

Mayor and Council Communication

DATE: 11/17/20

M&C FILE NUMBER: M&C 20-0841

LOG NAME: 08FY2020BUSINESS EQUITY ORDINANCE

SUBJECT

(ALL) Approve the Availability and Disparity Study, Adopt New Business Equity Ordinance to Repeal and Replace Chapter 20, Article X of the City Code and Replace All Previous Minority and Women Business Enterprise Ordinances and Adopt a Business Equity Firm Annual Goal of 25%

RECOMMENDATION:

It is recommended that the City Council:

1. Approve the attached Availability and Disparity Study conducted by CH Advisors, Inc.;
 2. Adopt the attached Business Equity Ordinance with an effective date of January 1, 2021 that will replace all previous minority and women business enterprise ordinances; and
 3. Adopt an Business Equity Firm Annual Goal of 25 percent.
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DISCUSSION:

This new Business Equity Ordinance represents a major revision to the City's existing Business Diversity Enterprise (BDE) Ordinance (Ordinance Number 20020-12-2011) and will replace it. In March 2019, the City signed a contract with CH Advisors, Inc. to perform an Availability and Disparity Study (the "Study"). CH Advisors, Inc. used quantitative data sources such as the City contract and vendor records, contract information from prime vendors, US census data, ecetera, and qualitative data sources to include interviews with stakeholders, business owners, city staff and other Texas disparity studies. CH Advisors, Inc. worked closely with the Economic Development Department, Office of Business Diversity staff, and conducted extensive outreach to community stakeholders, prime vendors, minority and women businesses, advocacy groups, Minority and Women Business Enterprise Advisory Committee (MWBE-AC), and City internal stakeholders over a period of twelve months and received feedback as part of the Study. In May 2020, upon receipt of the completed Study and over a period of three months, the Diversity and Inclusion Chief Equity Officer/Director held a series of virtual meetings (briefings on the study findings and recommendations) to the City Manager and leadership team, individual Council members, department heads, Business Equity staff and the Public. In May and June, Colette Holt of CH Advisors, Inc. and Christina Brooks, held a series of virtual meetings and presented the Study findings and recommendations to the Mayor and City Council members, CMO, department heads, MWBE Advisory Committee, and Public.

The Study was subsequently used as the guiding document and starting point for determining what substantive ordinance changes would be appropriate in response to the study. The Department of Diversity and Inclusion, Chief Equity Officer, with support from staff and input from the departments, conducted an in-depth and extensive review process to formulate proposed changes to the existing BDE Ordinance. The findings of the Study resulted in redefining the City's Marketplace, the geographic area now three counties, Tarrant, Dallas, Johnson, and the boundaries of the City of Fort Worth extending into or bordering the three additional counties of Denton, Parker and Wise. Based on the Study research, the input of the MWBE-AC, feedback from community stakeholders, vendor interviews, and the City internal stakeholders, the major proposed Ordinance changes include: replacing the current four BDE programs with a narrowly-tailored M/WBE program; Business Equity firms can count their self-performance on prime contracts; increased ability to set race and gender specific goals on a contract-by-contract basis; enhanced internal processes to strengthen participation of Business Equity Firms (minority-owned and women-owned businesses); increased threshold for setting Business Equity goals on projects from \$50,000.01 to \$100,000.00; and more as stated in the ordinance attached to this M&C; added incentives to encourage Business Equity participation as primes; and the establishment of more narrowly-tailored annual overall goals. The Study recommended an Annual Goal of 25%.

Business Equity goals can only be legally used to the extent to which there is statistically significant underutilization in specific race and/or gender categories. The courts consider availability and disparity studies like the Study to be an acceptable method to validate underutilization. This Business Equity Ordinance provides for a Program that addresses specific statistically significant underutilizations, is a product of the historical progress realized by the previous Business Diversity Enterprise Ordinance and continues to provide Business Equity Firms with opportunities to compete for and participate in City procurement opportunities.

State and local governments are legally required to periodically validate whether there continues to be a statistically significant underutilization of Business Equity firms in order to continue to apply Business Equity goals. Therefore, the new Business Equity Ordinance requires a new disparity study to begin five years after the effective date of the ordinance.

The existing BDE Ordinance was adopted by the City Council on December 13, 2011 and became effective on June 1, 2012. If adopted, the new ordinance will become effective on January 1, 2021 and terminate December 31, 2030 unless reauthorized after completion of the required disparity study referred to above. This effective date allows for sufficient transition time to further educate all stakeholders and to make the necessary changes to the existing processes, forms and documents.

A Form 1295 is not required because: This M&C does not request approval of a contract with a business entity.

FISCAL INFORMATION / CERTIFICATION:

The Director of Finance certifies that approval of these recommendations will have no material effect on City funds.

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