

**State of Texas
County of Bexar
City of San Antonio**



**Meeting Minutes
City Council B Session**

Council Briefing Room
City Hall
100 Military Plaza
San Antonio, Texas 78205

2023 – 2025 Council Members

Mayor Ron Nirenberg
Dr. Sukh Kaur, Dist. 1 | Jalen McKee-Rodriguez, Dist. 2
Phyllis Viagran, Dist. 3 | Dr. Adriana Rocha Garcia, Dist. 4
Teri Castillo, Dist. 5 | Melissa Cabello Havrda, Dist. 6
Marina Alderete Gavito, Dist. 7 | Manny Pelaez, Dist. 8
John Courage, Dist. 9 | Marc Whyte, Dist. 10

Wednesday, December 6, 2023

2:00 PM

Council Briefing Room

The City Council convened a B Session meeting in the Council Briefing Room beginning at 2:06 PM. City Clerk Debbie Racca-Sittre took the Roll Call noting a quorum with the following Council Members present:

PRESENT: 11 – Nirenberg, Kaur, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello Havrda, Alderete Gavito, Pelaez, Courage, Whyte

ABSENT: None

ITEMS

1. Briefing on the recommended amendments to the Small Business Economic Development Advocacy (SBEDA) Ordinance based on findings from the 2023 Disparity Study. [Alejandra Lopez, Assistant City Manager; Brenda Hicks-Sorensen, Director, Economic Development Department]

City Manager Erik Walsh introduced the Item and Michael Sindon, Small Business Administrator with the Economic Development Department (EDD) who provided an overview of the 2023 recommended Small Business Economic Development Advocacy (SBEDA) Ordinance

Amendments which were a result of the recently conducted Disparity Study. He stated that the purpose of the Ordinance was to promote the use of Small, Minority, and Woman-Owned Businesses (S/M/WBEs) on City contracts to address current and historically documented disparities found in the San Antonio market area.

The initial SBEDA Ordinance was established in 1992 and notable amendments were adopted in 2010 and 2016. Amendments included establishment of a compliance module, vendor registration system, contract-by-contract goal setting and self-performance of contracting goals.

According to Sindon, the U.S. Supreme Court ruled that race-and gender-conscious programs were subject to “strict scrutiny,” the highest level of judicial review. Sindon stated that local program findings included that the SBEDA Program had been effective in increasing opportunities for M/WBEs; however, benefits were not spread evenly across all groups, multiple marketplace disparities were found regarding M/WBE business formation, sales and payroll rates. Sindon also reported that anecdotal evidence supported the findings.

SBEDA Amendment goals were to support the continued utilization of M/WBEs on City contracts, ensure the narrowly tailored application of the SBEDA Program and streamline program processes according to Sindon. He reported that the current process to certify small businesses required firms to obtain certification through business tax records and size standards differed by industry and were set by the United States Small Business Administration. Sindon noted that the recommendation was to add personal net worth to the criteria and align size standards with the United States Department of Transportation Disadvantaged Business Enterprise Program limit of \$1.32 million in order to tailor SBEDA Program benefits to economically disadvantaged business owners.

Sindon proposed to eliminate the Goal Setting Committee and also to eliminate the significant business presence eligibility provision included in the current Ordinance and focus only on businesses headquartered in San Antonio. He proposed to add Emerging Small Business Enterprises (ESBE) to all SBEDA contracting goal tools up to 40% contracting requirement on specified solicitations/contracts asserting that ESBE addition would build the capacity of smaller firms to participate on larger contracts.

Sindon recommended maintaining SBE prime points, but eliminating M/WBE prime points as staff research indicated that there would be little impact to M/WBE businesses; noting that race-neutral programs were effective. Additionally, Sindon recommended removing the race-and gender-conscious prime contract and joint venture tools leaving only race-and gender-neutral tool versions. He also proposed removing contract term incentive-based tools that were historically ineffective and Joint Venture (JV) and Distributorship Development Incentive tools as well as removal of HUB Zone which had not been applied since 2011 due to lack of firm availability.

Sindon reported that amendments to Streamline SBEDA processes included allowing S/M/WBEs to self-perform contracting goals on all City of San Antonio projects; currently the provision only applied to contracts valued at \$10 million or lower. He stated that additionally, JV amendments would encourage more joint venture respondents by counting their S/M/WBE partner utilization

toward SBEDA goal requirements. Additionally, Sindon proposed to revise the required contracting goal waiver process to allow for additional flexibility.

Finally, Sindon recommended sunseting the Diversity Action Plan Ordinance and to consolidate it into the SBEDA Ordinance. Sindon concluded his presentation by providing a timeline for the adoption of the proposed amendments.

Mayor Nirenberg supported the staff recommendation noting that the consultant conducted a Disparity Study that indicated the need for necessary updates.

Councilmember Cabello Havrda requested clarification on why protected classes such as race conscious goals was a deep cut to the SBEDA Program. She stated that business owners that she spoke with felt like the program had been effective and was concerned about the impact to woman and minority-owned subcontractors. Sindon clarified that race and gender subcontracting goals were not being changed, the update only included removal of race and gender prime points.

Councilmember Cabello Havrda recommended a wholistic review of the Program that took into account how women and minority-owned small businesses had become prime vendors, won contracts and grew their business as a result of the points being awarded to them under the SBEDA Program. Sindon noted that 66% of the firms studied had a contract before and the remaining were new contractors that would have won the contract without the race-and gender-conscious preference points.

Councilmember Cabello Havrda asked whether the certifications were still necessary even without the race-and gender-conscious preference points. Sindon stated that they would still need to be certified as Small Businesses to be able to meet the subcontracting requirements including their ability to self-perform. Sindon assured the Councilmember that changes could be made in the future if the updates adversely impacted minority and woman-owned businesses.

Councilmember Castillo noted that a couple of the proposed amendments provided assurances to Council District 5 small businesses, and that the amendments would not include large businesses as it now included the personal net worth of the owner and allowed the self-performance for contracting above \$10 million.

Councilmember Viagran supported the headquarter change and adding personal net worth into the eligibility criteria. She recommended adding more responsibilities to the SBEDA Committee to have a greater role with the goal setting process. Councilmember Viagran wanted to ensure that the SBEDA Ordinance was defensible. City Attorney Andy Segovia stated that the Program had to be narrowly tailored to the needs identified by the disparity study in order to protect the City against litigation but adding to the scope of the SBEDA Committee would not have an adverse impact.

Councilmember McKee-Rodriguez agreed with Councilmember Cabello Havrda that the recommendations were going in the wrong direction because there were still disparities in the utilization of African American, Asian and Native American owned businesses as compared to White Woman-owned and Hispanic-owned businesses. He supported updating the definition of

local to include only firms headquartered in San Antonio and adding the personal net worth requirement for small business size determination but suggested that there could be a scoring category for underutilized businesses.

Councilmember McKee-Rodriguez stated that the City of San Antonio was the most economically segregated city in America and that translated into racial segregation as well. He did not support removing the race-based prime preference points and noted that goals were not requirements and proposed that if the City did not set high goals, they would never be met. Councilmember McKee-Rodriguez also recommended better representation of African American, Asian and Native Americans on the City's Boards and Commissions.

Councilmember Alderete Gavito clarified that removal of the race and gender prime preference points would have resulted in most of the firms still being selected under the race-neutral program. She asked how this would impact Middle Eastern owned firms. Sindon stated that the department could commit to study whether there was disparity for those firms.

Councilmember Alderete Gavito requested a definition of economically disadvantaged. Sindon stated that businesses would have to prove they were below the U.S. Small Business Administration standard through business tax records and meet the personal net worth standard of less than \$1.23 million.

Councilmember Kaur noted that 148 out of 153 small businesses would have still won the contract with only race-neutral preference points for the past year, and requested to continue this analysis for future contracts to see how the program updates impacted them. Councilmember Kaur noted that the net worth component seemed to be a community concern that it would be a large burden and suggested a self-attestation rather than a lengthy application.

Councilmember Whyte recalled that the ultimate goal was to no longer need a SBEDA Program and the only way to see if there had been an impact was to dial back the Program. Councilmember Whyte suggested that the makeup of the population was not the appropriate measure, rather it was availability of firms; noting that MWBE was at 53% utilization which meant the Program was working.

Councilmember Pelaez commented that the work performed by staff and the consultant was done in good faith by subject matter experts to keep the Program cutting edge, yet legally defensible. Councilmember Pelaez suggested that it was time to dial back the Program as it had been very effective over the past 30 years. Councilmember Pelaez disagreed that San Antonio was still the most economically segregated city in America. Mayor Nirenberg agreed that our city's economy had improved.

Councilmember McKee-Rodriguez clarified that we were at one time the most economically segregated city and now we were the most rapidly integrating city which was a result of gentrification. Councilmember McKee-Rodriguez recommended eliminating points for all other groups except Black, Asian, and Native Americans. Segovia stated that the proposal would be discussed in Executive Session as it was specifically a question related to potential litigation.

Mayor Nirenberg noted that it could be true that we were improving but were still not in the place that we want to be in terms of wage equality and the median wage, housing as well as small business. He stated that the data was going in the right direction with a goal of getting to 100% parity, but we needed to take some of the training wheels off to see the impact. He added that if dialing the program back resulted in setbacks for women-and minority-owned businesses, we could adjust but he agreed that the program was not intended to be permanent.

EXECUTIVE SESSION

Mayor Nirenberg recessed the meeting into Executive Session at 3:03 p.m. to discuss the following:

- A.** Economic development negotiations pursuant to Texas Government Code Section 551.087 (economic development).
- B.** The purchase, exchange, lease or value of real property pursuant to Texas Government Code Section 551.072 (real property).
- C.** Legal issues related to litigation involving the City pursuant to Texas Government Code Section 551.071 (consultation with attorney).
- D.** Legal issues relating to emergency preparedness pursuant to Texas Government Code Section 551.071 (consultation with attorney).

Mayor Nirenberg reconvened the meeting in Open Session at 3:55 p.m. and announced that no official action had been taken in Executive Session.

ADJOURNMENT

There being no further discussion, the meeting was adjourned at 5:04 P.M.

Approved

**Ron Nirenberg
Mayor**

**Debbie Racca-Sittre
City Clerk**