

1 [Health Code – Biological Agent Detector Registration and Fees]

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3 **Ordinance amending the San Francisco Health Code by adding Article 35 to create a**
4 **registration scheme, fees and other requirements for Biological Agent Detectors.**

5 Note: Additions are single-underline italics Times New Roman;
6 deletions are ~~strikethrough italics Times New Roman~~.
7 Board amendment additions are double underlined.
8 Board amendment deletions are ~~strikethrough normal~~.

8 Be it ordained by the People of the City and County of San Francisco:

9 Section 1. The San Francisco Health Code is hereby amended by adding Article 35, to
10 read as follows:

11 **SEC. 3500. FINDINGS AND STATEMENT OF PURPOSE.**

12 (a) Commercial vendors are promoting Biological Agent Detectors that have not been
13 scientifically validated to companies and institutions in San Francisco.

14 (b) “A single system that exhibits high specificity for detection of biological agents in the
15 environment currently does not exist as a commercially available item.” (Director of Homeland
16 Security, Guide for the Selection of Biological Agent Detection for Emergency First Responders, March
17 2005. 3.2) A lack of high specificity causes an unacceptably high rate of false alarms in biological
18 agent detectors.

19 (c) According to a joint statement by the Federal Bureau of Investigations, Director of
20 Homeland Security, and the Centers for Disease Control, “Currently, there are no definitive field tests
21 for identifying biological agents. Additional field testing can mislead response efforts by providing
22 incorrect or incomplete results, and destroy limited materials critical for definitive laboratory testing
23 required to facilitate any appropriate public health and law enforcement response.” (Federal Bureau
24 of Investigation/ Director of Health Services / Centers for Disease Control Coordinated Document;
25 Guidance on Initial Responses to a Suspicious Letter / Container – November 2, 2004)

1 (d) Biological Agent Detectors that are commercially available have not been scientifically
2 validated or approved for use by the Centers for Disease Control & Prevention (CDC).

3 (e) The currently available technology and protocols to confirm the presence or absence of
4 a bioterrorism attack are not well developed, which may result in prolonged and unnecessary closure
5 of the identified facility and nearby buildings. (United States Government Accountability Office,
6 Report to the Chairman, Subcommittee on National Security, Emerging Threats, and International
7 Relations, House Committee on Government Reform, House of Representatives. Anthrax detection:
8 Agencies need to validate sampling activities in order to increase confidence in negative results.
9 March 2006)

10 (f) A false alarm of a possible bioterrorism attack may cause civil unrest, business
11 disruptions, prolonged facility closure, and mental health consequences.

12 (g) Prolonged closure of facilities and adjacent buildings to perform environmental
13 sampling may cause extended work stoppage and significant financial loss to businesses.

14 (h) An estimated cost to the City and County of San Francisco in responding to a false
15 alarm of a Biological Agent Detector is over \$700,000 per incident, with an additional \$200,000 for
16 each additional day of emergency response and restoration activities. The costs may include
17 decontamination, environmental sampling, law enforcement, laboratory testing, public health
18 surveillance, and facility restoration.

19 (i) The City and County of San Francisco has a response plan for the federal Director of
20 Homeland Security Biowatch program that continuously collects air samples to test for key
21 bioterrorism agents and uses a CDC-coordinated Laboratory Response Network for testing and
22 confirmation. The Laboratory Response Network program has been scientifically validated by the
23 CDC.

1 (j) Emergency responders of the City and County of San Francisco use a Suspicious
2 Substance Response Plan. With guidance from this response plan, emergency responders
3 systematically assess the threats, potential risks, and the appropriate screening tests. If determined to
4 be appropriate, the emergency responders or the Federal Bureau of Investigations (FBI) would collect
5 the substance for testing at the CDC-coordinated Laboratory Response Network (LRN) reference
6 laboratory at the California Department of Public Health. Using scientifically validated testing
7 procedures, the LRN can produce reliable and validated test results within several hours.

8 (k) The San Francisco Director of Public Health and health professionals use medical and
9 public health surveillance to detect any cases of bioterrorism.

10 (l) For these reasons, the City and County of San Francisco strongly discourages the
11 purchase and use of Biological Agent Detectors by public institutions and businesses in San Francisco.

12 (m) If the National Science & Technology Council develops national equipment performance
13 standards for biological agent detectors, the Department of Public Health shall make recommendations
14 to the Board of Supervisors regarding whether to amend or repeal this legislation.

15 **SEC. 3501. DEFINITIONS.**

16 (a) "Biological Agent" means any microorganism, including bacteria, virus, infectious
17 substance or toxin, whether engineered or naturally occurring, or any component of such micro-
18 organism, bacteria, virus, infectious substance or toxin, capable of causing death, disease or other
19 biological malfunction in a living organism.

20 (b) "Biological Agent Detection Facility Response Plan" means a plan developed and
21 written to respond to a positive detection from a Biological Agent Detector including, but not limited
22 to: emergency coordinators and contact information, notification protocol, evacuation procedures, air
23 handling shutdown procedures, if relevant, procedures for collection of information on potentially
24 exposed Persons, coordination with City agencies for any decontamination or post-exposure
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1 prophylaxis procedures, confirmation of detector results procedures, plan training and maintenance,
2 and device maintenance.

3 (c) "Biological Agent Detector" or "Biodetector" means a device or equipment that tests for
4 a biological agent that may be used for a terrorism attack, and includes both mobile and fixed position
5 devices. Biological Agent Detectors include only devices that identify pathogenic Biological Agents by
6 genus or species (e.g. Bacillus anthracis, Francisella tularensis, Brucella sp.), or specific toxin (e.g.
7 ricin). This definition does not include screening devices to determine the presence of protein or
8 biological materials.

9 (d) "Biological Agent Detector User" or "Detector User" means a Person who owns and
10 deploys a Biological Agent Detector.

11 (e) "Certificate of Registration" means a certificate issued to a Biological Agent User under
12 this Article.

13 (f) "Chief" means the Chief of the San Francisco Fire Department and his or her designee.

14 (g) "City" means the City and County of San Francisco.

15 (h) "Director" means the Director of the San Francisco Department of Public Health or his
16 or her designee.

17 (i) "False Alarm" means an event where a Biological Agent Detector signals a positive
18 detection and follow up lab confirmation at a CDC approved Laboratory Response Network reference
19 lab does not confirm the presence of a biological agent.

20 (j) "Fixed Position" means stationary and cannot be relocated readily.

21 (k) "Mobile" means capable of moving or being moved readily.

22 (l) "Person" means an individual, trust, firm, joint stock company, corporation,
23 partnership, associations, but not a State or Federal governmental entity or agency.

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1 (m) "Tax Collector" means the Office of the Treasurer and Tax Collector of the City and
2 County of San Francisco.

3 **SEC. 3502. CERTIFICATE OF REGISTRATION REQUIRED.**

4 Any Person who possesses or deploys a Biological Agent Detector shall for each building,
5 obtain and keep current a Certificate of Registration with the Director. The Certificate of Registration
6 shall identify each Biological Agent Detector possessed or deployed at the building.

7 **SEC. 3503. APPLICATION FOR CERTIFICATE OF REGISTRATION.**

8 (a) Every Person who is required to obtain a Certificate of Registration under this Article
9 shall obtain a Certificate of Registration by filing a written application and Facility Response Plan
10 with the Director upon forms furnished by the Director for that purpose, certifying that the Facility
11 Response Plan meets the requirements of this Article, and paying the required fees. Every Person who
12 intends to deploy a mobile Biodetector at more than one building must submit a Facility Response Plan
13 for each building where the Biodetector User plans to deploy the device.

14 (b) Every Person who installs a Biodetector and where such an installation requires
15 alteration of the building's structure, including but not limited to the fire alarm, electrical, plumbing, or
16 communication systems, may be required to secure the necessary permits from the San Francisco
17 Department of Building Inspection or the San Francisco Fire Department, as appropriate. In addition,
18 the applicant for a Registration of Certification shall install and operate a Biodetector in compliance
19 with all applicable laws and regulations.

20 **SEC. 3504. INVESTIGATION AND ACTION ON APPLICATION.**

21 (a) Upon receipt of an application, the Director may coordinate approval of the application
22 with other directors of City departments. The Director may also request additional information from
23 the applicant as needed to assess the application, including information regarding compliance with all
24 applicable laws and regulations.

1 **(b)** *Applicants may be required to meet with the Director and other appropriate City*
2 *agencies in order to coordinate potential emergency responses to an alarm indicated or transmitted by*
3 *a Biological Agent Detector.*

4 **(c)** *If the application is denied, the Director shall so notify the applicant, including the*
5 *reason(s) for the denial.*

6 **SEC. 3505. TRANSFER OF CERTIFICATE OF REGISTRATION.**

7 *Certificates of Registration are non-transferable and may only be used by the Person who*
8 *submitted the application under this Article.*

9 **SEC. 3506. PRODUCTION OF CERTIFICATE OF REGISTRATION UPON REQUEST OF**
10 **AUTHORIZED CITY REPRESENTATIVE.**

11 *Any Person possessing a Certificate of Registration issued under this Article must produce the*
12 *Certificate of Registration for review by any City employee authorized to inspect the premises.*

13 **SEC. 3507. FEES.**

14 **(a)** *The Biological Agent Detector User shall pay a fee for each Biological Agent Detector*
15 *in order to obtain and maintain a Certificate of Registration. The fee for the Department of Public*
16 *Health shall be \$3,140 for the first Biodetector, and \$200 for each additional Biodetector deployed*
17 *within the same building. The fee for mobile devices shall be \$3,140 for each building where the*
18 *Biological Agent Detector User plans to deploy the Biodetector. The fee for the Fire Department shall*
19 *be \$220 per Biodetector, with \$110 for each additional hour of review or inspection per Biodetector*
20 *after the initial two hours. The initial detector fees shall be paid to the aforementioned Departments*
21 *before the City approves the Certificate of Registration and the Detector User activates the Biological*
22 *Agent Detector. The Detector User must renew the Certificate of Registration annually as provided in*
23 *this Article, and pay the fees for each Biological Agent Detector for the Certificate of Registration to*
24 *remain valid.*

1 (b) Beginning with fiscal year 2012-2013, fees set forth in this Article may be adjusted each
2 year, without further action by the Board of Supervisors, as set forth in this Section.

3 Not later than April 1, the Director and the Chief shall report to the Controller the revenues
4 generated by the fees for the prior fiscal year and the prior fiscal year's costs of operation, as well as
5 any other information that the Controller determines appropriate to the performance of the duties set
6 forth in this Article.

7 Not later than May 15, the Controller shall determine whether the current fees have produced
8 or are projected to produce revenues sufficient to support the costs of providing the services for which
9 the fees are assessed and that the fees will not produce revenue that is significantly more than the costs
10 of providing the services for which the fees are assessed.

11 The Controller shall, if necessary, adjust the fees upward or downward for the upcoming fiscal
12 year as appropriate to ensure that the program recovers the costs of operation without producing
13 revenue which is significantly more than such costs. The adjusted rates shall become operative on July
14 1.

15 **SEC. 3508. DUTY TO REPORT CHANGES.**

16 Any Person required to obtain a Certificate of Registration under this Article shall notify the
17 Director within 10 days of any relevant or material change in the information contained in the
18 application or of other relevant circumstances, including but not limited to, if the Person acquires an
19 additional Biological Agent Detector, ceases to possess a Biological Agent Detector, or modifies the
20 training, notification, or response plans for the Biological Agent Detector. Upon notification of such
21 change, the Director may suspend, revoke, or amend the registration or direct that the Certificate of
22 Registration holder submit an application for a new registration. If Director instructs a Person to
23 submit an application for a new registration, that Person must do so within 30 days of the mailing of
24 the notice by the Director.

1 **SEC. 3509. INSPECTION.**

2 Any Person required to register under this Article must allow inspections by any City agency of
3 the location or building containing the Biological Agent Detector, either pursuant to the application
4 process or after the issuance of the Certificate of Registration.

5 **SEC. 3510. TIME LIMIT FOR BUSINESSES OPERATING WHEN THIS ARTICLE IS**
6 **ENACTED TO FILE AN APPLICATION FOR CERTIFICATE OF REGISTRATION.**

7 Any Person who already possesses a Biological Agent Detector as of the date this Article
8 becomes effective must submit an application for a Certificate of Registration within 90 days of the
9 effective date of this ordinance. Following a denial, an applicant may resubmit an application or
10 remove the Biological Agent Detector within 30 days. If a Person's third application is denied, that
11 Person is barred from resubmitting another application and must permanently remove the Biological
12 Agent Detector within 30 days.

13 **SEC. 3511. DUTIES OF THE BIOLOGICAL AGENT DETECTOR USER.**

14 (a) A Biological Agent Detector User shall:

15 (1) Maintain the Biological Agent Detector so as to minimize or eliminate false
16 alarms;

17 (2) Make every reasonable effort to have a responder to the Biological Agent
18 Detector's location within 10 minutes of when the Biological Agent Detector alarm is activated to:

19 (A) Provide access to the Biological Agent Detector location;

20 (B) Assist with the assessment of the situation; or

21 (C) Provide alternative security for the Biological Agent Detector location; and,

22 (3) Not activate a Biological Agent Detector for any reason other than an
23 occurrence of an event that the Biological Agent Detector system was intended to report.

1 (b) A Biological Agent Detector User shall adjust the mechanism or cause the mechanism to
2 be adjusted so that a Biological Agent Detector signal shall not be audible to the general public.

3 (c) A Biological Agent Detector User shall maintain at each Biological Agent Detector
4 location a set of written operating instructions for each Biological Agent Detector system in a location
5 and manner acceptable to the Fire Department and the Department of Public Health.

6 (d) A Biological Agent Detector User shall maintain at each fire alarm annunciator panel
7 signage explaining that there is a Biological Agent Detector in the building. The signage shall also
8 contain a map or directions to explain the locations of the devices.

9 **SEC. 3512. PROHIBITION AGAINST FALSE ALARMS.**

10 False alarms are prohibited.

11 **SEC. 3513. VIOLATIONS AND PENALTIES.**

12 (a) **Enforcement.** Biological Agent Detector Users who violate this Article or any
13 regulations enacted under Section 3519 shall be liable for administrative or civil penalties. The
14 Director may assess administrative penalties following an administrative hearing. Civil penalties may
15 be assessed and recovered in a civil action brought in the name of the people of the City and County of
16 San Francisco by the City Attorney in any court of competent jurisdiction.

17 (b) **False Alarm Penalty.** A Biological Agent Detector User shall pay penalties for each
18 False Alarm as follows:

19 First False Alarm: Up to \$5,000.

20 Second False Alarm: Up to \$7,500.

21 Third And Each Subsequent False Alarm: Up to \$10,000.

22 (c) **Other Violations.** Any Person who violates any other provision of this Article or any
23 rule or regulation promulgated pursuant to this Article may be subject to an administrative or civil
24 penalty of up to \$500 per day of violation.

1 (d) **Factors For Setting Penalty.** In assessing the amount of the administrative or civil
2 penalty, the Director or Court shall consider any one or more of the relevant circumstances presented
3 by any of the parties to the case, including but not limited to the following: the nature and seriousness
4 of the misconduct, the number of violations, the persistence of the misconduct, the length of time over
5 which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's
6 assets, liabilities, and net worth.

7 (e) **Presumption of Noncompliance in Civil Cases.** In addition to any other penalties
8 provided in this Article, any Person or entity served with a notice or order by the Director setting forth
9 the nature of the violation of this Article, demanding correction of such violation, and specifying the
10 time within which such violation must be corrected, shall be presumed, in civil proceedings, to have
11 failed to comply with that notice or order at and after the time given in that notice or order for
12 correction of such violation, after the time specified in the order has expired without correction of the
13 violation.

14 (f) In any civil or administrative proceeding to collect penalties under this Article, the
15 Court or Hearing Officer may award the City costs and fees, including but not limited to attorneys'
16 fees.

17 **SEC. 3514. INTEREST AND PENALTIES FOR NONPAYMENT.**

18 (a) Any fee, penalty, or cost due to the Director not paid by the due date is delinquent.

19 (b) If a Certificate of Registration fee, penalty or cost due to the Director is not paid within
20 30 days after the same becomes due, the Director shall add 50 percent to the amount of the stated fee
21 or penalty as a penalty for non-payment.

22 (c) The Director may refer Detector User accounts to the Bureau of Delinquent Revenue or
23 to the Tax Collector to initiate collection.

1 (d) In addition to the penalties imposed in Subsection (b), any Detector User who fails to
2 pay any fee, penalty or cost due the Director shall pay interest on the amount due, exclusive of late
3 payment penalties, plus an additional collection charge for each delinquent account in an amount to be
4 determined by rules and regulations of the Tax Collector. The Tax Collector shall establish collection
5 charges sufficient to reimburse the costs incurred by the City for collecting delinquent fees or penalties.
6 Interest shall be paid at a rate of one percent per month, or fraction thereof. Interest and collection
7 charges shall accrue immediately after the original due date.

8 (e) If the Director determines that the Detector User has deliberately withheld the amount
9 of the fee to be remitted or that a Detector User has failed to pay the amount of the fee for a period of
10 one or more billing periods, or if the Director deems it in the best interest of the City and County, he or
11 she may refer collection of fees due under this Article from certain Detector Users for specified billing
12 periods to the Tax Collector. The Director shall notify the Detector User that the Director has referred
13 collection of the fees due and payable for the stated periods and demand payment of such fees to the
14 Tax Collector. The notice shall be served on the Detector User personally by handing it to him or her
15 or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the Detector
16 User at the address on the application or location where the detector(s) is located. If the Detector User
17 fails to remit fees, penalties, or costs assessed to the Tax Collector, the Detector User shall be subject
18 to the interest and penalties provided in this Section.

19 **SEC. 3515. SUSPENSION AND REVOCATION OF CERTIFICATE OF REGISTRATION.**

20 In addition to the penalties described in Section 3513, the Director may suspend or revoke any
21 Certificate of Registration if the Director finds:

22 (1) The registrant has violated any of the provisions of this Article;

23 (2) The application contains a material false statement;

1 (3) The Biological Agent Detector for which a Certificate was issued does not comply with
2 any of the provisions of this Article or rules and regulations promulgated hereunder;

3 (4) The registrant has refused to permit any City inspector to inspect the premises or the
4 Biological Agent Detector therein;

5 (5) The registrant refuses to produce the Certificate of Registration upon request by a City
6 inspector;

7 (6) The registrant or his or her authorized employees or agents have failed to comply with
8 the instructions of any City Director or cooperate in any investigation relating to the Certificate of
9 Registration or the Biological Agent Detector for which a Certificate of Registration was issued;

10 (7) The Biological Agent Detector has more than two false alarms within a 12-month
11 period; or,

12 (8) For good cause.

13 **SEC. 3516. APPEALS.**

14 (a) If the Director revokes or suspends a Certificate of Registration, assesses a penalty, or
15 denies the issuance, renewal or reinstatement of a Certificate of Registration, the Director shall send
16 written notice of the action and a statement of the right to an appeal to either the affected applicant or
17 Biological Agent Detector User.

18 (b) The applicant or Biological Agent Detector User may appeal the decision of the
19 Director as follows:

20 (1) The applicant or Biological Agent Detector User may file a written request for a
21 review by paying an appeal fee of \$180 and setting forth the reasons for the appeal within 20 business
22 days notice of the Director's decision. The Person filing the appeal must also deposit with the Tax
23 Collector the full amount of any penalty imposed, plus any accrued interest and costs. Appeal fees, and

1 any other amount deposited with the Tax Collector, will be returned to the appealing applicant or
2 Biological Agent Detector User if the appeal is upheld.

3 (2) The Director may grant, but not deny, the appeal based upon an initial review of
4 the appellant's written submission, as well as any other pertinent information.

5 (3) If, after his or her initial review, the Director does not grant the appeal or
6 determines that a hearing is appropriate or necessary, the Director shall appoint a hearing officer to
7 conduct a formal hearing within 30 days of the receipt of the request and consider the evidence
8 submitted by any interested Person(s). The hearing officer shall not be an employee whose regular
9 duties include administration or enforcement of this Article. The hearing officer shall make his or her
10 decision affirming or reversing the decision of the Director on the basis of the preponderance of
11 evidence presented at the hearing, and must render the decision within 30 days after the date of the
12 hearing.

13 (c) Filing of a request for appeal shall stay the action by the Director revoking or
14 suspending the Certificate of Registration or requiring payment of a penalty, until the appeal is
15 complete. If a request for appeal is not made within the 20 business day period, the Director's decision
16 is final.

17 **SEC. 3517. REINSTATEMENT.**

18 A Person whose Certificate of Registration has been revoked or suspended may, at the
19 discretion of the Director, have the Certificate of Registration reinstated if the Person:

20 (1) In the case of revocation, submits a new application and pays a reinstatement fee equal to
21 one-half of the certificate renewal fee;

22 (2) Pays, or otherwise resolves, all outstanding fees and penalties; and,

23 (3) Submits a certification from a Biological Agent Detector installation company, stating that
24 the detector system has been inspected and repaired (if necessary) by the alarm installation company.

1 **SEC. 3518. LIENS.**

2 *(a) All final costs, fees, and administrative or civil penalties assessed against a Person for*
3 *violations of this Article shall be an obligation owed to the City by the Person found to have violated*
4 *this Article, and the owner of the property where the violation occurred, provided that both have been*
5 *given adequate notice of the alleged violation(s). Such obligation may be collected by means of the*
6 *imposition of a lien against the property of the owner of the property or the Person against whom the*
7 *final administrative or civil penalty was assessed. The City shall mail to the owner of the property and*
8 *to the Person against whom the final amount was assessed (if different from the owner of the property)*
9 *a notice of the amounts due and a warning that lien proceedings will be initiated against the property if*
10 *the amounts are not paid within 30 days after the notice is mailed.*

11 *(b) Liens shall be created and assessed in accordance with Article XX of Chapter 10 of the*
12 *San Francisco Administrative Code (commencing with Section 10.230).*

13 **SEC. 3519. RULES AND REGULATIONS**

14 *The Director, after a noticed public hearing, may adopt rules and regulations to carry out the*
15 *provisions of this Article. Such rules and regulations shall take effect 15 days after the public hearing.*
16 *Violation of any such rule or regulation may be grounds for administrative or civil action against the*
17 *permittee pursuant to this Article.*

18 **SEC. 3520. GOVERNMENT IMMUNITY.**

19 *Issuance of a Certificate of Registration is not intended to, nor will it, create a duty or*
20 *obligation, either expressed or implied, of response. Nor will issuance of a Certificate of Registration*
21 *guarantee the safety of an emergency response plan. Any and all liability and consequential damage*
22 *resulting from the failure to respond to a Biological Agent Detector or the implementation of an*
23 *emergency response plan is hereby disclaimed and governmental immunity as provided by law is*
24 *retained. By applying for a Certificate of Registration, the applicant acknowledges that the Director,*
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1 law enforcement, or any other City director response may be influenced by factors such as the
2 availability of Personnel, priority of calls, weather conditions, traffic conditions, emergency conditions,
3 staffing levels and prior response history.

4 **SEC. 3521. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.**

5 In undertaking the adoption and enforcement of this Article, the City and County is assuming an
6 undertaking only to promote the general welfare. The City does not intend to impose the type of
7 obligation that would allow a Person to sue for money damages for an injury that the Person claims to
8 suffer as a result of a City officer or employee taking or failing to take an action with respect to any
9 matter covered by this Article.

10 **SEC. 3522. PREEMPTION.**

11 Nothing in this Article shall be interpreted or applied so as to create any power, duty or
12 obligation in conflict with, or preempted by, any Federal or State law.

13 **SEC. 3523. SEVERABILITY.**

14 If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this Article or
15 any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of
16 competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining
17 portions of this Article or any part thereof. The Board of Supervisors hereby declares that it would
18 have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof
19 irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses,
20 or phrases be declared unconstitutional, or invalid, or ineffective.

21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: _____
24 CECILIA T. MANGOBA
25 Deputy City Attorney