

1 [First Source Hiring Ordinance – expanding scope of covered permits in Market and Octavia
2 Plan]

3 **Ordinance amending the San Francisco Administrative Code by amending sections**
4 **83.2, 83.4, and 83.6 to: (1) expand the scope of permits that the ordinance applies to in**
5 **the Market and Octavia Area Plan; (2) place new reporting requirements on the First**
6 **Source Hiring Administration that include reporting first source statistics on**
7 **permittees, as defined under the ordinance, and (3) require contractors and permittees**
8 **to cooperate with reasonable requests for information from the First Source Hiring**
9 **Administration.**

10 Note: Additions are single-underline italics Times New Roman;
11 deletions are ~~strikethrough italics Times New Roman~~.
12 Board amendment additions are double underlined.
13 Board amendment deletions are ~~strikethrough normal~~.

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

15 Section 1. The San Francisco Administrative Code is hereby amended by amending
16 Sections 83.2, 83.4, and 83.6 to read as follows:

17 **SEC. 83.2. FINDINGS.**

18 (a) In August 1996, a new federal law, the Personal Responsibility and Work
19 Opportunity Act, also known as "welfare reform," fundamentally changed the nature of public
20 assistance programs in this country, shifting the focus from the receipt of benefits to
21 procurement of employment within specified time limits. Approximately 17,350 of San
22 Francisco's children and 7,330 of its adults (3.4 percent of the population) who currently
23 receive Temporary Assistance to Needy Families (TANF), the program formerly known as Aid
24 to Families with Dependent Children (AFDC), will be limited to five cumulative years of aid
25 during their lifetime. This means that within five years, the adult members of these families,

1 unless specifically exempted, must be employed at an economically self-sufficient level.
2 Under the new federal law, after two years on aid, most recipients must work in order to
3 maintain eligibility for (TANF). As families reach their time limits, there will be no federal or
4 State funding help to support them. Therefore, the creation and retention of adequate
5 employment opportunities within the City is essential to prevent these families from falling into
6 complete destitution.

7 (b) The federal law will penalize states that fail to meet their assigned quotas for
8 moving individuals from welfare to work by imposing monetary sanctions that will be passed
9 on to the counties.

10 (c) Many people on welfare and other economically disadvantaged individuals do not
11 have immediate access to employment opportunities that will bring economic self-sufficiency.
12 Often, long-term recipients of public benefits are confronted with multiple barriers to full
13 employment, including lack of education, job-readiness skills and work experience.

14 (d) In San Francisco, there are 9,000 single unemployed adults in the County Adult
15 Assistance Program (CAAP) who are also in need of programs to move toward self-
16 sufficiency. Many CAAP clients have chosen an employment track and are pursuing self-
17 sufficiency through work. Unlike TANF, CAAP is funded solely by county dollars and is not
18 subsidized by the State or federal government. While the economy shows signs of
19 improvement, unemployment rates in San Francisco remain at 5.8 percent.

20 (e) Since 2000, over 100,000 jobs have been lost, almost three times the job loss rate
21 of the early 1990's.

22 (f) The welfare time limits imposed upon families place tremendous pressure on the
23 City to find jobs, provide appropriate training opportunities, and assist economically
24 disadvantaged individuals to find and retain adequate employment. The availability of
25

1 sufficient employment opportunities is essential to the economic and social well-being of the
2 City. This process of workforce development must be a component of the City's economic
3 development planning.

4 (g) New development and construction of commercial projects tend to increase
5 property values which in turn can displace low-income residents and put a greater burden on
6 the City to assist economically disadvantaged individuals.

7 (h) Additionally, business expansion places increased demand upon, and reduces the
8 available pool, of qualified workers. The City's economic health depends upon the
9 maintenance of that pool. Job training funds are a component of welfare reform and will result
10 in an increase of available qualified workers. Thus, early identification of entry level positions
11 in new or growing commercial activity allows the City to plan training programs that will
12 prepare economically disadvantaged individuals to be available for these new jobs. One of the
13 goals of this Chapter is to create a seamless job referral system.

14 (i) The City, the business community, the service providers, organized labor, the
15 schools, and the people who must personally meet the challenge of welfare reform are
16 gathering at a unique historical moment. The time limits on public assistance are a matter of
17 law, and the only choice is to organize the opportunities so as not to bypass these workers.
18 The consequences of welfare reform are significant not just for the individuals who must find
19 economic self-sufficiency, but for the whole economic well-being and commercial activity of
20 the City and its constituents.

21 (j) The concept of "First Source Hiring" under this Chapter contains two essential
22 components: the identification of entry level positions in order to properly allocate training
23 resources, and the availability of the first opportunity for graduates of those training programs
24 to be considered for employment. The City must work with the business community, the
25

1 service providers, organized labor and schools in identifying workforce needs, developing job
2 readiness standards, supporting training that creates a new pool of qualified workers, and
3 providing a mechanism by which the business community can draw upon this pool; thereby
4 facilitating and strengthening the relationship between the City, educational institutions,
5 community-based job training, development and place-mended programs, and the private
6 sector. While the City commits to providing the support services necessary to ensure the
7 successful transition to economic self-sufficiency, the business community must be willing to
8 offer these employment opportunities to qualified economically disadvantaged individuals.

9 (k) Participation in the City's First Source Hiring Program can be economically
10 advantageous to employers. The Program provides a ready supply of qualified workers to
11 employers with hiring needs. There are a variety of City, federal and State tax credits
12 available for hiring qualified economically disadvantaged individuals. Within State-designated
13 "Enterprise Zone" areas of San Francisco, the state offers a hiring tax credit for employers
14 who hire job seekers from targeted groups. Employers can claim up to \$31,605 in tax credits
15 over a 5 year period when they hire qualified employees. The State of California also allows a
16 hiring tax credit against wages paid qualified economically disadvantaged individuals, and a
17 sales tax credit for equipment purchased for use in designated Enterprise Zones.

18 (l) In order to provide financial assistance to employers who hire qualified economically
19 disadvantaged individuals, the federal government offers the Federal Welfare-to-Work Credit
20 that provides up to \$8,500 in tax credits per qualified employee and the Work Opportunity Tax
21 Credit that provides up to \$2,400 in tax credits per qualified employee.

22 (m) The City is committed, in partnership with the Private Industry Council, to
23 facilitating employer access to tax credit and other financial incentive information regarding
24
25

1 the hiring of qualified economically disadvantaged individuals who meet City, State or federal
2 program criteria.

3 (n) The Board of Supervisors passed the FSHA before Congress passed the
4 Workforce Investment Act of 1998 (WIA) (29 U.S.C.A. 2801 et seq.). The WIA mandates the
5 creation of a Workforce Investment Board (WIB) that, in partnership with the Mayor, oversees
6 the workforce development system for the City.

7 (o) The WIA also requires the implementation of a One-Stop delivery system that
8 provides services to both job seekers and employers. It requires that the workforce
9 development services in each locality be delivered through a single "One-Stop" delivery
10 system. The WIA gives states and localities flexibility in deciding how to implement the One-
11 Stop system with the condition that a "full service center" be formed in each locality, which
12 provides full access to all services. The WIB, in partnership with the Mayor, agreed to have
13 one full service center located on Mission Street, two affiliate centers located in the southeast
14 sector and in the Civic Center area, and a multitude of access points. This structure makes up
15 the foundation of the One-Stop system in San Francisco. The City chose a consortium of
16 agencies to be responsible for the operation of these centers, including the San Francisco
17 Human Services Agency (HSA), City College of San Francisco, the National Council on
18 Aging, and the State of California Employment Development Department.

19 (p) With the passage of the WIA and the implementation of the One-Stop system, the
20 FSHA has been fully integrated into the delivery of services.

21 (q) In 2003, the FSHA ordinance was extended for one year, during which time an
22 independent evaluation was conducted on the effectiveness of the program. The final report
23 indicates that the stakeholders view the ordinance as a tool to open doors to jobs for
24 populations that have historically had difficulty gaining access to employment opportunities.

25

1 (r) In March 2004, HSA began implementing a business service initiative designed to
2 integrate job posting and placement activities within the One-Stop system. With this new
3 referral system in place, a process exists to connect job seekers with the job opportunities that
4 result from this ordinance.

5 (s) Also in 2004, HSA implemented a new data system that tracks the activities of the
6 referral system. Information gathered includes the number of employers notified of first source
7 requirements, the number that comply with first source requirements, the number of jobs
8 posted, and the number of job seekers referred and placed in jobs.

9 (t) The proposed Market and Octavia Area Plan -- consisting of general plan, planning
10 code, and zoning map amendments - is a means for implementing an innovative set of land use controls,
11 urban design guidelines, and public space and transportation system improvements to create a dense,
12 vibrant and transit-oriented neighborhood. The plan rezones the commercial uses in the Plan Area;
13 consequently more jobs will occur in the lower wage industries such as retail, food service, and
14 personal services. Such industries offer employment opportunities to first time and entry level workers
15 especially served by the City's First Source Hiring program and as such special efforts will be made to
16 enlist lower income residents and job seekers in these new employment opportunities. Expanding the
17 provisions of the First Source Hiring Ordinance to the Market and Octavia Area Plan will serve as a
18 pilot project for other areas of the City and is in the best interest of the residents residing in this
19 designated area.

20
21 **SEC. 83.4 DEFINITIONS.**

22 (a) "Approved plan" shall mean a first source hiring implementation and monitoring
23 plan developed by a City department and approved by the FSHA.
24
25

1 (b) "Biotechnology business" shall mean conducting biotechnology research and
2 experimental development, and operating laboratories for biotechnology research and
3 experimental development, using recombinant DNA, cell fusion, and bioprocessing
4 techniques, as well as the application thereof to the development of diagnostic products
5 and/or devices to improve human health, animal health, and agriculture.

6 (c) "City" shall mean the City and County of San Francisco.

7 (d) "Commercial activity" shall include but not be limited to, for purposes of this
8 Chapter only, retail sales and services, restaurant, hotel, education, hospital, and office uses,
9 biotechnology business, and any other non-profit or for-profit commercial uses.

10 (e) "Contract" shall mean an agreement for public works or improvements to be
11 performed, or for goods or services to be purchased, or grants to be provided, at the expense
12 of the City, or to be paid out of moneys deposited in the Treasury of the City, or out of trust
13 moneys under the control of, or collected by, the City involving an expenditure in excess of
14 \$350,000 for construction contracts, in excess of \$50,000 for goods, or in excess of \$50,000
15 for services. Contract shall also mean loans or grants in excess of \$50,000 which are
16 awarded by the Mayor's Office of Housing, the Mayor's Office of Community Development,
17 the Mayor's Office of Children Youth and their Families, or by any other City department for
18 work covered under this Chapter.

19 In addition, the term "contract" includes agreements that are amended or modified in
20 either of the following manners:

21 (1) An amendment or modification to a contract, as defined above in this
22 Subsection (e), that causes the amount of the expenditure, loan or grant to exceed the
23 applicable threshold amount for "contract" stated above in this Subsection (e), or
24
25

1 (2) An amendment or modification to a contract as defined above in this
2 subsection (e) involving an expenditure, loan or grant in excess of such applicable threshold
3 amount, but to which this Chapter has not been applied.

4 The requirements of this Chapter shall apply to: (1) entry level positions for work
5 performed by a contractor in the City; (2) entry level positions for work performed on the
6 contract in counties contiguous to the City; and (3) entry level positions for work performed on
7 the contract on property owned by the City.

8 For purposes of this Chapter, "Contract" shall include subcontracts under the contract
9 subject to first source hiring, unless otherwise exempted under this Chapter.

10 For purposes of this Chapter, "Contract" shall not include contracts for urgent litigation
11 expenses as determined by the City Attorney, emergency contracts under San Francisco
12 Administrative Code § 6.30, or §21.25, tolling agreements, cooperative purchasing
13 agreements with other governmental entities or contracts with other governmental entities.

14 (f) "Contractor" shall mean any person(s), firm, partnership, corporation, or
15 combination thereof, who enters into a contract or property contract with a department head or
16 officer empowered by law to enter into contracts or property contracts on the part of the City.

17 (g) "Developer" shall mean the property owner, agents of the property owner, including
18 but not limited to management companies, person or persons, firm, partnership, corporation,
19 or combination thereof, having the right under the San Francisco Planning Code and/or the
20 San Francisco Building Code to make an application for approval of a commercial activity or
21 residential project.

22 (h) "Development project" shall mean commercial activity(ies) or a residential project
23 that require a permit that is subject to the requirements of this Chapter, including applicable
24 permits related to biotechnology business.

1 (i) "Economically disadvantaged individual" shall mean an individual who is either: (1)
2 eligible for services under the Workforce Investment Act of 1988 (WIA) (29 U.S.C.A. 2801 et
3 seq.), as determined by the San Francisco Private Industry Council; or (2) designated
4 "economically disadvantaged" by the First Source Hiring Administration, as an individual who
5 is at risk of relying upon, or returning to, public assistance.

6 (j) "Employer" shall mean a contractor, sub-contractor, developer, agents of the
7 developer, tenants or other occupants, or person(s), firm, partnership, corporation, or
8 combination thereof engaged in work performed under a contract, lease, loan, grant, or
9 permit, or engaged in work performed in the City, subject to the requirements of this Chapter.

10 (k) "Entry level position" shall mean a non-managerial position that requires either: (1)
11 no education above a high school diploma or certified equivalency; or (2) less than two years
12 of training or specific preparation; and shall include temporary and permanent jobs, and
13 construction jobs related to the development of a commercial activity or residential project.

14 (l) "First source hiring agreement" shall mean the written agreement entered into by
15 the employer with the City which details the particular first source hiring requirements with
16 which an employer must comply, as further defined in Sections 83.9 and 83.11 of this
17 Chapter.

18 (m) "FSHA" shall mean the First Source Hiring Administration.

19 (n) "Market and Octavia Area Plan" shall mean the Market and Octavia Plan Area in Map
20 1 (Land Use Plan) of the Market and Octavia Area Plan of the San Francisco General Plan (pursuant
21 to San Francisco Planning Code section 326.2(h)), which includes those districts zoned Residential
22 Transit Oriented (RTO), Neighborhood Commercial Transit (NCT), or any neighborhood specific NCT,
23 a few parcels zoned RH-1 or RH-2, and those parcels within the Van Ness and Market Downtown
24 Residential Special Use District (VMDRSUD).

1 (~~no~~) "OLSE" shall mean the Office of Labor Standards and Enforcement.

2 (~~pr~~) "Permit" shall mean, during Phase I, as defined in Section 83.4(~~pr~~) below, either
3 or both of the following: (1) any building permit application for a commercial activity over
4 50,000 square feet in floor area and involving new construction, an addition, or alteration
5 which results in the expansion of entry level positions for a commercial activity; (2) any
6 application which requires discretionary action by the City's Planning Commission relating to a
7 commercial activity over 50,000 square feet including, but not limited to, a conditional use,
8 project authorization under San Francisco Planning Code Section 309, and office
9 development under San Francisco Planning Code Section 320, et seq.

10 During Phase II, as defined Section 83.4(~~qs~~) below, any or all of the following: (1) any
11 building permit application for a commercial activity over 25,000 square feet in floor area and
12 involving new construction, an addition, or alteration which results in the expansion of entry
13 level positions for a commercial activity; (2) any application which requires discretionary action
14 by the City's Planning Commission relating to a commercial activity over 25,000 square feet
15 including, but not limited to conditional use, project authorization under San Francisco
16 Planning Code section 309, and office development under San Francisco Planning Code
17 Section 320, et seq., or (3) any building permit application for a residential project as defined
18 herein.

19 For purposes of the Market and Octavia Area Plan only, as defined herein, any or all of the
20 following: (1) any building permit application for a commercial activity over 10,000 square feet in
21 floor area and involving new construction, an addition, or alteration which results in the expansion of
22 entry level positions for a commercial activity, or (2) any building permit application for a residential
23 project as defined herein.

24
25

1 The requirements of this Chapter shall apply to entry level positions for work done
2 under a permit authorizing a development project or residential project in the City.

3 (q) "Permittee" shall mean any project applicant seeking a permit, as defined in subsection (p),
4 or its successor in interest, and any of their agents and/or lessees who participate in commercial
5 activities subject to this ordinance.

6 (~~pr~~) "Phase I" shall refer to the first stage of implementation of this Article which
7 became operative on October 20, 1998. Phase I applied to contracts for public works or
8 improvements to be performed, property contracts, grants or loans issued by the Mayor's
9 Office of Housing, or by the Mayor's Office of Community Development, and permits issued
10 for commercial activity over 50,000 square feet.

11 (~~qs~~) "Phase II" refers to the second stage of implementation of this Chapter which
12 became operative on April 1, 2001, 24 months after the FSHA adopted a resolution stating
13 that Phase I had been implemented. In addition to the contracts, property contracts, grants or
14 loans referred to in Section 83.4(~~pr~~), above, Phase II shall apply to contracts for goods in
15 excess of \$50,000 contracts for services in excess of \$50,000, permits issued for commercial
16 activity exceeding 25,000 square feet; grants and loans in excess of \$50,000 issued by other
17 City departments, and permits issued for residential projects as defined herein. In addition,
18 Phase II shall apply to any and all work performed in the City by City contractors.

19 (~~rt~~) "Property contract" shall mean a written agreement, including leases, concessions,
20 franchises and easements, between the City and a private party for the exclusive use of real
21 property, owned or controlled by the City, for a term exceeding 29 days in any calendar year
22 (whether by a singular instrument or by cumulative instruments) for the operation or use of
23 such real property for the operation of a business establishment, that creates available entry
24 level positions. For purposes of this Chapter, "property contract" does not include an
25

1 agreement for the City to use or occupy real property owned by others, or leases, easements
2 or permits entered into by the Public Utilities Commission for pipeline rights of way property
3 and watershed property.

4 (~~su~~) "Publicize" shall mean to advertise or post, and shall include participation in job
5 fairs, or other forums in which employment information is available.

6 (~~sv~~) "Qualified" with reference to an economically disadvantaged individual shall mean
7 an individual who meets the minimum bona fide occupational qualifications provided by the
8 prospective employer to the San Francisco Workforce Development System in the job
9 availability notices required by this Chapter.

10 (~~sw~~) "Residential project" shall mean a residential development involving new
11 construction, an addition, a conversion, or substantial rehabilitation that results in the creation
12 or addition of ten or more residential units.

13 (~~sx~~) "Retention" shall, when used in this Chapter, be construed to apply to the entry
14 level position, not to any particular individual.

15 (~~sy~~) "San Francisco Workforce Development System ("System")" shall mean the
16 system established by the City and County of San Francisco, and managed by the FSHA, for
17 maintaining: (1) a pool of qualified individuals; and (2) the mechanism by which such
18 individuals are certified and referred to prospective employers covered by the first source
19 hiring requirements under this Chapter.

20 (~~sz~~) "Substantial rehabilitation," when used in this Chapter, shall mean rehabilitation
21 that involves costs in excess of 75 percent of the value of the building after rehabilitation.

22 **SEC. 83.6. FIRST SOURCE HIRING ADMINISTRATION.**

23 (a) Establishment and Composition. A First Source Hiring Administration ("FSHA") is
24 hereby established for the purpose set forth in Subsection (b) below. The FSHA shall consist

25

1 of the following: (1) the Mayor or his/her designee from the Mayor's Office of Economic and
2 Workforce Development; (2) the Executive Director of the Human Services Agency, or his/her
3 designee; (3) the Director of the Mayor's Office of Community Development, or his/her
4 designee; (4) the Chair of Workforce Investment San Francisco, or his/her designee; (5) the
5 Chancellor of the City College of San Francisco or his/her designee; (6) other City department
6 representatives appointed by the FSHA as necessary from time to time; and (7) other San
7 Francisco governmental agency representatives participating in the First Source Hiring
8 Program and invited by the FSHA.

9 The Department of Economic and Workforce Development shall manage and provide
10 staff for the FSHA.

11 (b) Powers and Duties. The FSHA shall be responsible for the implementation,
12 oversight, and monitoring of the first source hiring requirements of this Chapter. Its powers
13 and duties shall include:

14 (1) Providing assistance to individual City departments in designing first source
15 hiring implementation and monitoring plans for that department to use in contracts and
16 property contracts, including criteria for assigning particular numerical hiring goals, or
17 reviewing and approving existing Plans. The FSHA shall work with departments to identify
18 those contracts and property contracts that offer available entry level positions in duration and
19 numbers sufficient to justify the additional administrative duties resulting from the
20 implementation of the requirements of this Chapter. To the greatest extent possible, the
21 development of these plans shall utilize the department's existing contract-monitoring
22 procedures and facilitate a coordinated flow of information;

23
24
25

1 (2) Working with the Department of City Planning and the Department of
2 Building Inspection to establish conditions based upon first source hiring agreements for
3 development projects;

4 (3) Working with employers and unions to identify entry level positions for
5 qualified economically disadvantaged individuals, and to set appropriate recruitment, hiring
6 and retention goals;

7 (4) Determining appropriate monitoring and enforcement mechanisms to
8 achieve the purpose of this Chapter, and consistent with Sections 83.10 and 83.12, below;

9 (5) Developing written regulations to implement first source hiring;

10 (6) Entering into cooperative agreements with other San Francisco
11 governmental agencies, including, but not limited to, the Housing Authority, the
12 Redevelopment Agency, the In-Home Supportive Services Public Authority, and the Parking
13 Authority, consistent with the laws governing such agencies and consistent with the purpose
14 of this Chapter;

15 (7) Conducting independent audits of City departmental implementation,
16 monitoring and enforcement of the requirements of this Chapter;

17 (8) Preparing an annual report on the progress of first source hiring for
18 presentation to the Mayor and the Board of Supervisors that will include but not be limited to
19 the status of first source implementation by all City departments, the number of contractors by
20 department subject to first source requirements by department, the number of permittees subject
21 to first source requirements, the number and percent of contractors and permittees with signed
22 first source agreements on file, the number and percent of first source employers posting jobs,
23 the number of jobs posted and the wage data associated with those jobs, the number of job
24 seekers referred to employers, the number of job seekers hired by first source employers, the
25

1 number and percent of first source employers hiring job seekers, and the length of time that
2 hired individuals remain employed. All contractors and permittees covered by this Chapter shall
3 comply with all reasonable requests for information from the FSHA in its attempt to comply with this
4 subdivision. In addition, ~~The~~ FSHA shall review these data to determine whether, in light of the
5 data, the liquidated damages provision that this ordinance requires continues to reflect a fair
6 estimate of the injury that the City suffers when a contractor fails to comply with its first source
7 referral obligations. If the FSHA determines that the liquidated damages provision can be
8 improved it shall submit to the Board of Supervisors proposed amendments to this ordinance
9 reflecting those improvements. The Board of Supervisors shall hold a hearing on the report
10 within 45 days of its submission to the Clerk of the Board of Supervisors.

11 (9) Submitting all approved first source hiring implementation and monitoring
12 plans ("approved plan") to the Workforce Development Advisory Committee for review;

13 (10) Developing effective outreach, education, support services for, and
14 recognition of, employers.

15 (c) The FSHA shall phase-in implementation of this Chapter in accordance with
16 Section 83.18, below, and as defined in Sections 83.4 (~~pr~~) and (~~qs~~), above. The FSHA shall
17 first establish a schedule for assisting in the development of, or approving existing first source
18 hiring implementation and monitoring plans by the following City departments: Airport;
19 Department of Building Inspection; Department of Planning; Department of Public Health;
20 Mayor's Office of Children, Youth and Families; Mayor's Office of Community Development;
21 Mayor's Office of Housing; Municipal Railway; Parks and Recreation; Port; Public Works, and
22 Purchasing. The FSHA shall also establish a schedule for the remaining City departments.

23 (d) The FSHA shall exercise its powers and duties in a manner that does not result in
24 delay for contractors or developers subject to this Chapter.

25

1 (e) The FSHA, or the OLSE, where appropriate, shall make the final administrative
2 determination as to compliance with the requirements of this Chapter.

3 **SEC. 83.18. OPERATIVE DATE AND APPLICATION.**

4 Phase I, as defined in 83.4(~~pr~~) became operative on October 20, 1998. Phase II, as
5 defined in Section 83.4(~~qs~~) of this Chapter became operative on April 1, 2001, 24 (twenty-four)
6 months after the FSHA adopted a resolution stating that Phase I had been implemented. This
7 Chapter is intended to have prospective effect only, and shall not be interpreted to impair any
8 rights under any existing City contract or property contract or permit. The provisions of this
9 Chapter shall expire on January 1, 2009.
10

11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney
14

15
16 By: _____
17 JENNIFER WILLIAMS
18 Deputy City Attorney
19
20
21
22
23
24
25