

**ORDINANCE NO. 20181213-040**

**AN ORDINANCE AMENDING CITY CODE CHAPTERS 2-9A, 2-9B, 2-9C, AND 2-9D REGARDING 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 subsections (V) through (Z) to read as follows:

**§ 2-9A-1 - FINDINGS.**

- (V) In 2013, the City commissioned a disparity study from National Economic Research Associates, Inc. ("NERA") to develop evidence relevant to the City's continuing compelling interest in remedying discrimination. The results of these efforts were presented in the December 2015 report entitled "Race, Sex, and Business Enterprise: Evidence from the City of Austin".
- (W) Based on the evidence from the 2015 Report, the City determined that:
  - (1) Minorities and women are substantially and significantly less likely to own their own businesses as the result of discrimination than would be expected based upon their observable characteristics, including age, education, geographic location and industry.
  - (2) Minorities and women earn substantially and significantly less than their nonminority male counterparts.
  - (3) There are large, adverse, and statistically significant disparities between MBE/WBEs share of overall revenues and their share of overall firms in the U.S. as a whole, and in the State of Texas.
  - (4) There is evidence of discrimination against MBE/WBEs in the City of Austin market area for the small business credit market.
  - (5) Anecdotal evidence from outreach meetings, mail surveys and in-depth personal interviews of MBE/WBE firms and non-MBE/WBE firms revealed numerous forms of discrimination affecting the City's marketplace, including unequal access to bonding, stereotypical attitudes, passive participation in private sector discrimination, predatory business practices, and closed business systems, causing minorities and women continue to suffer discriminatory barriers to

full and fair access to City of Austin, other public sector and private sector contracts.

- (6) Despite the City's efforts to create equal opportunities in its marketplace, the evidence continues to indicate that ongoing effects of marketplace discrimination continue to undermine the utilization of MBE/WBE firms.
- (X) The City is authorized to establish race- and gender-conscious contracting goals, and if utilized, required that goals be based on constitutional standards related to the City's marketplace.
- (Y) Under these circumstances and based on the factual predicate which has been established after careful study and review, the City still has a compelling governmental interest in remedying the racial and gender discrimination that exists in the market segments in which the City does business, and in ensuring that the City is not a participant in such discrimination, thereby allowing all segments of the Austin community to share in the economic benefits of the City.
- (Z) The MBE/WBE Program adopted by the City is narrowly tailored to remedy the discrimination described above and in City Code, and should be continued.

**PART 2.** Subsection (K) of City Code Section 2-9A-15 (*Program Eligibility*) is amended to read:

**§ 2-9A-15 - PROGRAM ELIGIBILITY.**

- (K) The certification status of all MBEs and WBEs may [~~shall~~] be reviewed [~~on an annual basis~~] by SMBR or its designee, as approved by city council. Prior to commencing any review, SMBR shall provide advance notice of the review to the certified Business Enterprise or Firm. The [~~annual~~] review may be conducted through examination of a sworn affidavit of continuing eligibility (including all such attachments as may be required by rule) submitted by the Business Enterprise or Firm seeking certification. MBEs and WBEs are required to seek recertification upon the fourth [~~third~~] anniversary of their initial certification and upon the fourth [~~third~~] anniversary of all subsequent certifications. Failure of the Business Enterprise or Firm to seek recertification by filing the necessary documentation with SMBR within 60 calendar days from the date of receipt

of written notification from SMBR may result in decertification of the Business Enterprise or Firm.

**PART 3.** City Code Section 2-9B-1 (*Findings*) is amended to add subsections (V) through (Z) to read as follows:

**§ 2-9B-1 - FINDINGS.**

- (V) In 2013, the City commissioned a disparity study from National Economic Research Associates, Inc. ("NERA") to develop evidence relevant to the City's continuing compelling interest in remedying discrimination. The results of these efforts were presented in the December 2015 report entitled "Race, Sex, and Business Enterprise: Evidence from the City of Austin".
- (W) Based on the evidence from the 2015 Report, the City determined that:
  - (1) Minorities and women are substantially and significantly less likely to own their own businesses as the result of discrimination than would be expected based upon their observable characteristics, including age, education, geographic location and industry.
  - (2) Minorities and women earn substantially and significantly less than their nonminority male counterparts.
  - (3) There are large, adverse, and statistically significant disparities between MBE/WBEs share of overall revenues and their share of overall firms in the U.S. as a whole, and in the State of Texas.
  - (4) There is evidence of discrimination against MBE/WBEs in the City of Austin market area for the small business credit market.
  - (5) Anecdotal evidence from outreach meetings, mail surveys and in-depth personal interviews of MBE/WBE firms and non-MBE/WBE firms revealed numerous forms of discrimination affecting the City's marketplace, including unequal access to bonding, stereotypical attitudes, passive participation in private sector discrimination, predatory business practices, and closed business systems, causing minorities and women continue to suffer discriminatory barriers to full and fair access to City of Austin, other public sector and private sector contracts.

- (6) Despite the City's efforts to create equal opportunities in its marketplace, the evidence continues to indicate that ongoing effects of marketplace discrimination continue to undermine the utilization of MBE/WBE firms.
- (X) The City is authorized to establish race- and gender-conscious contracting goals, and if utilized, required that goals be based on constitutional standards related to the City's marketplace.
- (Y) Under these circumstances and based on the factual predicate which has been established after careful study and review, the City still has a compelling governmental interest in remedying the racial and gender discrimination that exists in the market segments in which the City does business, and in ensuring that the City is not a participant in such discrimination, thereby allowing all segments of the Austin community to share in the economic benefits of the City.
- (Z) The MBE/WBE Program adopted by the City is narrowly tailored to remedy the discrimination described above and in City Code, and should be continued.

**PART 4.** Subsection (K) of City Code Section 2-9B-15 (*Program Eligibility*) is amended to read:

**§ 2-9B-15 - PROGRAM ELIGIBILITY.**

- (K) The certification status of all MBEs and WBEs may [~~shall~~] be reviewed [~~on an annual basis~~] by SMBR or its designee, as approved by city council. Prior to commencing any review, SMBR shall provide advance notice of the review to the certified Business Enterprise or Firm. The [~~annual~~] review may be conducted through examination of a sworn affidavit of continuing eligibility (including all such attachments as may be required by rule) submitted by the Business Enterprise or Firm seeking certification. MBEs and WBEs are required to seek recertification upon the fourth [~~third~~] anniversary of their initial certification and upon the fourth [~~third~~] anniversary of all subsequent certifications. Failure of the Business Enterprise or Firm to seek recertification by filing the necessary documentation with SMBR within 60 calendar days from the date of receipt of written notification from SMBR may result in decertification of the Business Enterprise or Firm.

**PART 5.** City Code Section 2-9C-1 (*Findings*) is amended to add subsections (V) through (Z) to read as follows:

**§ 2-9C-1 - FINDINGS.**

- (V) In 2013, the City commissioned a disparity study from National Economic Research Associates, Inc. ("NERA") to develop evidence relevant to the City's continuing compelling interest in remedying discrimination. The results of these efforts were presented in the December 2015 report entitled "Race, Sex, and Business Enterprise: Evidence from the City of Austin".
- (W) Based on the evidence from the 2015 Report, the City determined that:
  - (1) Minorities and women are substantially and significantly less likely to own their own businesses as the result of discrimination than would be expected based upon their observable characteristics, including age, education, geographic location and industry.
  - (2) Minorities and women earn substantially and significantly less than their nonminority male counterparts.
  - (3) There are large, adverse, and statistically significant disparities between MBE/WBEs share of overall revenues and their share of overall firms in the U.S. as a whole, and in the State of Texas.
  - (4) There is evidence of discrimination against MBE/WBEs in the City of Austin market area for the small business credit market.
  - (5) Anecdotal evidence from outreach meetings, mail surveys and in-depth personal interviews of MBE/WBE firms and non-MBE/WBE firms revealed numerous forms of discrimination affecting the City's marketplace, including unequal access to bonding, stereotypical attitudes, passive participation in private sector discrimination, predatory business practices, and closed business systems, causing minorities and women continue to suffer discriminatory barriers to full and fair access to City of Austin, other public sector and private sector contracts.
  - (6) Despite the City's efforts to create equal opportunities in its marketplace, the evidence continues to indicate that ongoing effects of marketplace discrimination continue to undermine the utilization of MBE/WBE firms.

- (X) The City is authorized to establish race- and gender-conscious contracting goals, and if utilized, required that goals be based on constitutional standards related to the City's marketplace.
- (Y) Under these circumstances and based on the factual predicate which has been established after careful study and review, the City still has a compelling governmental interest in remedying the racial and gender discrimination that exists in the market segments in which the City does business, and in ensuring that the City is not a participant in such discrimination, thereby allowing all segments of the Austin community to share in the economic benefits of the City.
- (Z) The MBE/WBE Program adopted by the City is narrowly tailored to remedy the discrimination described above and in City Code, and should be continued.

**PART 6.** Subsection (K) of City Code Section 2-9C-15 (*Program Eligibility*) is amended to read:

**§ 2-9C-15 - PROGRAM ELIGIBILITY.**

- (K) The certification status of all MBEs and WBEs may ~~[shall]~~ be reviewed ~~[on an annual basis]~~ by SMBR or its designee, as approved by city council. Prior to commencing any review, SMBR shall provide advance notice of the review to the certified Business Enterprise or Firm. The ~~[annual]~~ review may be conducted through examination of a sworn affidavit of continuing eligibility (including all such attachments as may be required by rule) submitted by the Business Enterprise or Firm seeking certification. MBEs and WBEs are required to seek recertification upon the fourth ~~[third]~~ anniversary of their initial certification and upon the fourth ~~[third]~~ anniversary of all subsequent certifications. Failure of the Business Enterprise or Firm to seek recertification by filing the necessary documentation with SMBR within 60 calendar days from the date of receipt of written notification from SMBR may result in decertification of the Business Enterprise or Firm.

**PART 7.** City Code Section 2-9D-1 (*Findings*) is amended to add subsections (V) through (Z) to read as follows:

**§ 2-9D-1 - FINDINGS.**

- (V) In 2013, the City commissioned a disparity study from National Economic Research Associates, Inc. ("NERA") to develop evidence relevant to the City's continuing compelling interest in remedying discrimination. The results of these efforts were presented in the December 2015 report entitled "Race, Sex, and Business Enterprise: Evidence from the City of Austin".
- (W) Based on the evidence from the 2015 Report, the City determined that:
- (1) Minorities and women are substantially and significantly less likely to own their own businesses as the result of discrimination than would be expected based upon their observable characteristics, including age, education, geographic location and industry.
  - (2) Minorities and women earn substantially and significantly less than their nonminority male counterparts.
  - (3) There are large, adverse, and statistically significant disparities between MBE/WBEs share of overall revenues and their share of overall firms in the U.S. as a whole, and in the State of Texas.
  - (4) There is evidence of discrimination against MBE/WBEs in the City of Austin market area for the small business credit market.
  - (5) Anecdotal evidence from outreach meetings, mail surveys and in-depth personal interviews of MBE/WBE firms and non-MBE/WBE firms revealed numerous forms of discrimination affecting the City's marketplace, including unequal access to bonding, stereotypical attitudes, passive participation in private sector discrimination, predatory business practices, and closed business systems, causing minorities and women continue to suffer discriminatory barriers to full and fair access to City of Austin, other public sector and private sector contracts.
  - (6) Despite the City's efforts to create equal opportunities in its marketplace, the evidence continues to indicate that ongoing effects of marketplace discrimination continue to undermine the utilization of MBE/WBE firms.
- (X) The City is authorized to establish race- and gender-conscious contracting goals, and if utilized, required that goals be based on constitutional standards related to the City's marketplace.

- (Y) Under these circumstances and based on the factual predicate which has been established after careful study and review, the City still has a compelling governmental interest in remedying the racial and gender discrimination that exists in the market segments in which the City does business, and in ensuring that the City is not a participant in such discrimination, thereby allowing all segments of the Austin community to share in the economic benefits of the City.
- (Z) The MBE/WBE Program adopted by the City is narrowly tailored to remedy the discrimination described above and in City Code, and should be continued.

**PART 8.** Subsection (K) of City Code Section 2-9D-15 (*Program Eligibility*) is amended to read:

**§ 2-9D-15 - PROGRAM ELIGIBILITY.**

- (K) The certification status of all MBEs and WBEs may ~~[shall]~~ be reviewed ~~[on an annual basis]~~ by SMBR or its designee, as approved by city council. Prior to commencing any review, SMBR shall provide advance notice of the review to the certified Business Enterprise or Firm. The ~~[annual]~~ review may be conducted through examination of a sworn affidavit of continuing eligibility (including all such attachments as may be required by rule) submitted by the Business Enterprise or Firm seeking certification. MBEs and WBEs are required to seek recertification upon the fourth ~~[third]~~ anniversary of their initial certification and upon the fourth ~~[third]~~ anniversary of all subsequent certifications. Failure of the Business Enterprise or Firm to seek recertification by filing the necessary documentation with SMBR within 60 calendar days from the date of receipt of written notification from SMBR may result in decertification of the Business Enterprise or Firm.

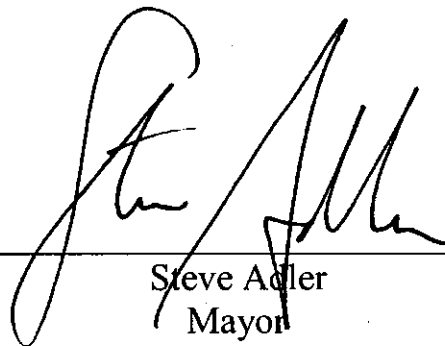


**PART 9.** This ordinance takes effect on December 24, 2018.

**PASSED AND APPROVED**

December 13, 2018

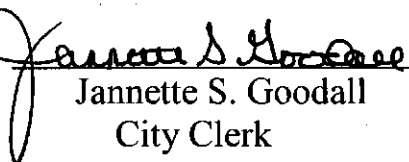
§  
§  
§

  
\_\_\_\_\_  
Steve Adler  
Mayor

**APPROVED:**

  
\_\_\_\_\_  
Anne L. Morgan  
City Attorney

**ATTEST:**

  
\_\_\_\_\_  
Jannette S. Goodall  
City Clerk