

**THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED
ORDINANCE OR RESOLUTION ADOPTED BY CITY COUNCIL.**

AN ORDINANCE

**AMENDING THE SMALL BUSINESS ECONOMIC DEVELOPMENT
ADVOCACY ORDINANCE TO ENCOURAGE THE FULL AND
EQUITABLE UTILIZATION AND DEVELOPMENT OF SMALL
BUSINESS ENTERPRISES AND SMALL MINORITY / WOMEN
BUSINESS ENTERPRISES IN THE SAN ANTONIO MARKETPLACE.**

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WHEREAS, in April 2014, National Economic Research Associated, Inc. (NERA) was retained to conduct an updated minority and women business enterprise Disparity Study for the City of San Antonio to determine whether a compelling interest remained for the City to continue or modify implementation of a narrowly-tailored minority- and women-owned business enterprise (M/WBE) program established in 2011; and

WHEREAS, NERA's Disparity Study was completed and released for public comment in October 2015; and

WHEREAS, NERA's Disparity Study findings from the contracting period between January 2011 and December 2013 confirm that although the City's Small Business Economic Development Advocacy (SBEDA) Ordinance has significantly improved the participation of M/WBE firms in City contracts beyond the level reflected in a 2010 study which had found that 16 percent of City contracts dollars overall were paid to M/WBE firms, nevertheless, significant disparities in the City's utilization of M/WBE firms continue to persist in numerous industry segments; and

WHEREAS, NERA's 2015 Disparity Study found, based upon regression analysis and other firm evidence, that private sector discrimination adversely affects M/WBE access to small business credit markets, and that such discrimination also contributes to gross patterns of exclusion of M/WBE firms from private sector contract opportunities and significantly lowers earnings for M/WBE firms as compared to similarly situated non-minority firms; and

WHEREAS, public testimony and comments received during the Disparity Study process and public comment period following release of the 2015 Disparity Study further supported study findings with additional anecdotal evidence that some prime contractors and vendors engaged in business with the City had avoided contracting with M/WBE firms when the SBEDA Program was not applied to a public or private sector contract; and

WHEREAS, the City is relying upon a strong basis in evidence in concluding that there are ongoing effects of marketplace discrimination adversely affecting the utilization of M/WBE firms in City contracts and in the City's relevant marketplace; and

WHEREAS, the 2015 Disparity Study was also reviewed and formally recommended for acceptance for purposes of reliance in the formulation of public policy by the Small Business Advocacy Committee (SBAC) as appointed by the City Council; and

WHEREAS, on December 3, 2015, after a considerable period of public review and comment, the San Antonio City Council voted to formally accept the 2015 Disparity Study findings for purposes of policy formulation; and

WHEREAS, decades of small business programs and other race- and gender-neutral remedies (including those within the current SBEDA Ordinance) have failed to fully eliminate statistically significant underutilization of ready, willing and able M/WBE firms; and

WHEREAS, based upon the latest Disparity Study, the City of San Antonio continues to have a compelling interest to remedy the ongoing effects of marketplace discrimination against M/WBE businesses and to avoid becoming a passive participant in private sector discrimination; and

WHEREAS, the significant underutilization of available M/WBE firms continues to be a drain on the local economy and continues to undermine the economic vitality and development of the San Antonio region; and

WHEREAS, the City of San Antonio is fully committed to not only remedying the ongoing effects of marketplace discrimination, but to also using its spending powers in a manner that promotes a robust and inclusive economy that fully utilizes all segments of its business population regardless of race or gender; and

WHEREAS, based upon an extensive factual predicate, the City Council has determined that a narrowly-tailored and somewhat modified combination of race- and gender-neutral and race- and gender-conscious remedies and programs are necessary to serve these compelling interests and needs of the City of San Antonio; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The amendments to the SBEDA Ordinance No. 2010-06-17-0531 as set out in Attachment “A” are hereby approved and adopted for purposes of furthering the narrow-tailoring of remedies necessary to effectively address the aforementioned compelling interests and needs of the City of San Antonio.

SECTION 2. Scope and Exclusions: Attachment “A” of this Ordinance shall apply to all contracts for the purchase of services, goods or supplies awarded by, or on behalf of, the City, including, but not limited to, every contract or other agreement between the City of San Antonio and any governmental agency, quasi-governmental agency, corporation, developer or contractor, under which the agency, corporation, developer or contractor receives any fiscal assistance (including, but not limited to, Tax Increment Financing for economic development projects) from or through the City for the purpose of contracting with businesses to perform real estate development, renovation, maintenance or other services and as such, the City shall require the agency, corporation, developer or contractor to comply with this Ordinance in awarding and

administering that contract or agreement; provided, however, that the following categories of contracts shall be excluded from the scope and application of this Ordinance:

- (a) Contracts that are subject to the U.S. Department of Transportation Disadvantaged Business Enterprise Program and Airport Concessions Disadvantaged Business Enterprise Program as set forth in 49 CFR Parts 23 and 26 or any successor regulations or legislation;
- (b) Any expenditure or revenue contract with a value that is less than the amount that is required to be bid pursuant to state law (Chapter 252, Texas Local Government Code, and as amended), currently \$50,000 or less;
- (c) Contracts for the purchase of goods or supplies of a unique nature for which the City Originating Department determines there is only a sole source of supply;
- (d) Contracts for electricity or water and sewage services from a municipal utility district or governmental agency;
- (e) Emergency contracts for goods or supplies that the City Manager or designee determines are necessary for the preservation of public health or safety and whose immediacy of need is so great that it is impractical for the City to apply the terms of this Ordinance to the contract;
- (f) Contracts for the City's lease or purchase of real property where City is lessee or purchaser;
- (g) Agreements for Tax Abatements and Chapter 380 Grant Agreements; and
- (h) Personal Services involving the unique abilities or style of a particular individual.

SECTION 3. This Ordinance shall be effective July 1, 2016.

PASSED AND APPROVED THIS 19th day of May 2016.

M A Y O R
Ivy R. Taylor

ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek
City Clerk

Martha G. Sepeda
City Attorney