



## Recommendation for Action

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**File #:** 20-1176, **Agenda Item #:** 39.

2/20/2020

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### **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 note.

### **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.

### **For More Information:**

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### **Council Committee, Boards and Commission Action:**

February 4, 2020 - Recommended by the MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee on 8-0 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 2013, the City Council authorized execution of an agreement with National Economic Research Associates, Inc. (NERA) 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,

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Disadvantaged Business Enterprises, and veteran-owned businesses in the City's geographic and product markets and the number being utilized on City contracts, and to document any statistical and anecdotal evidence of continued discrimination in the marketplace and the necessity of the Program. NERA completed its study and provided a presentation to the Economic Development Council Committee on January 11, 2016. The disparity study has been available to the public since January 8, 2016 on the City's website. The disparity study and its findings were adopted by City Council on March 3, 2016, and Council directed the City Manager to take the necessary steps to continue the Program.

In fall 2016, Small Minority Business Resources Department (SMBR) staff proposed amendments to City Code Chapters 2-9A, 2-9B, 2-9C, and 2-9D to update the findings and annual goals in those chapters based on the disparity study and to also extend the sunset date of those chapters. Due to concerns raised regarding the disparity study, the amendments to the findings and annual goals sections were put on hold. Instead, in December 2016, Council approved an ordinance that extended the sunset date of the existing four City Code chapters from December 31, 2016 to March 31, 2017, to allow SMBR staff time to meet with the stakeholders to address their concerns. On March 23, 2017, Council again extended the Program's sunset date to March 31, 2018 to allow staff to work with NERA and the stakeholders on the concerns raised.

Staff is requesting an extension of City Code Chapters 2-9A, 2-9B, 2-9C, and 2-9D to allow for staff and the City's new consultant to work on the development of a new disparity study, continue to meet with stakeholders and seek options and recommendations to the current MBE/WBE Procurement Program. Staff will return to Council with recommendations for ordinance changes after all reviews and validations have been completed.

The proposed ordinance revises the sunset date of the Program. Currently, the Program sunsets or ends on March 31, 2020, unless Council takes action. The new proposed sunset date is March 31, 2022, to give the new consultant and staff sufficient time to conduct the new study and develop recommendations.