 2-9A-4 DEFINITIONS.

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.**

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 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 the
 15 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> [1.9%]
Hispanic-Owned Business Enterprises	<u>7.5%</u> [9.0%]

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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 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> [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%]

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> [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%]

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.

