

AMENDMENT OF THE WHOLE - 9/22/04

FILE NO. 041190

ORDINANCE NO.

1 [Expanding the first source hiring program to apply to: 1) sole source contracts, 2) contracts,  
2 loans or grants in excess of \$50,000, 3) residential projects, and 4) any work performed in the  
3 City by City contractors; expanding the definition of "commercial activity," as defined herein;  
4 increasing the First Source Hiring Administration's reporting requirements; deleting  
5 Purchaser's obligation to determine applicability of ordinance to certain service contracts;  
6 requiring developers to obtain first source hiring agreement before City can approve  
7 development or issue applicable permit, imposing fee schedule on covered entities, and  
8 extending the operative date of the ordinance to January 1, 2009.]

6 **Ordinance amending the San Francisco Administrative Code by amending sections**  
7 **83.3, 83.4, 83.5, 83.6, 83.7, 83.9, 83.11, and by adding section 83.12A to: (1) expand the**  
8 **scope of the ordinance to apply to any work performed in the City by City contractors;**  
9 **(2) expand the definition of contract to include sole source contracts and contracts,**  
10 **loans and grants awarded by the City in excess of \$50,000; (3) include residential**  
11 **projects, as defined herein, to be subject to first source hiring requirements; (4) expand**  
12 **the definition of "commercial activity," as defined herein; (5) increase the First Source**  
13 **Hiring Administration's reporting requirements to the Mayor and the Board of**  
14 **Supervisors regarding the progress of the first source hiring program; (6) delete the**  
15 **requirement that the Purchaser shall determine the applicability of the first source**  
16 **hiring requirements to certain service contracts; (7) require developers to obtain a first**  
17 **source hiring agreement or an exemption before the Planning Commission may**  
18 **approve development projects or other City departments may issue permits subject to**  
19 **first source requirements; (8) impose a fee schedule on covered entities; and (9) extend**  
20 **the operative date to January 1, 2009.**

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22 Note: Additions are *single-underline italics Times New Roman*;  
23 deletions are ~~*strikethrough italics Times New Roman*~~.  
24 Board amendment additions are double underlined.  
25 Board amendment deletions are ~~strikethrough normal~~.

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

1 Section 1. The San Francisco Administrative Code is hereby amended by amending  
2 Sections 83.2, 83.3, 83.4, 83.5, 83.6, 83.7, 83.9, 83.11, and 83.18, and by adding Section  
3 83.12A to read as follows

4 **SEC. 83.2. FINDINGS.**

5 (a) In August 1996, a new federal law, the Personal Responsibility and Work  
6 Opportunity Act, also known as "welfare reform," fundamentally changed the nature of public  
7 assistance programs in this country, shifting the focus from the receipt of benefits to  
8 procurement of employment within specified time limits. Approximately 17,350 of San  
9 Francisco's children and 7,330 of its adults (3.4 percent of the population) who currently  
10 receive Temporary Assistance to Needy Families (TA~~A~~NF), the program formerly known as Aid  
11 to Families with Dependent Children (AFDC), will be limited to five cumulative years of aid  
12 during their lifetime. This means that within five years, the adult members of these families,  
13 unless specifically exempted, must be employed at an economically self-sufficient level.  
14 Under the new federal law, after two years on aid, most recipients must work in order to  
15 maintain eligibility for TA~~A~~NF. As families reach their time limits, there will be no federal or  
16 State funding help to support them. Therefore, the creation and retention of adequate  
17 employment opportunities within the City is essential to prevent these families from falling into  
18 complete destitution.

19 (b) The federal law will penalize states that fail to meet their assigned quotas for  
20 moving individuals from welfare to work by imposing monetary sanctions that will be passed  
21 on to the counties. *It is estimated that failure by the City to meet its work force participation goals*  
22 *would cost \$2.33 million the first year, and \$3.27 million the second year.*

23 (c) Many people on welfare and other economically disadvantaged individuals do  
24 not have immediate access to employment opportunities that will bring economic self-

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1 sufficiency. Often, long-term recipients of public benefits are confronted with multiple barriers  
2 to full employment, including lack of education, job-readiness skills and work experience.

3 (d) ~~*Between 1990 and 1993, San Francisco lost over 37,500 jobs, including scores of well-*~~  
4 ~~*paying blue collar positions, particularly in manufacturing.*~~ *In San Francisco, there are 9,000 single*  
5 *unemployed adults in the County Adult Assistance Program (CAAP) who are also in need of programs*  
6 *to move toward self-sufficiency. Many CAAP clients have chosen an employment track and are*  
7 *pursuing self-sufficiency through work. Unlike TANF, CAAP is funded solely by county dollars and is*  
8 *not subsidized by the State or federal government.*

9 ~~(e)~~ *While the economy shows signs of improvement, unemployment rates in San Francisco*  
10 *remain at 5.8 percent. Since 2000, over 100,000 jobs have been lost, almost three times the job loss*  
11 *rate of the early 1990's.*

12 (ef) The welfare time limits imposed upon families place tremendous pressure on the  
13 City to find jobs, provide appropriate training opportunities, and assist economically  
14 disadvantaged individuals to find and retain adequate employment. The availability of  
15 sufficient employment opportunities is essential to the economic and social well-being of the  
16 City. This process of workforce development must be a component of the City's economic  
17 development planning.

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

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

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

11 (ij) The concept of "First Source Hiring" under this Chapter contains two essential  
12 components: the identification of entry level positions in order to properly allocate training  
13 resources, and the availability of the first opportunity for graduates of those training programs  
14 to be considered for employment. The City must work with the business community, the  
15 service providers, organized labor and schools in identifying workforce needs, developing job  
16 readiness standards, supporting training that creates a new pool of qualified workers, and  
17 providing a mechanism by which the business community can draw upon this pool; thereby  
18 facilitating and strengthening the relationship between the City, *educational institutions*,  
19 community-based job training, development and place-mended programs, and the private  
20 sector. While the City commits to providing the support services necessary to ensure the  
21 successful transition to economic self-sufficiency, the business community must be willing to  
22 offer these employment opportunities to qualified economically disadvantaged individuals.

23 (jk) Participation in the City's First Source Hiring Program can be economically  
24 advantageous to employers. The Program ~~is expected to provide~~ a ready supply of qualified  
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1 workers to employers with hiring needs. There are a variety of City, federal and State tax  
2 credits available for hiring qualified economically disadvantaged individuals. *The City offers a*  
3 *New Jobs Hiring Tax Credit to businesses that create new, permanent jobs, or relocates existing jobs to*  
4 *the City, of 100 percent against the City's payroll tax for the first year, and 50 percent for the second.*  
5 *Businesses that create summer jobs for economically disadvantaged youth are eligible for a 50 percent*  
6 *credit against the City's payroll tax.* Within State-designated "Enterprise Zone" areas of San  
7 Francisco, *businesses that create new jobs for qualified individuals are eligible for a gradually*  
8 *declining payroll tax credit, beginning at 100% for the first two years, and available for a total of ten*  
9 *years* the state offers a hiring tax credit for employers who hire job seekers from targeted groups.  
10 Employers can claim up to \$31,605 in tax credits over a 5 year period when they hire qualified  
11 employees. The State of California also allows a hiring tax credit against wages paid qualified  
12 economically disadvantaged individuals, and a sales tax credit for equipment purchased for  
13 use in designated Enterprise Zones.

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

18 (m) The City is committed, in partnership with the Private Industry Council, to  
19 facilitating employer access to tax credit and other financial incentive information regarding  
20 the hiring of qualified economically disadvantaged individuals who meet City, State or federal  
21 program criteria. (Added by Ord. 264-98, App. 8/21/98)

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

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

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

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

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

1           (s) Also in 2004, DHS implemented a new data system that tracks the activities of the  
2 referral system. Information gathered includes the number of employers notified of first source  
3 requirements, the number that comply with first source requirements, the number of jobs posted, and  
4 the number of job seekers referred and placed in jobs.

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6 **SEC. 83.3. PURPOSE.**

7           The purpose of this Chapter is to establish a First Source Hiring Program for the City  
8 and County of San Francisco to foster construction and permanent employment opportunities  
9 for qualified economically disadvantaged individuals. Participation in this program shall be  
10 required in City contracts and city property contracts. In addition, participation in this program is  
11 required by City contractors for any and all work performed by the contractor in the City.

12           This Chapter additionally requires similar first source hiring obligations to be included in  
13 permits authorizing construction of certain commercial development and residential projects.

14           Because of the wide variety of contracts, ~~and property contracts entered into, and, other~~  
15 work performed in the City by the City contractor, and permits issued by, the City, there is no  
16 single first source hiring requirement that can be applied and enforced in all such ~~contract and~~  
17 ~~permit~~-situations. Therefore, specific first source hiring requirements must be tailored to  
18 individual contracts, property contracts, work performed in the City by City contractors, and  
19 permits for commercial activities and residential projects. An administrative body shall be  
20 established by the City to assist in the tailoring of these requirements, and shall be known as  
21 the “First Source Hiring Administration” (FSHA) for the purpose of implementing and  
22 overseeing the first source hiring requirements under this Chapter.

23           This Chapter is intended to authorize and direct the First Source Hiring Administration,  
24 where consistent with the purpose of this Chapter and its assessment of feasibility, and in a  
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1 manner that avoids conflicts with applicable federal and State law, to set entry level position  
2 hiring and retention goals for contracts, property contracts, other work performed in the City by  
3 City contractors, and permits.

4 Nothing in this Chapter is intended to, nor shall it be interpreted or applied so to create  
5 delay to, ~~or impose a monetary exaction upon,~~ contractors or developers under permits subject to  
6 the requirements of first source hiring.

7 Three years after the effective date of this Chapter, the Board of Supervisors shall  
8 review the First Source Hiring Program to determine: 1) the number of entry level positions  
9 identified and acquired by qualified economically disadvantaged individuals; 2) whether  
10 participants in the Workforce Development System received appropriate and sufficient  
11 training; 3) whether the requirements of this Chapter are adequate to achieve the goals of the  
12 program; and 4) whether amendments and/or revisions of this Chapter are needed. (Added  
13 by Ord. 264-98, App. 8/21/98)

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15 **SEC. 83.4 DEFINITIONS.**

16 (a) "Approved Plan" shall mean a first source hiring implementation and monitoring  
17 plan developed by a City department and approved by the FSHA. ~~Once a department's overall~~  
18 ~~plan has been approved by the FSHA, the department is not required to seek authorization from the~~  
19 ~~FSHA for individual contracts, property contracts or permits unless otherwise instructed to do so in the~~  
20 ~~approved plan.~~

21 (b) "City" shall mean the City and County of San Francisco.

22 (c) "Commercial Activity" shall include but not be limited to, for purposes of this Chapter  
23 only, retail sales and services, restaurant, hotel, education, hospital, and office uses, and any  
24 other non-profit or for-profit commercial uses.

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1 (d) "Contract" shall mean an agreement for public works or improvements to be  
2 performed, or for goods or services to be purchased, or grants to be provided, at the expense  
3 of the City, or to be paid out of moneys deposited in the Treasury of the City, or out of trust  
4 moneys under the control of, or collected by, the City involving an expenditure in excess of  
5 \$350,000 for construction contracts, ~~and~~ in excess of ~~\$200,000~~50,000 for goods, or in excess of  
6 \$50,000 for services. Contract shall also mean loans or grants in excess of ~~\$200,000~~50,000  
7 which are awarded by the Mayor's Office of Housing, the Mayor's Office of Community  
8 Development, the Mayor's Office of Children Youth and their Families, or by any other City  
9 department for work covered under this Chapter.

10 The requirements of this Chapter shall apply to: (1) entry level positions for work  
11 performed ~~on the contract~~by a contractor in the City; (2) entry level positions for work performed  
12 on the contract in counties contiguous to the City; and (3) entry level positions for work  
13 performed on the contract on property owned by the City.

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

16 For purposes of this Chapter, "Contract" shall not include contracts for urgent litigation  
17 expenses as determined by the City Attorney, emergency contracts under San Francisco  
18 Administrative Code §6.30, or §21.25, ~~sole source contracts~~, tolling agreements, cooperative  
19 purchasing agreements with other governmental entities or contracts with other governmental  
20 entities.

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

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

6 (g) "Development Project" shall mean commercial activity(ies) or a residential project  
7 that requires a permit that is subject to the requirements of this Chapter.

8 (h) "Economically disadvantaged individual" shall mean an individual who is either:  
9 (1) Eligible for services under the Job Training Partnership Act, 29 U.S.C. §1503 Workforce  
10 Investment Act of 1998 (WIA) (29 U.S.C.A. 2801 et seq.), as determined by the San Francisco  
11 Private Industry Council; or (2) designated "economically disadvantaged" by the First Source  
12 Hiring Administration, as an individual who is at risk of relying upon, or returning to, public  
13 assistance.

14 (i) "Employer" shall mean a contractor, subcontractor, developer, agents of the  
15 Developer, tenants or other occupants, or person(s), firm, partnership, corporation, or  
16 combination thereof engaged in ~~the commercial activity(ies) in the development project, who is~~  
17 work performed under a contract, lease, loan, grant, or permit, or engaged in work performed in the  
18 City, subject to the requirements of this Chapter.

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

23 (k) "First source hiring agreement" shall mean the written agreement entered into by  
24 the employer with the City which details the particular first source hiring requirements with  
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1 which an employer must comply, as further defined in Sections 83.9 and 83.11 of this  
2 Chapter.

3 (l) "FSHA" shall mean the First Source Hiring Administration.

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

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

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

23 (n) "Phase I" shall refer to the first stage of implementation of this Article which *shall*  
24 *become became* operative *on October 20, 1998. 30 days after the ordinance adopting this Chapter*

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1 ~~becomes effective, and shall apply~~ Phase I applied to contracts for public works or improvements  
2 to be performed, property contracts, grants or loans issued by the Mayor's Office of Housing,  
3 or by the Mayor's Office of Community Development, and permits issued for commercial  
4 activity over 50,000 square feet.

5 (o) "Phase II" ~~shall refer~~s to the second stage of implementation of this Chapter  
6 which ~~shall become~~ became operative on April 1, 2001, 24 months after the FSHA ~~adopted~~ of a  
7 resolution by the FSHA stating that Phase I ~~has~~d been implemented, ~~and~~. In addition to the  
8 contracts, property contracts, grants or loans referred to in section 83.4(n), above, Phase II shall  
9 apply to contracts for goods in excess of \$50,000 contracts for services in the amount of  
10 \$200,000~~excess of \$50,000, -contracts for the procurement of goods, materials equipment or supplies~~  
11 ~~as determined by the Purchaser under Section 83.7(d) of this chapter,~~ permits issued for commercial  
12 activity exceeding 25,000 square feet; ~~and~~grants and loans in excess of \$200,00050,000  
13 issued by other City departments, ~~and~~ permits issued for residential projects as defined herein. In  
14 addition, Phase II shall apply to any and all work performed in the City by City contractors.

15 (p) "Property contract" shall mean a written agreement, including leases,  
16 concessions, franchises and easements, between the City and a private party for the  
17 exclusive use of real property, owned or controlled by the City, for a term exceeding 29 days  
18 in any calendar year (whether by a singular instrument or by cumulative instruments) for the  
19 operation or use of such real property for the operation of a business establishment, that  
20 creates available entry level positions. For purposes of this Chapter, "property contract" does  
21 not include an agreement for the City to use or occupy real property owned by others, or  
22 leases, easements or permits entered into by the Public Utilities Commission for pipeline  
23 rights of way property and watershed property.

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1 (q) "Publicize" shall mean to advertise or post, and shall include participation in job  
2 fairs, or other forums in which employment information is available.

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

7 (s) "Residential project" shall mean a residential development involving new construction,  
8 an addition, a conversion, or substantial rehabilitation that results in the creation or addition of ten or  
9 more residential units.

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

12 (~~u~~) "San Francisco Workforce Development System ("System")" shall mean the  
13 system established by the City and County of San Francisco, and managed by the FSHA, for  
14 maintaining: (1) a pool of qualified individuals; and (2) the mechanism by which such  
15 individuals are certified and referred to prospective employers covered by the first source  
16 hiring requirements under this Chapter. (Added by Ord. 264-98, App. 8/21/98)

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

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## 20 **SEC. 83.5 SCOPE.**

21 The requirements of this Chapter shall apply to: (a) entry level positions for work  
22 performed ~~on the contract~~ by a contractor in the City; (b) entry level positions for work performed  
23 on the contract in counties contiguous to the City; (c) entry level positions for work performed  
24 on the contract on property owned by the City; and (d) entry level positions for work done

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1 under a permit authorization on a development project in the City. (Added by Ord. 264-98,  
2 App. 8/21/98)

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

5 (a) **Establishment and Composition.** A First Source Hiring Administration (“FSHA”) is hereby established for the purpose set forth in Subsection (b) below. The FSHA shall consist of the following: (1) the Mayor or his/her designee from the Mayor’s Office of Economic Development; (2) the Executive Director of the Department of Human Services, or his/her designee; (3) the Director of the Mayor’s Office of Community Development, or his/her designee; (4) the President of the Private Industry Council, or his/her designee; (5) *the Chancellor of the City College of San Francisco or his/her designee*; (6) other City department representatives appointed by the FSHA as necessary from time to time; and (67) other San Francisco governmental agency representatives participating in the First Source Hiring Program and invited by the FSHA .

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

18 (1) Providing assistance to individual City departments in designing first source hiring implementation and monitoring plans for that department to use in contracts and property contracts, including criteria for assigning particular numerical hiring goals, or reviewing and approving existing Plans. The FSHA shall work with departments to identify those contracts and property contracts that offer available entry level positions in duration and numbers sufficient to justify the additional administrative duties resulting from the implementation of the requirements of this Chapter. To the greatest extent possible, the

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1 development of these plans shall utilize the department's existing contract-monitoring  
2 procedures and facilitate a coordinated flow of information;

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

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

9 ~~(4) Managing the San Francisco Workforce Development System;~~

10 ~~(54) Determining appropriate monitoring and enforcement mechanisms to~~  
11 ~~achieve the purpose of this Chapter, and consistent with Sections 83.10 and 83.12, below;~~

12 ~~(65) Developing written regulations to implement first source hiring;~~

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

18 ~~(87) Conducting independent audits of City departmental implementation,~~  
19 ~~monitoring and enforcement of the requirements of this Chapter;~~

20 ~~(98) Preparing an annual report on the progress of first source hiring for~~  
21 ~~presentation to the Mayor and the Board of Supervisors, that will include but not be limited to the~~  
22 ~~status of first source implementation by all City departments, the number of contractors subject to first~~  
23 ~~source requirements by department, the number and percent of contractors with signed first source~~  
24 ~~agreements on file, the number and percent of first source employers posting jobs, the number of jobs~~  
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1 posted and the wage data associated with those jobs, the number of job seekers referred to employers,  
2 the number of job seekers hired by first source employers and the number and percent of first source  
3 employers hiring job seekers. The Board of Supervisors shall hold a hearing on the report within 45  
4 days of its submission to the Clerk of the Board of Supervisors.

5 (H09) Submitting all approved first source hiring implementation and monitoring  
6 plans (“approved plan”) to the Workforce Development Advisory Committee for review;

7 (H10) Developing effective outreach, education, support services for, and  
8 recognition of, employers.

9 (c) The FSHA shall phase-in implementation of this Chapter in accordance with Section  
10 83.18, below, and as defined in Sections 83.4 (n) and (o), above. The FSHA shall first  
11 establish a schedule for assisting in the development of, or approving existing first source  
12 hiring implementation and monitoring plans by the following City departments: Airport;  
13 Department of Building Inspection; Department of Planning; Department of Public Health;  
14 Mayor’s Office of Children, Youth and Families; Mayor’s Office of Community Development;  
15 Mayor’s Office of Housing; Municipal Railway; Parks and Recreation; Port; Public Works, and  
16 Purchasing. The FSHA shall also establish a schedule for the remaining City departments.

17 (d) The FSHA shall exercise its powers and duties in a manner that does not result in  
18 delay, ~~or impose a monetary exaction under permits, for contractors or developers~~ subject to this  
19 Chapter.

20 (e) The FSHA shall make the final administrative determination as to compliance with  
21 the requirements of this Chapter. (Added by Ord. 264-98, App. 8/21/98)

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23 **SEC. 83.7. DUTIES OF CITY DEPARTMENTS.**

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1 (a) All commissions, departments, officers and employees of the City shall cooperate  
2 with the FSHA in connection with their respective duties relative to the award of contracts,  
3 property contracts, and the issuance of permits subject to this Chapter.

4 (b) City departments shall develop an overall first source hiring implementation and  
5 monitoring plan ("plan") with the assistance of the FSHA. Once the FSHA approves the plan  
6 ("approved plan"), the department is not required to seek approval from the FSHA for specific  
7 contracts, property contracts or permits unless otherwise instructed to do so in the approved  
8 plan. If a department is required to comply with federal or state hiring program regulations  
9 that meet or exceed the requirements of this Chapter, that department shall submit that  
10 information as its plan. Compliance with such regulations shall be deemed to be an  
11 "approved plan." Compliance by a department with the approved plan shall be deemed to be  
12 compliance with the requirements of this Chapter. The FSHA may require regular reports by  
13 the department as part of the plan.

14 (c) In situations where both the Departments of Building ~~i~~nsp~~e~~ction and Planning grant  
15 approval for a development project or residential project, the City's Department of Planning  
16 shall have primary jurisdiction for the conditions imposed on the permit required under this  
17 Chapter, and the role of the Department of Building Inspection shall be limited to assisting in  
18 enforcement of the first source hiring requirements.

19 ~~(d) The Purchaser shall determine which contracts for the procurement of goods, materials,~~  
20 ~~equipment or supplies to which it is feasible to apply the first source hiring requirements of this~~  
21 ~~Chapter, and, in consultation with the FSHA, shall develop first source hiring criteria for inclusion in~~  
22 ~~invitations to bid and requests for proposals. The successful bidder or respondent shall enter into a~~  
23 ~~first source hiring agreement.~~ (Added by Ord. 264-98, App. 8/21/98)

1     **SEC. 83.8.   WORKFORCE DEVELOPMENT ADVISORY COMMITTEE.**

2             There shall be established a Workforce Develop-mented Advisory Committee  
3     ("Advisory Committee") to advise the FSHA on workforce development, employ-mented  
4     needs, program policy, design, implementation, oversight, and monitoring. This advisory  
5     committee shall be appointed by the Mayor and shall include representatives of community-  
6     based organizations, labor, the business community, *educational institutions*, and City  
7     departments. The members of this advisory committee shall serve at will for a term of one  
8     year, and may be reappointed. This Advisory Committee shall meet at least quarterly.

9     (Added by Ord. 264-98, App. 8/21/98)

10  
11     **SEC. 83.9.   FIRST SOURCE HIRING REQUIREMENTS FOR CONTRACTS ~~AND,~~**  
12     **PROPERTY CONTRACTS, ~~AND OTHER WORK PERFORMED IN THE CITY BY CITY~~**  
13     **CONTRACTORS.**

14             (a) This Chapter applies to all contracts and property contracts, except where the  
15     FSHA determines that application of the requirements of this Chapter is not feasible or  
16     conflicts with applicable federal or State law. *In addition, this Chapter applies to any and all work*  
17     *performed in the City by a City contractor.*

18             (b) As an essential term of, and consideration for, any contract or property contract with  
19     the City, not exempted by the FSHA, the contractor shall enter into a first source hiring  
20     agreement ("agreement") with the City, on or before the effective date of the contract or  
21     property contract. *Contractors shall also enter into an agreement with the City for any other work*  
22     *that it performs in the City.* Such agreement shall:

23             (1) Set appropriate hiring and retention goals for entry level positions. The  
24     employer shall agree to achieve these hiring and retention goals, or, if unable to achieve  
25

1 these goals, to establish good faith efforts as to its attempts to do so, as set forth in the  
2 agreement. The agreement shall take into consideration the employer's participation in  
3 existing job training, referral and/or brokerage programs. Within the discretion of the FSHA,  
4 subject to appropriate modifications, participation in such programs may be certified as  
5 meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to  
6 establish good faith efforts will constitute noncompliance and will subject the employer to the  
7 provisions of Section 83.10 of this Chapter.

8 (2) Set first source interviewing, recruitment and hiring requirements, which will  
9 provide the San Francisco Workforce Development System with the first opportunity to  
10 provide qualified economically disadvantaged individuals for consideration for employment for  
11 entry level positions. Employers shall consider all applications of qualified economically  
12 disadvantaged individuals referred by the System for employment; provided however, if the  
13 employer utilizes nondiscriminatory screening criteria, the employer shall have the sole  
14 discretion to interview and/or hire individuals referred or certified by the San Francisco  
15 Workforce Development System as being qualified economically disadvantaged individuals.  
16 The duration of the first source interviewing requirement shall be determined by the FSHA and  
17 shall be set forth in each agreement, but shall not exceed 10 days. During that period, the  
18 employer may publicize the entry level positions in accordance with the agreement. A need  
19 for urgent or temporary hires must be evaluated, and appropriate provisions for such a  
20 situation must be made in the agreement.

21 (3) Set appropriate requirements for providing notification of available entry level  
22 positions to the San Francisco Workforce Development System so that the System may train  
23 and refer an adequate pool of qualified economically disadvantaged individuals to  
24 participating employers. Notification should include such information as employment needs  
25

1 by occupational title, skills, and/or experience required, the hours required, wage scale and  
2 duration of employment, identification of entry level and training positions, identification of  
3 English language proficiency requirements, or absence thereof, and the projected schedule  
4 and procedures for hiring for each occupation. Employers should provide both long term job  
5 need projections and notice before initiating the interviewing and hiring process. These  
6 notification requirements will take into consideration any need to protect the employer's  
7 proprietary information.

8 (4) Set appropriate record keeping and monitoring requirements. The First  
9 Source Hiring Administration shall develop easy-to-use forms and record keeping  
10 requirements for documenting compliance with the agreement. To the greatest extent  
11 possible, these requirements shall utilize the employer's existing record-keeping systems, be  
12 non-duplicative, and facilitate a coordinated flow of information and referrals.

13 (5) Establish guidelines for employer good faith efforts to comply with the first  
14 source hiring requirements of this Chapter. The FSHA will work with City departments to  
15 develop employer good faith effort requirements appropriate to the types of contracts and  
16 property contracts handled by each department. Employers shall appoint a liaison for dealing  
17 with the development and implementation of the employer's agreement. In the event that the  
18 FSHA finds that the employer under a City contract or property contract has taken actions  
19 primarily for the purpose of circumventing the requirements of this Chapter, that employer  
20 shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

21 (6) Set the term of the requirements.

22 (7) Set appropriate enforcement and sanctioning standards consistent with this  
23 Chapter.

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1 (8) Set forth the City's obligations to develop training programs, job applicant  
2 referrals, technical assistance, and information systems that assist the employer in complying  
3 with this Chapter.

4 (9) Require developer to include notice of the requirements of this Chapter in  
5 leases, subleases, and other occupancy contracts.

6 (c) The employer shall make the final determination of whether an economically  
7 disadvantaged individual referred by the System is "qualified" for the position. Any qualified  
8 economically disadvantaged individual who is hired by the employer shall have the same  
9 rights and obligations as all other employees in similar positions. The employer shall not  
10 discriminate against any employees on the basis of participation in the First Source Hiring  
11 Program. Any such discrimination shall be considered a breach of the employer's "good faith"  
12 obligations under the agreement, and shall be subject to the sanctions set forth in Section  
13 83.10 of this Chapter.

14 (d) Compliance by an employer with a City department's approved plan shall be  
15 deemed to be compliance with the requirements of this Chapter.

16 (e) In any situation where the FSHA concludes based upon application by the employer  
17 that compliance with this Chapter would cause economic hardship the FSHA may grant an  
18 exception to any or all of the requirements of this Chapter. (Added by Ord. 264-98, App.  
19 8/21/98)

20  
21 **SEC. 83.10. VIOLATION OF FIRST SOURCE HIRING IN CONTRACTS AND PROPERTY**  
22 **CONTRACTS.**

23 (a) Violation of the requirements of this Chapter is subject to an assessment of  
24 liquidated damages as set forth below. Additionally, contractors, except property contractors,  
25

1 may be subject to the provisions of Sections 6.52, 6.58, and/or 6.60 of the San Francisco  
2 Administrative Code.

3 (b) If upon administrative review as provided for in Subsection (e) of this Section, the  
4 FSHA determines that entry level positions were not made available to the System for referral  
5 of qualified economically disadvantaged individuals as specified in the employer's first source  
6 hiring agreement, and the employer does not remedy the violations, that employer shall be  
7 assessed liquidated damages in the amount of \$2,070 for every new hire for an entry level  
8 position improperly withheld from the first source hiring process.

9 (c) Lack of referrals of qualified economically disadvantaged individuals, delay in  
10 referrals due to causes beyond the reasonable control of the employer, emergency, or other  
11 good cause as demonstrated by the employer to the FSHA may be a defense to the  
12 assessment of liquidated damages under this Chapter.

13 (d) If the developer fulfills its obligations as set forth in this Chapter, the developer shall  
14 not be held responsible for the failure of an employer to comply with the requirements of this  
15 Chapter.

16 (e) The assessment of liquidated damages and the evaluation of any defenses or  
17 mitigating factors, shall be made by the FSHA.

18 (f) The FSHA shall establish procedures that allow an employer to respond to any  
19 complaints of noncompliance made by a City department or other interested party, or any  
20 determination of noncompliance with this Chapter made by the FSHA, prior to the imposition  
21 of any sanctions by the City. (Added by Ord. 264-98, App. 8/21/98)

22

23 **SEC. 83.11. FIRST SOURCE HIRING REQUIREMENTS FOR PERMITS FOR**  
24 **COMMERCIAL DEVELOPMENT AND RESIDENTIAL PROJECTS.**

25

1 (a) Developers applying for permits as defined in Section 83.4(m) *and Section 83.4(s)*  
2 shall cooperate with the FSHA in establishing first source hiring agreement(s) for the  
3 development project. The Planning Commission shall not approve a development project, nor shall  
4 any City department issue a permit subject to this Chapter unless the developer or contractor has  
5 obtained approval from the FSHA of a first source hiring agreement applicable to the development  
6 project or obtained an exemption from the requirements of Chapter 83 pursuant to Section 83.11(d).  
7 The FSHA may condition approval of the first source hiring agreement on the City's approval of the  
8 development project. In the event the development project approved by the Planning Commission  
9 differs substantially from the development project assumed by the FSHA at the time it approved the  
10 agreement, the FSHA may approve modifications to the first source hiring agreement if necessary for  
11 the agreement to conform to the requirements of this Chapter. Such agreement shall become a  
12 condition of the permit, and shall:

13 (1) Set appropriate hiring and retention goals for entry level positions for all  
14 employers engaged in construction work on, and commercial activity(ies) to be conducted in,  
15 the development project, *including residential services*. The developer shall agree to require all  
16 such employers to achieve these hiring and retention goals, or, if unable to achieve these  
17 goals, to establish good faith efforts as to their attempts to do so, as set forth in the  
18 agreement. The agreement shall take into consideration the employer's participation in  
19 existing job training, referral and/or brokerage programs. Within the discretion of the FSHA,  
20 subject to appropriate modifications, participation in such programs may be certified as  
21 meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to  
22 establish good faith efforts will constitute noncompliance and will subject the employer to the  
23 sanctions provided in Section 83.12 of this Chapter.

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1                   (2) Set first source interviewing, recruitment and hiring requirements for all  
2 employers engaged in construction work on, and commercial activity(ies) to be conducted in,  
3 the development project, including residential services, which will provide the San Francisco  
4 Workforce Development System with the first opportunity to provide qualified economically  
5 disadvantaged individuals for consideration for employment for entry level positions.  
6 Employers subject to the agreement shall consider all applications of qualified economically  
7 disadvantaged individuals referred by the System for employment; provided however, if the  
8 employer utilizes nondiscriminatory screening criteria, the employer shall have the sole  
9 discretion to interview and/or hire individuals referred or certified by the San Francisco  
10 Workforce Development System as being qualified economically disadvantaged individuals.  
11 The duration of the first source interviewing requirement shall be determined by the FSHA and  
12 shall be set forth in each agreement but shall not exceed 10 days. During that period, the  
13 employer subject to the agreement may publicize the positions in accordance with the  
14 agreement. A need for urgent or temporary hires must be evaluated, and appropriate  
15 provisions for such a situation must be made in the agreement.

16                   (3) Set appropriate requirements for providing notification of available entry level  
17 positions to the San Francisco Workforce Development System so that the System may train  
18 and refer an adequate pool of qualified economically disadvantaged individuals to employers  
19 subject to the agreement. Notification should include such information as employment needs  
20 by occupational title, skills, and/or experience required, the hours required, wage scale and  
21 duration of employment, identification of entry level and training positions, identification of  
22 English language proficiency requirements, or absence thereof, and the projected schedule  
23 and procedures for hiring for each occupation. Employers subject to the agreement should  
24 provide both long-term job need projections, and notice before initiating the interviewing and  
25



1 hiring process. These notification requirements will take into consideration any need to  
2 protect the employer's proprietary information.

3 (4) Set appropriate record keeping and monitoring requirements. The First  
4 Source Hiring Administration shall develop easy to use forms and record keeping  
5 requirements for documenting compliance with the agreement. To the greatest extent  
6 possible, these requirements shall utilize the employer's existing record keeping systems, be  
7 non-duplicative, and facilitate a coordinated flow of information and referrals.

8 (5) Establish guidelines for employer good faith efforts to comply with the first  
9 source hiring requirements of this Chapter. The FSHA will work with City departments to  
10 develop employer good faith effort requirements appropriate to the types of permits handled  
11 by each department. Employers shall appoint a liaison for dealing with the development and  
12 implementation of the employer's agreement. In the event that the FSHA finds that the  
13 employer has taken actions primarily for purpose of circumventing the requirements of this  
14 Chapter, that employer shall be subject to the sanctions set forth in Section 83.12 of this  
15 Chapter.

16 (6) Set the term of the requirements.

17 (7) Set appropriate enforcement and sanctioning standards consistent with this  
18 Chapter.

19 (8) Provide that the agreement shall be recorded.

20 (9) Set forth the City's obligations to develop training programs, job applicant  
21 referrals, technical assistance, and information systems that assist the employer in complying  
22 with this Chapter.

23 (10) Require developer to include notice of the requirements of this Chapter in  
24 leases, subleases, and other occupancy contracts.

25

1 (b) The employer subject to the agreement shall make the final determination of  
2 whether an economically disadvantaged individual referred by the System is “qualified” for the  
3 position. Any qualified economically disadvantaged individual who is hired by the employer  
4 shall have the same rights and obligations as all other employees in similar positions. The  
5 employer shall not discriminate against any employees on the basis of participation in the First  
6 Source Hiring Program. Any such discrimination shall be considered a breach of the  
7 employer’s “good faith” obligations under the agreement, and shall be subject to the sanctions  
8 set forth in Section 83.12 of this Chapter.

9 (c) Compliance by an employer subject to the agreement with a City department’s  
10 approved plan shall be deemed to be compliance with the requirements of this Chapter. In  
11 situations where an employer must comply with the requirements of this Chapter as part of a  
12 contract or property contract, and subsequently must apply for permits for the same project  
13 that is the subject of the contract or property contract, the employer will be deemed to be in  
14 compliance with this Chapter.

15 (d) In any situation where the FSHA concludes based upon application by the employer  
16 that compliance with this Chapter would cause economic hardship or the burden of  
17 compliance would be disproportionate to the impacts of the employer’s commercial  
18 activity(ies) in the City, the FSHA shall grant an exception to any or all of the requirements of  
19 this Chapter. (Added by Ord. 264-98, App. 8/21/98)  
20

21 **SEC. 83.12. VIOLATION OF FIRST SOURCE HIRING IN PERMITS.**

22 (a) The sole financial remedy for violation of the requirements of this Chapter is the  
23 penalty set forth below. Additionally, failure to comply with the conditions imposed on the  
24 permit may be subject to the provisions of San Francisco Building Code Section 104.2.  
25

1 (b) If upon administrative review, as provided for in Subsection (e) of this Section, the  
2 FSHA determines that entry level positions were not made available to the System for referral  
3 of qualified economically disadvantaged individuals as specified in the employer's first source  
4 hiring agreement, and the employer does not remedy the violations, that employer shall be  
5 assessed a penalty in the amount of \$2,070 for every new hire for an entry level position  
6 improperly withheld from the first source hiring process.

7 (c) Lack of referrals of qualified economically disadvantaged individuals, delay in  
8 referrals due to causes beyond the reasonable control of the employer, emergency, or other  
9 good cause as demonstrated by the employer to the FSHA may be a defense to the  
10 assessment of a penalty under this Chapter.

11 (d) If the developer fulfills its obligations as set forth in this Chapter, the developer shall  
12 not be held responsible for the failure of an employer to comply with the requirements of this  
13 Chapter.

14 (e) The assessment of a penalty and the evaluation of any defenses and mitigating  
15 factors, shall be made by the FSHA.

16 (f) The FSHA shall establish procedures that allow an employer to respond to any  
17 complaints of noncompliance made by a City department or other interested party, or any  
18 determination of noncompliance with this Chapter made by the FSHA, prior to the imposition  
19 of any sanctions by the City. (Added by Ord. 264-98, App. 8/21/98)

20  
21 **SEC. 83.12A. FEE SCHEDULE.**

22 (a) A developer, contractor, or employer entering into a first source hiring agreement for  
23 commercial activities that include from 25,000 square feet to 99,999 square feet shall pay a fee of  
24 \$150.00 to defray the costs of administering the program. A developer, contractor, or employer  
25

1 entering into a first source hiring agreement for commercial activities that include 100,000 square feet  
2 or more shall pay a fee of \$250.00.

3 (b) A developer, contractor, or employer entering into a first source hiring agreement for a  
4 residential project that includes 10 to 49 units shall pay a fee of \$150.00 to defray the costs of  
5 administering the program. A developer, contractor, or employer entering into a first source hiring  
6 agreement for a residential project that includes 50 or more units shall pay a fee of \$250.00.

7 (c) All fees under this Section shall be due and payable within 30 days of the date of the  
8 issuance of a notice of payment due. Delinquent fees shall be subject to a penalty of ten percent (10%)  
9 plus interest at the rate of one percent (1%) per month on the outstanding balance which shall be  
10 added to the amount of the fee collected from the date that payment is due.

11 (d) Non-profit entities shall be exempt from the administrative fee requirements under this  
12 Section.

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16 **SEC. 83.13. RECORDS.**

17 The employers subject to provisions of this Chapter shall maintain and provide  
18 the FSHA with the records necessary to document compliance with the requirements of this  
19 Chapter as determined in the first source agreement. (Added by Ord. 264-98, App. 8/21/98)

20  
21 **SEC. 83.14. GENERAL EXCLUSIONS AND LIMITATIONS.**

22 Nothing in this Chapter shall be interpreted to interfere with, or prohibit existing labor  
23 agreements, nondiscrimination programs, workforce training pro-grams and agreements,  
24  
25

1 economically disadvantaged hiring and retention goals. This Chapter is to be implemented *in*  
2 a manner that does not conflict with applicable federal or State laws.

3 Nothing in this Chapter shall be interpreted in a manner that would displace an  
4 employer's existing workers.

5 The FSHA may reach agreements with other governmental agencies that have similar  
6 programs in order to ensure that requirements imposed pursuant to this Chapter and by other  
7 governmental agency authority do not create an undue burden or conflicting obligations on  
8 employers, and to make the implementation of the purpose of this Chapter feasible where the  
9 City and other jurisdictions have joined together to procure goods, services or public works.

10 (Added by Ord. 264-98, App. 8/21/98)

11

12 **SEC. 83.15. COLLECTIVE BARGAINING AGREEMENTS.**

13 Notwithstanding anything to the contrary in this Chapter, if a first source hiring  
14 agreement conflicts with an existing collective bargaining agreement to which an employer is  
15 a party, the collective bargaining agreement shall prevail. However, the employer will be  
16 obligated to provide workforce needs information to the San Francisco Workforce  
17 Development System and the employer will be obligated to make good faith efforts to comply  
18 with the requirements of its first source hiring agreement that do not conflict with the collective  
19 bargaining agreement. (Added by Ord. 264-98, App. 8/21/98)

20

21 **SEC. 83.16. SEVERABILITY.**

22 If any part or provision of this Chapter, or the application thereof to any person or  
23 circumstance, is held invalid, the remainder of this Chapter, including the application of such  
24 part or provision to other persons or circumstances, shall not be affected thereby and shall

25

1 continue in full force and effect. To this end, the provisions of this Chapter are severable.  
2 (Added by Ord. 264-98, App. 8/21/98)

3

4 **SEC. 83.17. LIMITED TO PROMOTION OF GENERAL WELFARE.**

5 In undertaking the adoption and enforcement of this Chapter, the City and County of  
6 San Francisco is assuming an undertaking only to promote the general welfare. It is not  
7 assuming, nor is it imposing on its commissions, departments, officers and employees, an  
8 obligation for breach of which it is liable in money damages to any person who claims that  
9 such breach proximately caused injury. (Added by Ord. 264-98, App. 8/21/98)

10

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

12 Phase I, as defined in 83.4(n), ~~shall become operative 30 days after the date the~~  
13 ~~ordinance adopting this Chapter becomes effective, on October 20, 1998.~~ Phase II, as defined in  
14 Section 83.4(o) of this Chapter, ~~will become operative on April 1, 2001,~~ 24 (twenty-four)  
15 months after the FSHA ~~adopted~~ of a resolution by the FSHA stating that Phase I ~~has~~ been  
16 implemented. This Chapter is intended to have prospective effect only, and shall not be  
17 interpreted to impair any rights under any existing City contract or property contract or permit.  
18 The provisions of this Chapter shall expire ~~six years after the effective date of this ordinance on~~  
19 January 1, 2009. (Added by Ord. 264-98, App. 8/21/98)

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

24

25 By: \_\_\_\_\_  
JENNIFER WILLIAMS

Deputy City Attorney

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