

1 [Minority/Women/Local Business Utilization Ordinance - IV]
2 AMENDING CHAPTER 12D.A OF THE SAN FRANCISCO ADMINISTRATIVE CODE BY
3 AMENDING SECTIONS 12D.A2 AND 12D.A5 THEREOF TO AMEND BOARD FINDINGS
4 TO INCLUDE IRANIAN AMERICANS AND TO AMEND THE DEFINITION OF THE TERMS
5 MINORITY, MINORITIES, OR MINORITY PERSON TO INCLUDE IRANIAN AMERICANS.

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7

8 Note: Additions are underlined; deletions are in ((double parentheses)).

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

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11 Section 1. Chapter 12D.A of the San Francisco Administrative Code is hereby
12 amended by amending Sections 12D.A.2 and 12.D.A.5 thereof to read as follows:

13

14 **SEC. 12D.A.2. GENERAL FINDINGS.** This Board initially passed Ordinance No.
15 139-84 on April 2, 1984 to combat the City and County of San Francisco's own active and
16 passive participation in discrimination against minority- and women-owned businesses, both
17 in its own contracting for goods and services and in the private market for such goods and
18 services. At the time of passage, women- and minority-owned businesses were virtually
19 excluded as contractors on prime City contracts. The Ordinance also sought to offset
20 economic disadvantages faced by local businesses that are not shared by non-local
21 businesses, and to increase employment in the City and County of San Francisco by
22 encouraging the participation of local business enterprises in City contracting.

23 Since that time, this Board and the City's Human Rights Commission have actively and
24 extensively documented and studied discrimination against and disadvantages faced by
25 these groups to gauge the effectiveness of the prior Minority, Women and Local Business

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1 Enterprise Ordinances (the "M/W/LBE Ordinances") and to assess the need for further and
2 continuing action.

3 The earlier studies are documented in the legislative history of the previous
4 amendments and re-enactments of the Ordinance, including Ordinance 175-98, enacted on
5 May 30, 1989, and Ordinance Nos. 155-92, 210-97, 457-97 and 82-98. The 1989 Ordinance
6 was challenged in federal court and upheld by the Ninth Circuit Court of Appeals. See
7 *Associated General Contractors of California v. Coalition for Economic Equity*, 950 F.2d 1401
8 (9th Cir. 1991).

9 The findings underlying the 1984 and 1989 Ordinances have been reviewed and
10 analyzed in the preparation of the current Ordinance and are hereby incorporated by
11 reference into the legislative history of this Ordinance. These materials, prepared up to and
12 including May 1989, include disparity studies, transcripts of live testimony by dozens of
13 witnesses, case studies of discrimination, and voluminous other materials. An index and a
14 separate synopsis of this material are on file with the Clerk of this Board in File No. 98-0612.

15 Since 1989, the City has devoted substantial additional resources to the task of
16 understanding and documenting discrimination against women and minorities in awarding
17 City contracts and in the private market for such contracts. Given the prior findings of
18 discrimination and the need for this Ordinance, this Board examined whether the identified
19 discrimination had been eradicated. Together this Board and the Human Rights Commission
20 have held 14 hearings on the subject of women- and minority-owned business enterprises,
21 have heard live testimony from 254 witnesses, have reviewed videotaped oral histories by
22 numerous witnesses, have reviewed many volumes of social science materials, three
23 disparity studies undertaken by the City and County of San Francisco and numerous other
24 relevant statistical disparity studies undertaken by the City agencies and various other groups
25 and governments from around the Bay Area. The Board has also reviewed case studies and

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1 other statistical information gathered by the Human Rights Commission. These materials are
2 all incorporated by reference into the legislative history of this Ordinance. The collection and
3 analysis of relevant information is ongoing.

4 In its hearings on the MBE/WBE/LBE Ordinance since 1989, this Board has given
5 close consideration to the need for adding Native Americans and Arab Americans to the list of
6 minority groups covered by the Ordinance. As part of this process, the Board and the Human
7 Rights Commission have heard or reviewed testimony from 47 individuals (including those
8 individuals interviewed in connection with the preparation of the Mason Tillman Disparity
9 Study) concerning discrimination against Arab Americans and Native Americans. In addition,
10 as discussed in greater detail below, the Mason Tillman Associates study covering City
11 contracting in the years 1992 through 1995 found statistically significant evidence of
12 discrimination against Native Americans and Arab Americans in several categories of
13 contracting. That study also closely reviewed testimonial evidence of discrimination against
14 these groups.

15 In 1997 and 1998 alone, this Board and the Human Rights Commission have held
16 eight public hearings at which testimony was given by 170 individuals concerning
17 discrimination against Minority and Women Business Enterprises, the transcripts of which and
18 the written submittals accompanying same are hereby incorporated by reference. In addition,
19 on January 12, 1997, the Human Rights Commission hired Mason Tillman Associates to
20 assist in conducting a disparity study for the years 1992-1995, including an evaluation of both
21 statistical and testimonial evidence of discrimination. In January 1998, Mason Tillman
22 Associates produced its study, which the Board has closely reviewed. In addition, in
23 February of 1998, the staff of the Human Rights Commission was directed to expand the
24 disparity study to cover the years 1996-1997. The staff of the Human Rights Commission has
25

1 issued its report on those years, which reveals findings consistent with those of Mason
2 Tillman, and this Board has reviewed the report closely.

3 On January 4, 1999, the Human Rights Commission issued a report regarding
4 discrimination in city contracting against Iranian Americans. That report recounted testimony
5 from HRC hearings regarding discrimination against Iranian American contractors.

6 In addition, the Board considered and reviewed oral histories from many persons
7 involved in the bidding and compliance process taken in the summer of 1998. Many of the
8 oral histories have been preserved on video tape. These oral histories recount personal
9 incidences of discrimination as well as compliance difficulties. The oral histories were taken
10 in this manner because many of the individuals were fearful of retaliation and further
11 discrimination if they testified at a public forum. In fact, this fear caused some of the oral
12 histories to be given in a manner in which the identities of those testifying were not identified.
13 An index and a separate synopsis of the oral histories are on file with the Clerk of this Board
14 in File No. 98-0612.

15 As a result of these hearings and review of these materials and the materials archived
16 by the Human Rights Commission and the relevant statistical and social science data, oral
17 histories, articles and studies, the Board makes the following findings:

18 1. The Board finds that the decision makers in the City contracting process -- the
19 City department heads and general and deputy managers -- have been and continue to be
20 overwhelmingly Caucasian males. Data compiled according to mayoral term show that:

- 21 • From 1980-1988, there were 68 white male department heads and general and
22 deputy managers, constituting ninety-two percent (92%) of the total. During the
23 same period, there were 3 male minority department heads and general and deputy
24 managers, constituting four percent (4%) of the total, and 3 white female
25 department heads and general and deputy managers, constituting four percent

1 (4%) of the total. There were no female minority department heads or managers
2 during this period.

- 3 • From 1988 to 1991, there were 66 white male department heads and general and
4 deputy managers, constituting eighty-nine percent (89%) of the total. During the
5 same period, there were 5 male minority department heads and general and deputy
6 managers, constituting seven percent (7%) of the total, and 3 white female
7 department heads and general and deputy managers, constituting four percent
8 (4%) of the total. There were no female minority department heads or managers
9 during this period.
- 10 • From 1992 to 1995, there were 65 white male department heads and general and
11 deputy managers, constituting eighty-eight percent (88%) of the total. During the
12 same period, there were 5 male minority department heads and general and deputy
13 managers, constituting seven percent (7%) of the total, and 3 white female
14 department heads and general and deputy managers, constituting four percent
15 (4%) of the total. There was one female minority department head or manager,
16 constituting one percent (1%) of the total.
- 17 • From 1996 to the present, there were 48 white male department heads and general
18 and deputy managers, constituting sixty-five percent (65%) of the total. During the
19 same period, there were 14 male minority department heads and general and
20 deputy managers, constituting nineteen percent (19%) of the total, 5 white female
21 department heads and general and deputy managers, constituting four percent
22 (4%) of the total, and 7 female minority department heads or managers,
23 constituting ten percent (10%) of the total.

24 Based on these statistics and the evidence presented by numerous witnesses, the
25 Board finds that many City departments continue to operate under an "old boy network,"

1 dominated by Caucasian males, that creates a barrier to the entry of women- and minority-
2 owned businesses and puts those firms at a competitive disadvantage in their efforts to
3 secure City contracts.

4 2. The City has conducted two comprehensive disparity studies to gauge
5 discrimination against women- and minority-owned businesses in the City's contracting.
6 These two studies, one conducted by Mason Tillman Associates and covering the years
7 1992-1995, and a second conducted by the City's Human Rights Commission staff and
8 covering the years 1996-1997, have thoroughly and conclusively documented the fact that
9 women- and minority-owned business enterprises continue to receive a smaller share of
10 contracts for the purchases of goods and services by the City than would be expected based
11 on the number of able and available women- and minority-owned businesses. This poor
12 utilization cannot be attributed to chance. This Board finds, based on these statistical studies
13 and on all of the other evidence of persistent discrimination presented to the Board, that the
14 disproportionately small share of City contracting and subcontracting that goes to women-
15 and minority-owned businesses is due to discrimination by the City and discrimination in the
16 private market.

17 3. The Mason Tillman Study analyzed the City contracting data for various groups
18 for the years 1992 through 1995. Under a fair and equitable system of awarding contracts,
19 the proportion of contract dollars awarded to minority- and women-owned business
20 enterprises would be equal to the proportion of willing and able minority- and women-owned
21 enterprises in the relevant market area. If these proportions are not equal, or if a disparity
22 exists between these proportions, the probability that the disparity is due to chance is
23 determined using a statistical test. If there is a very low probability that the disparity is due to
24 chance, the Supreme Court has stated that an inference of discrimination can be made.
25

1 The Mason Tillman Study reviewed contracts entered into by the City and County of
2 San Francisco in a variety of areas and categories and determined the following:

- 3 • For prime construction contracts, women and all minority groups received fewer
4 construction prime-contracting dollars than would be expected given their
5 availability. Arab Americans did not receive any contract dollars at all. The
6 disparity was statistically significant for Asian Americans. In addition, there was
7 statistically significant evidence of discrimination in favor of Caucasian men.
8 Although African Americans represent 10.24% of the available construction firms,
9 they received only 1.44% of the construction contract dollars. Although Arab
10 Americans represent 0.8 percent of the available construction firms, they received
11 no construction contract dollars at all. Although Asian Americans represent 20.71
12 percent of the available construction firms, they received only 3.0 percent of the
13 construction contract dollars. Although Latino Americans represent 9.67 percent of
14 the available construction firms, they received 5.28 percent of the construction
15 contract dollars. Although Native Americans represent 0.8 percent of the available
16 construction firms, they received no construction contract dollars at all. Although
17 Caucasian women represent 8.08 percent of the available construction firms, they
18 received only 1.37 percent of the construction contract dollars. Although
19 Caucasian men represent 49.72 percent of available construction firms, they
20 received 88.92 percent of the construction contract dollars.
- 21 • For architecture and engineering prime contracts between 1992 and 1995, Arab
22 Americans, Asian Americans, Native Americans, and Caucasian women received
23 fewer contracts than would be expected given their availability. More than 60
24 percent of the contracts in this area went to Caucasian male-owned businesses.
25

1 The disparity was statistically significant for Caucasian women. There was a
2 statistically significant disparity in favor of Caucasian men.

- 3 • For professional services prime contracts in the years 1992-1995, African
4 Americans, Arab Americans, Asian Americans, Latino Americans, Native
5 Americans, and Caucasian women all received fewer contracts than expected.
6 More than 78 percent of the professional service contracts for the years 1992-1995
7 went to Caucasian male-owned businesses. The disparity is statistically significant
8 for Caucasian women. In addition, there is a statistically significant disparity in
9 favor of Caucasian men. African Americans, who represent 10.65 percent of the
10 available professional service firms, received only 5.08 percent of the contract
11 dollars. Arab Americans, who represent 4.66 percent of the available professional
12 service firms, received none of the professional service dollars. Asian Americans,
13 who represent 16.32 percent of the available professional services firms, received
14 11.92 percent of the professional services contract dollars. Latino Americans, who
15 represent 5.77 percent of the available professional services firms, received 0.95
16 percent of the professional services dollars. Caucasian women, who represent
17 21.75 percent of the available professional services firms, received 3.22 percent of
18 the professional services dollars. On the other hand, Caucasian men, who
19 represent 40.7 percent of the available professional services firms, received 78.83
20 percent of the professional services dollars.
- 21 • For purchases of goods and services prime contracts for 1992-1995, all minorities
22 received fewer contract dollars than expected. More than 89 percent of all goods
23 and services contract dollars went to Caucasian male-owned businesses. The
24 disparity is statistically significant for each ethnic group except Native Americans.
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- 1 • For construction contract dollars below \$500,000 for the years 1992-1995,
2 minorities and females received fewer contract dollars than expected, given their
3 availability. The finding was statistically significant for African Americans, Arab
4 Americans, Asian Americans and Native Americans. Caucasian men received a
5 statistically significant greater number of contract dollars than expected.
- 6 • For architecture and engineering contract dollars below \$500,000 for the years
7 1992-1995, minorities and women received fewer contract dollars than expected,
8 given their availability. The findings are statistically significant for Latino Americans
9 and Caucasian females. Caucasian men received a statistically significant greater
10 number of contract dollars than expected.
- 11 • For small professional service contract dollars below \$500,000 for the years 1992-
12 1995, all minorities and female Caucasians received statistically significantly fewer
13 of the contract dollars than expected. Caucasian males received statistically
14 significantly greater contract dollars than expected.
- 15 • For purchases of goods and supplies contracts below \$500,000 for the years 1992-
16 1995, all minorities and female Caucasians received fewer contract dollars than
17 would be expected based on their availability. The figures were statistically
18 significant for all groups except Native Americans.

19 4. In addition to statistical analysis, the Mason Tillman study also reviewed
20 testimonial evidence of discrimination from 35 individuals including 5 African Americans, 7
21 Asian Americans, 3 Latino Americans, 4 Native Americans, 8 Arab Americans, and 8
22 Caucasian women. The report also reviewed written testimony of discrimination and
23 testimony from public hearings. The report found, based on this testimonial evidence, that
24 minorities and women continuously face racial prejudice in both the public and private sector
25 markets in San Francisco. The prejudice against minorities takes the form of stereotyping,

1 prejudging, discomfort in working with minorities, an absence of opportunities to prove one's
2 skill and ability, exclusion, networking difficulties, and racial slurs. Women also face
3 prejudging and stereotyping. Women are often made to feel that they are not qualified to be
4 running a company and that they are innately incapable of certain tasks. Women also
5 sometimes face questions as to whether they are really running their firms. Women- and
6 minority-owned firms also face overt hostility from majority-male firms, reporting harassment,
7 intimidation, and undue pressure during the course of doing business with majority-male
8 firms. Women interviewed in the study reported sexual harassment. Women- and minority-
9 owned businesses also are subjected to increased and higher standards of review of their
10 work than Caucasian, male-owned firms. Minorities and women also reported difficulties and
11 discrimination in obtaining financing and credit for their firms, difficulty obtaining bonding and
12 insurance, and other forms of business institutional discrimination. Minority- and women-
13 owned businesses also reported being discriminated against by prime contractors, by, for
14 example, being given inadequate lead time to bid on projects, being paid late after a bid
15 award, being listed on a bid without permission, and having the scope of their work reduced
16 or canceled after the bid award.

17 The report also documents numerous specific instances of discrimination against
18 minority- and women-owned businesses and hostility in the industry toward the M/WBE
19 program.

20 5. In February 1998, the Human Rights Commission instructed its staff to review
21 statistical evidence available for the years 1996-1997 to determine if the evidence
22 demonstrates that the discrimination identified in the Mason Tillman study is still present. The
23 HRC study determined that the discrimination identified in the Mason Tillman study was still
24 present in 1996 and 1997, in that women- and minority-owned business enterprises
25 continued to be used at rates substantially below what would be expected based on the

1 availability of such firms. In addition, the HRC report reviewed extensive other evidence,
2 including testimonial evidence, about the presence of discrimination in the City and County's
3 contracting processes. The HRC report also documents hostility and active resistance to the
4 W/MBE program by various City departments and agencies. The HRC report also found the
5 following discriminatory practices at work in City contracting: (1) listing minority- and women-
6 owned enterprises as subcontractors but never using the listed minority- and women-owned
7 subcontracting firms, (2) the use of additional non-minority, male subcontractors never listed
8 on the relevant HRC forms, and (3) the creation of fraudulent joint ventures involving minority-
9 or women-owned and majority, men-owned firms. In particular, the HRC's investigation found
10 that in at least 4 out of 86 contracts involving joint ventures, the minority- or women-owned
11 firms listed in the joint venture did not perform any work on the project.

12 6. The 1996-97 Disparity Study prepared by the HRC also includes evidence
13 concerning historically ineffective enforcement of the W/MBE program by the HRC due to
14 resistance from other City departments. The annual budget for the HRC has ranged from
15 \$500,000 for fiscal year 1983/84 to slightly less than \$4,000,000 for fiscal year 1997/98.

16 These deficiencies have proved especially problematic with respect to implementing
17 the 12D Ordinance as to subcontractors. The City has encountered persistent difficulties in
18 securing information regarding compliance at the subcontracting level. For this reason, this
19 Ordinance includes additional enforcement measures to assure full and appropriate reporting
20 of information pertaining to subcontractors to determine if there is compliance at the
21 subcontracting level.

22 The City has also found that one method used to circumvent the intent and purpose of
23 this Ordinance is the change order process. To assure the change order process is not used
24 as a tool to circumvent this Ordinance, departments and contractors seeking to submit
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1 contract amendments, modifications, supplements, or change orders shall be required to
2 prove continued compliance with the Ordinance.

3 7. The 1996-97 Disparity Study prepared by the HRC also includes the transcript
4 of a public hearing held on March 30, 1998 at which 44 individuals testified about their
5 experiences of discrimination in City contracting.

6 8. The Board finds that these two disparity studies demonstrate that the City and
7 County of San Francisco is actively discriminating against women and minority groups in its
8 contracting, and is passively participating in discrimination in the private sector. This Board
9 finds that these studies establish that the City's current contracting practices are in violation of
10 federal law and that as a result, this Ordinance is required by federal law to bring the City into
11 compliance with federal civil rights law in its contracting practices.

12 9. In addition to the disparity studies undertaken by the City and County of San
13 Francisco, the Board has reviewed numerous studies by San Francisco-based agencies.
14 These studies, although narrower in scope, support the findings of the disparity studies
15 undertaken by the City to assess discrimination against women and minorities in City
16 contracting:

- 17 • In 1991, the San Francisco Unified School District undertook a disparity study of its
18 contracting in various categories. The study found "substantial evidence of
19 statistically significant disparities between utilization and availability of minority and
20 women contractors." For prime contracts over \$15,000 in value, the study found
21 statistically significant evidence of discrimination against African Americans, Latino
22 Americans, and other minorities, in the number of contracts willing and able firms
23 owned by these groups were able to obtain. For prime contracts under \$15,000 in
24 total value, the study found statistically significant evidence of discrimination
25 against Asian Americans, Latino Americans, minorities in general, and women, in

1 the number of contracts willing and able firms owned by members of these groups
2 were able to obtain. For subcontracts, the study found statistically significant
3 evidence of discrimination in the number of subcontracts that African American,
4 Asian American, Latino American, and minority firms in general were able to obtain.
5 In a review of contracts under its Earthquake program, the study found statistically
6 significant evidence of discrimination against Asian Americans, minorities in
7 general, and women in the number of contracts businesses owned by members of
8 these groups were able to obtain. In construction related professional services, the
9 study found statistically significant evidence of discrimination against African
10 Americans, Asian Americans, minorities in general and women. In printing and
11 publishing contracts, the study found statistically significant discrimination against
12 African Americans, Asian Americans, Latino Americans, minorities in general, and
13 women. The study also reviewed testimonial evidence of discrimination that
14 supported its findings of discrimination.

- 15 • In November 1992, the San Francisco Redevelopment Agency ("SFRA") issued a
16 study of its use of minority- and women-owned business enterprises. The
17 comprehensive study found that women-owned business enterprises received none
18 of the publicly funded prime contract dollars and only 24% of the privately funded
19 contract dollars SFRA would have expected given their availability. The study found
20 from a survey of private construction contractors that minority- and women-owned
21 businesses received none of the prime contracts and only 2.32% of the subcontract
22 dollars. The study also surveyed 95 local minority- and women-owned construction
23 firms, out of which 75% reported that prime contractors who use their firms on
24 public contracts with W/MBE requirements never use their firms on private
25 contracts.

- 1 • In May 1993, the Regional Transit Association of the San Francisco Bay Area
2 issued a report entitled "The Utilization of Minority and Women-Owned Business
3 Enterprises by Member Agencies of the Regional Transit Association." The study
4 found significant underutilization of minority- and women-owned enterprises in
5 those jurisdictions in the Bay Area without programs designed to increase minority
6 and women participation. The study also found that for each transit agency,
7 including San Francisco's Municipal Railway, "M/WBEs were used less than we
8 would expect given their availability." The study also examined anecdotal evidence
9 of discrimination from 502 minority- and women-owned enterprises in the Bay Area.
- 10 • In March 1992, the Human Rights Commission issued a study entitled "MBE/WBE
11 Progress Report for FY 1990-1991" that documents some improvement over earlier
12 years in the total number of City contracts awarded to minority- and women-owned
13 enterprises, but that found that (1) "departments must do more to increase the
14 contracts they award to MBEs/WBEs," (2) that there should be more closely
15 focused outreach by City departments to MBE/WBEs, (3) that there needed to be
16 greater monitoring and enforcement of the Ordinance by the HRC, and (4) there
17 needed to be greater education of City contract personnel to combat discrimination.
18 The 1992 Sunset Report on the MBE/WBE Ordinance issued by the Human Rights
19 Commission, which includes summaries of testimony from 84 individuals, supports
20 the Board's finding that there is an ongoing need for a M/WBE Ordinance.
- 21 • In 1995, the Human Rights Commission issued a progress report on the M/WBE
22 Program covering the years 1994-95. The report supports the finding of a continued
23 need for an M/WBE Ordinance.
- 24 • In July 1998, the Human Rights Commission prepared a budget comparison
25 graphing the annual budget of the HRC against that of other City departments.

1 That comparison is contained in Tab 10 of the evidence, prepared to support this
2 Ordinance and contained in the files of this Board.

- 3 • In July 1998, contract compliance officer of the Human Rights Commission issued
4 a report on the labor force used in City contracted work totaling seven hundred and
5 ninety million dollars (\$790,000,000) pursuant to the San Francisco International
6 Airport Master Plan Expansion Program. The report illustrates the severe
7 underrepresentation of women, minorities, and San Francisco residents on the
8 airport expansion project.
- 9 • On May 13, 1993, the Human Rights Commission issued a report on the Trucking
10 Industry and minority- and women-owned enterprises. The report supports the
11 inclusion of trucking services in the current Ordinance.
- 12 • In February 1993, the Human Rights Commission issued a report entitled "The
13 Unfinished Agenda: The Economic Status of African Americans in San Francisco
14 1964-1990." This report also supports the finding of the Board that an Ordinance
15 encouraging minority- and women-owned enterprise participation in City contracting
16 is necessary, and also gives important historical information concerning African
17 Americans in San Francisco.

18 10. A number of broad disparity studies undertaken by state and other local
19 governments and agencies also support the findings of discrimination in San Francisco's
20 studies, including:

- 21 • In May 1992, the Board of Supervisors of Contra Costa County issued a
22 comprehensive study of the use of women- and minority-owned businesses by that
23 County. The study examined Contra Costa's own contracts, data about
24 subcontractors collected from prime contractors, data on Contra Costa's payments
25 to vendors, data on 7,993 minority- and women-owned vendors in the Bay Area

1 identified from various Directories, questionnaires on purchasing practices by
2 Contra Costa officials and census data, testimony Contra Costa solicited in public
3 hearings in Alameda and San Francisco, and Bay Area wide mail surveys of 540
4 women- and minority-owned businesses. The study found that minorities received
5 a smaller share of Contra Costa County contracts than would be expected given
6 their availability. The study also examined the private sector for construction in San
7 Francisco, Oakland, and San Jose and found that minority- and women- owned
8 businesses received a smaller share of prime and subcontracts than would be
9 expected given their availability. The study also found strong evidence of
10 discrimination against women- and minority firms in Contra Costa's Professional
11 Services Contracting and commodity purchases.

- 12 • In 1995 the California Senate Office of Research issued a report entitled "The
13 Status of Affirmative Action in California." The report explained, in part, that "[c]ities
14 and counties have affirmative action programs as a matter of public policy, as a
15 requirement for contracting with the state, or because they receive federal money
16 that requires attention to nondiscrimination hiring." The report concluded that
17 despite past affirmative action efforts, "salaries remain disparate among racial and
18 ethnic groups and between men and women."
- 19 • In April 1996, the California Senate Office of Research issued a report entitled
20 "Exploring the Glass Ceiling and Salary Disparities in California State Government."
21 The report examined the salary levels of 164,000 state civil service employees and
22 compared compensation according to gender, race and ethnicity. The study found
23 that women of equal educational attainment earn only \$.74 for every dollar earned
24 by their male counterparts.

1 11. This Board finds that Arab Americans who seek prime and subcontracting
2 opportunities have been underutilized in the award of such contracts by City Departments,
3 and that such underutilization is attributable to discrimination both in the private sector and in
4 the City's procurement practices. This Board finds, based on the historical record of
5 discrimination against Arab Americans, the current disparity analysis, and the testimonial
6 evidence given at public hearings, that there is ample evidence of discrimination to support
7 the addition of Arab Americans to the MBE program and to justify remedial measures on their
8 behalf. The evidence supporting this finding includes:

- 9 • The findings in the Mason Tillman Associates 1992-1995 study that Arab
10 American business enterprises continue to be used at rates less than would
11 be expected given their availability. The study found the disparity to be
12 statistically significant for purchases of goods and services prime contracts,
13 for construction contracts worth less than five hundred thousand dollars
14 (\$500,000), for professional services contracts worth less than five hundred
15 thousand dollars (\$500,000), and for purchases of goods and supplies
16 contracts worth less than five hundred thousand dollars (\$500,000).
- 17 • Testimonial evidence concerning discrimination against Arab American
18 owned firms in the form of testimony from 8 Arab Americans interviewed as
19 part of the Mason Tillman disparity study, one Arab American business
20 owner who testified at the January 29, 1997 public hearing before the
21 Human Rights Commission, one Arab American business representative
22 who testified before the Board of Supervisors' Health, Family and
23 Environment Committee on April 24, 1997, and from 14 Arab Americans who
24 testified at a public hearing before the Human Rights Commission on April
25 29, 1997.

- The historical overview of the Arab American experience in San Francisco contained in the Mason Tillman study.

12. This Board finds that Native Americans who seek prime and subcontracting opportunities have been underutilized in the award of such contracts by City departments, and that such underutilization is attributable to discrimination both in the private sector and in the City's procurement practices. This Board finds, based on the historical record of discrimination against Native Americans, the current disparity analysis, and the testimonial evidence given at public hearings, that there is ample evidence of discrimination to support the addition of Native Americans to the MBE program and to justify remedial measures on their behalf. The evidence supporting this finding includes:

- The findings in the Mason Tillman Associates 1992-1995 study that Native American business enterprises continue to be used at rates less than would be expected given their availability. The study found the disparity to be statistically significant for construction contracts worth less than five hundred thousand dollars (\$500,000) for the years 1992-1995, and professional services contracts below five hundred thousand dollars.
- Testimonial evidence concerning discrimination against Native Americans in the form of the testimony of 5 Native Americans at a public hearing in January 1990, the testimony of 4 Native American interviewees in the Mason Tillman study, and the testimony of 9 Native Americans at a public meeting before the Human Rights Commission on May 7, 1997, and the testimony of a representative of Native Americans at the May 8, 1997 hearing of the Board of Supervisors Health, Family and Environment Committee.
- The historical overview of the Native American experience in San Francisco contained in the Mason Tillman study.

1 13. This Board finds that Iranian Americans who seek prime and subcontracting
2 opportunities have been underutilized in the award of such contracts by City Departments,
3 and that such underutilization is attributable to discrimination both in the private sector and in
4 the City's procurement practices. This Board finds, based on the record of discrimination
5 against Iranian Americans and the testimonial evidence given at public hearings, that there is
6 ample evidence of discrimination to support the addition of Iranian Americans to the MBE
7 program and to justify remedial measures on their behalf. The evidence supporting this
8 finding includes:

- 9 • Testimonial evidence concerning discrimination against Iranian American
10 owned firms.
- 11 • The historical overview of the Iranian American experience in San Francisco
12 attached as exhibits to the January 4, 1999, Human Rights Commission
13 Report. That testimony recounted several experiences of Iranian Americans
14 who were being considered for subcontracting with prime city contractors.
15 When the prime contractors learned that the Iranian American contractors
16 were not certified MBEs, the prime contractors had no further interest in
17 continuing contracting with the Iranian American contractors even though
18 they were fully qualified to do the work.
- 19 • The findings indicate that Iranian American firms have been virtually
20 excluded from city contracting. Their utilization rate on prime contracting
21 was % of total dollars awarded during calendar year 1996-97.

22 14. The Board has also reviewed and considered several volumes of collected
23 social science materials concerning discrimination against women and minorities in the Bay
24 Area and in public contracting. These social science materials strongly support, and are
25 consistent with, the findings in the statistical and testimonial evidence that discrimination

1 exists against women and minorities in the City's contracting and in the private market for
2 similar contracts.

3 15. The Board has considered a substantial body of evidence in enacting the
4 Ordinance. The findings set forth herein represent certain salient portions derived from the
5 evidence and hearings. These findings, however, are intended to be representative and
6 nonexhaustive of the evidence and reasons supporting the enactment herein. The Board will
7 consider relevant evidence that continues to be collected.

8 16. In enacting this Ordinance, the Board considered and relied on (a) the fact that
9 a substantial percentage of City agencies receive federal funds, a vast portion of which is
10 expended in city contracts, (b) the federal requirements for eradication of discrimination,
11 including the evidence supporting those requirements, and (c) all applicable constitutional
12 standards including those that apply to federally-funded projects.

13 17. This Board finds that the testimony of minority and women business owners
14 who seek to enter into contracts with the City or are doing business with the City, as
15 presented to this Board and the Human Rights Commission, offer clear and persuasive
16 evidence of discrimination to such an extent that the disparity of contract dollars awarded to
17 minority- and women-owned enterprises can only be explained by discrimination. The
18 statistical evidence, oral histories, and social science evidence reviewed by this Board also
19 support this finding. Accordingly, this Board adopts this Ordinance to remedy the specifically
20 identified City contracting practices and conditions in the Community and industries that
21 cause the exclusion or reduction of contracting opportunities for minority- and women-owned
22 businesses in City Prime and subcontracting programs.

23 18. Based on a comparative review of the use of minority- and women-owned
24 businesses in the public and private sectors in the City, oral histories and additional evidence,
25 this Board finds that there is a substantial reduction in the use of minority- and women-owned

1 firms in private sector contracting in the absence of MBE/WBE requirements such as those
2 found in this Ordinance. In the private sector, substantial evidence demonstrates that
3 minority- and women-owned businesses are seldom or never used by prime contractors for
4 projects that do not have MBE/WBE goal requirements. Therefore, this Board finds that if
5 this Ordinance were not enacted and the MBE/WBE goal requirements eliminated, the
6 discrimination against and non-utilization of minority- and women-owned businesses now
7 existing in the private sector would occur immediately in the awarding of City contracts.

8 19. This Board further finds that local businesses that seek prime contracting and
9 subcontracting opportunities in City contracting continue to labor under a competitive
10 disadvantage with private businesses from other areas because of the higher administrative
11 costs of doing business in the City (e.g. higher taxes, higher rents, higher wages and benefits
12 for labor, higher insurance rates, etc.).

13 20. This Board finds that public interest is served by encouraging economically
14 disadvantaged businesses to locate and to remain in San Francisco through the provision of
15 bid discounts to such San Francisco businesses in the award of City contracts and by
16 requiring prime contractors to use good faith efforts to use such businesses as subcontractors
17 when there are subcontracting opportunities available on City contracts.

18 21. Additionally, this Board finds that policies and programs that enhance the
19 opportunities and entrepreneurial skills of local businesses will best serve the public interest
20 because the growth and development of such businesses will have a significant positive
21 impact on the economic health of San Francisco by, among other things, the creation of local
22 jobs and increased tax revenue.

23 22. The Board finds that affording a five percent (5%) bid discount for economically
24 disadvantaged local businesses bidding on City contracts reduces the disadvantages under
25 which these businesses compete.

1 23. The bid discount mechanism in this Ordinance is used to assure equality in the
2 treatment of opportunities to any bidder for City contracts. This Board further finds that the
3 failure to use such a bid discount would result in discrimination against or preferential
4 treatment to certain individuals and/or groups.

5
6 **SEC. 12D.A.5. DEFINITIONS.**

7 “Award of a contract” occurs when a contract is certified by the Controller of the City
8 and County of San Francisco.

9 “Back contracting” shall mean any agreement or other arrangement between a prime
10 contractor and its subcontractor that requires the prime contractor to perform or to secure the
11 performance of the subcontract in such a fashion and/or under such terms and conditions
12 that the prime contractor enjoys the financial benefits of the subcontract. Such agreements
13 or other arrangements include, but are not limited to, situations in which either a prime
14 contractor or subcontractor agrees that any term, condition or obligation imposed upon the
15 subcontractor by the subcontract shall be performed by or be the responsibility of the prime
16 contractor.

17 “Best efforts” when required of contract awarding authority shall mean reasonable
18 efforts to include minorities, MBEs, women, or WBEs in City contracting.

19 “Bid” shall mean and include a quotation, proposal, solicitation or offer by a bidder or
20 contractor to perform or provide labor, materials, equipment, supplies or services to the City
21 and County of San Francisco for a price.

22 “Bidder” shall mean any business that submits a quotation, bid or proposal to provide
23 labor, materials, equipment, supplies or services to the City and County of San Francisco.

24 “City” shall mean the City and County of San Francisco.

25 “Commercially useful function” shall mean that the business is directly responsible for

1 providing the materials, equipment, supplies or services to the City as required by the
2 solicitation or request for quotes, bids or proposals. MBEs, WBEs or LBEs that engage in the
3 business of providing brokerage, referral or temporary employment services shall not be
4 deemed to perform a "commercially useful function" unless the brokerage, referral or
5 temporary employment services are those required and sought by the City.

6 "Commission" shall mean the Human Rights Commission of the City and County of
7 San Francisco.

8 "Concession" shall mean any privilege conferred by the City on a person to engage in
9 business on property owned or leased by the City.

10 "Contract" shall mean and include any agreement between the City and a person to
11 provide or procure labor, materials, equipment, supplies or services to, for or on behalf of the
12 City. A "contract" shall include an agreement between the City and a person or nonprofit
13 entity to perform construction- related services or fund the performance of such services. A
14 "contract" does not include: (1) awards made by the City with Federal/State grant or City
15 general fund monies to a nonprofit entity where the City offers assistance, guidance, or
16 supervision on a project or program and the recipient of the grant award uses the grant
17 monies to provide services to the community; (2) sales transactions where the City sells its
18 personal or real property; (3) a loan transaction where the City is acting as a debtor or a
19 creditor; (4) lease, franchise, or concession agreements; (5) agreements to use City real
20 property; (6) gifts of materials, equipment, supplies or services to the City; or (7) agreements
21 with a public agency except as provided in Section 12D.A.9.

22 "Contract awarding authority" shall mean the City officer, department, commission,
23 employee or board authorized to enter into contracts on behalf of the City. In the case of an
24 agreement with a person or nonprofit entity to perform or fund the performance of
25 construction-related services, the term "contract awarding authority" shall mean the person or

1 nonprofit entity receiving funds from the City to perform or fund the performance of such
2 services.

3 "Contractor" shall mean any person(s), firm, partnership, corporation, or combination
4 thereof, who submits a bid to perform, performs any part of, agrees with a person to provide
5 services relating to and/or enters into a contract with department heads and officers or
6 contract awarding authorities empowered by law to enter into contracts on the part of the City
7 for public works or improvements to be performed, or for goods or services or supplies to be
8 purchased at the expense of the City or to be paid out of monies deposited in the treasury or
9 out of trust monies under the control of or collected by the City.

10 "Control" of a business shall refer to the possession of the legal authority and power to
11 manage business assets, good will and daily operations of the business, and the active and
12 continuous exercise of such authority and power in determining the policies and directing the
13 operations of the business.

14 "Director" shall mean the Director of the Human Rights Commission of San Francisco.

15 "Discount" shall mean an upward or downward price adjustment, according to the
16 context, that is made for the purpose of remedying, in the case of MBEs and WBEs, identified
17 discrimination, and, in the case of LBEs, the competitive disadvantage caused by the higher
18 administrative costs of doing business in the City.

19 "Economically disadvantaged business" shall mean a business whose average gross
20 annual receipts in the three fiscal years immediately preceding its application for certification
21 as a MBE, WBE or LBE do not exceed the following limits: (1) Public works/construction —
22 \$14,000,000; Specialty Construction Contractors — \$5,000,000; (2) Goods/materials/
23 equipment and general services suppliers — \$5,000,000; (3) Professional services —
24 \$2,000,000; (4) Trucking — \$3,500,000; and (5) Telecommunications — \$5,000,000.

25 "Equipment and supplies contract" shall mean a term purchase agreement, contract

1 order, purchase order and any other agreement for the purchase of transportation equipment,
2 office supplies, data processing and office equipment, hospital and medical equipment and
3 supplies, food, restaurants, building supplies, fire/safety equipment and supplies, clothing,
4 miscellaneous and electrical equipment and supplies. The term "equipment and supplies
5 contract" shall not include contracts for fuels, lubricants and illuminants.

6 "Franchise" shall mean and include the right or privilege conferred by grant from the
7 City, or any contracting agency thereof, and vested in and authorizing a person to conduct
8 such business or engage in such activity as is specified in the grant. A "franchise" shall not
9 include an agreement to perform construction-related services.

10 "General services contract" shall mean a purchase agreement, contract order,
11 purchase order and any other agreement for the procurement of janitorial, security,
12 equipment and computer maintenance, miscellaneous, printing and graphics services.

13 "Good-faith efforts" when required of a contract awarding authority or department shall
14 mean the actions undertaken by a department to obtain MBE or WBE participation in a
15 contract as prime contractors, and shall include the following efforts: (1) encouraging
16 MBE/WBEs to attend pre-bid meetings scheduled by a department or the Commission to
17 inform potential contractors of contracting opportunities; (2) advertising in general circulation
18 media, trade association publications and minority/woman business focused media; (3)
19 notifying MBE/WBEs that are available to perform the work contemplated in a contract and
20 soliciting their interest in the contract; (4) dividing the contract work into economically feasible
21 units to facilitate MBE/WBE participation in the contract; (5) pursuing solicitations of interest
22 by contacting MBE/WBEs to determine whether these businesses are interested in
23 participating on the contract; (6) providing MBE/WBEs with adequate information about the
24 plan, specifications and requirements of the contract; (7) where applicable, negotiating with
25 MBE/WBEs in good faith and demonstrating that MBE/WBEs were not rejected as unqualified

1 without sound reasons based on a thorough investigation of their capabilities; and (8) using
2 the services of available community and contractors' groups, local, State or Federal minority
3 and woman business assistance offices that provide assistance in the recruitment of
4 MBE/WBEs for public sector contracts.

5 "Good-faith efforts" when required of a prime public works/construction contractor or
6 professional services provider shall mean the steps undertaken to comply with the goals and
7 requirements imposed by the City for participation by MBE/WBEs as subcontractors, and
8 shall include the following:

9 (1) Attending any presolicitation or prebid meetings scheduled by the City to inform
10 all bidders of MBE/WBE program requirements for the project for which the contract will be
11 awarded;

12 (2) Identifying and selecting specific items of the project for which the contract will
13 be awarded to be performed by MBE/WBEs to provide an opportunity for participation by
14 those enterprises;

15 (3) Advertising for MBEs or WBEs that are interested in participating in the project,
16 not less than 10 calendar days before the date the bids can first be submitted, in one or more
17 daily or weekly newspapers, trade association publications, minority or trade-oriented
18 publications, trade journals, or other media, specified by the City. This paragraph applies
19 only if the City gave public notice of the project not less than 15 calendar days prior to the
20 date the bids can first be submitted;

21 (4) Providing, not less than 10 calendar days prior to the date on which bids can
22 first be submitted, written notice of his or her interest in bidding on the contract to the number
23 of MBEs or WBEs required to be notified by the project specifications. The City shall make
24 available to the bidder not less than 15 calendar days prior to the date the bids are opened a
25 list or a source of lists of enterprises that are certified by the Director as MBE/WBEs;

SUPERVISOR BROWN
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1 (5) Following up initial solicitations of interest by contacting potential MBE/WBE
2 subcontractors to determine with certainty whether those enterprises were interested in
3 performing specific items of the project;

4 (6) Providing interested MBE/WBEs with information about the plans,
5 specifications, and requirements for the selected subcontracting or material supply work;

6 (7) Requesting assistance from minority and women community organizations;
7 minority and women contractor or professional groups; local, State or Federal minority and
8 women business assistance offices; or other organizations that provide assistance in the
9 recruitment and placement of minority or women business enterprises, if any are available;

10 (8) Negotiating in good faith with interested MBEs or WBEs, and not unjustifiably
11 rejecting as unsatisfactory bids or proposals prepared by any MBEs or WBEs, as determined
12 by the City;

13 (9) Where applicable, advising and making efforts to assist interested MBE/WBEs
14 in obtaining bonds, lines of credit, or insurance required by the City or contractor;

15 (10) Making efforts to obtain MBE/WBE participation that the City could reasonably
16 expect would produce a level of participation sufficient to meet the City's goals and
17 requirements.

18 "Human Rights Commission (HRC)" shall mean the Human Rights Commission of San
19 Francisco, hereinafter referred to as the "Commission."

20 "Joint venture" shall mean an association of two or more businesses acting as a
21 contractor and performing or providing services on a contract, in which each joint venture
22 partner combines property, capital, efforts, skill, and/or knowledge.

23 "Lease" shall mean and include an agreement by which the City or any contracting
24 agency thereof, grants to a person the temporary possession and use of property for
25 consideration.

1 "Local business" or "Local business enterprise (LBE)" shall mean an economically
2 disadvantaged business that is an independent and continuing business for profit, performs a
3 commercially useful function and is a firm that:

4 (1) Has fixed offices or distribution points located within the geographical
5 boundaries of the City where a commercially useful function is performed. Post office box
6 numbers or residential addresses shall not suffice to establish status as a "Local Business";

7 (2) Is listed in the Permits and License Tax Paid File with a San Francisco business
8 street address; and

9 (3) Possesses a current Business Tax Registration Certificate at the time of the
10 application for certification as a local business.

11 (4) Has been located and doing business in the City for at least six months
12 preceding its application for certification as a local business; and

13 (5) Is certified as an LBE pursuant to 12D.A.6(B)(1).

14 "Lower-tier subcontracting" shall mean any agreement or other arrangement between a
15 subcontractor and a prime contractor that requires the prime contractor to perform any term,
16 condition or obligation imposed by the subcontract upon the subcontractor.

17 "Minority," "minorities," or "minority person" shall mean members of one or more of the
18 following ethnic groups:

- 19 • Asian Americans (defined as Chinese, Japanese, Koreans, Pacific Islanders,
20 Samoans, Filipinos, Asian Indians, and Southeast Asians);
- 21 • African Americans;
- 22 • Latino Americans (defined as Mexicans, Puerto Ricans, Cubans, Central or South
23 Americans);
- 24 • Arab Americans (defined as individuals whose ancestry is from an Arabic speaking
25 country that is a member of the League of Arab States);

- 1 • Native Americans; and
- 2 • Iranian Americans (defined as all individuals whose ancestry is from Iran).

3 "Minority Business Enterprise (MBE)" shall mean an economically disadvantaged local
4 business that is an independent and continuing business for profit, performs a commercially
5 useful function, is owned and controlled by one or more minority persons residing in the
6 United States or its territories and is certified as an MBE pursuant to Section 12D.A.6(B).

7 "Miscellaneous professional services" shall mean all professional services except legal,
8 architect/engineer, computer systems, management consulting and medical services.

9 "Office" or "offices" shall mean a fixed and established place where work is performed
10 of a clerical, administrative, professional or production nature directly pertinent to the
11 business being certified. A temporary location or movable property or one that was
12 established to oversee a project such as a construction project office does not qualify as an
13 "office" under the Ordinance. The office is not required to be the headquarters for the
14 business.

15 "Owned," for purposes of determining whether a business is a MBE or WBE shall
16 mean that minorities or women, as the context requires:

- 17 (1) Possess an ownership interest of at least 51 percent of the business;
- 18 (2) Possess incidents of ownership, such as an interest in profit and loss, equal to
19 at least the required ownership interest percentage; and
- 20 (3) Contribute capital, equipment and expertise to the business equal to at least the
21 required ownership percentage.

22 For an individual seeking MBE or WBE certification, ownership shall be measured as
23 though the applicant's ownership were not subject to the community property interest of a
24 spouse, if both spouses certify that (a) only the woman or minority spouse participates in the
25 management of the business and the nonparticipating spouse relinquishes control over

1 his/her community property interest in the subject business or (b) both spouses have bona
2 fide management and control of the business.

3 "Participation commitment" shall mean the targeted level of MBE/WBE subcontractor
4 participation that each prime public works/construction contractor or professional service
5 provider has designated in its bid.

6 "Participation goals" shall mean the targeted levels of City-wide MBE/WBE
7 participation in City prime contracts that reflect the relevant share of MBEs or WBEs in a
8 given industry or profession referred to as "percent availability" in the utilization indices
9 contained on file with the Clerk of this Board in File No. 98-0612.

10 "Percent availability" shall mean the relevant share of MBEs or WBEs in a given
11 industry or profession.

12 "Person" includes one or more individuals, partnerships, associations, organizations,
13 trade or professional associations, corporations, cooperatives, legal representatives, trustees,
14 trustees in bankruptcy, receivers, or any group of persons, including any official, agent or
15 employee of the City.

16 "Professional services contract" shall mean an agreement for the procurement of legal,
17 architect/engineer, computer systems, management consulting, medical services and
18 miscellaneous professional services.

19 "Public works/construction contract" shall mean an agreement for the construction,
20 reconstruction or repair of public buildings, streets, utilities or other public works or
21 improvements.

22 "Set-aside" when referring to a contract or project shall mean a procurement or
23 contract award process where competition for a contract or project is limited to MBEs, WBEs
24 and/or joint ventures with MBE/WBEs.

25 "Subcontractor" shall mean any business providing goods or services to a contractor

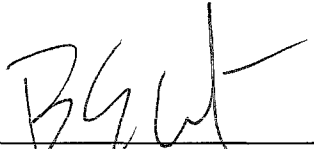
1 for profit, if such goods or services are procured or used in fulfillment of the contractor's
2 obligations arising from a contract with the City.

3 "Subcontractor participation goals" shall mean the targeted level of MBE/WBE
4 subcontractor participation designated by the Director for prime public works/construction and
5 professional services contracts.

6 "Woman Business Enterprise (WBE)" shall mean an economically disadvantaged local
7 business that is an independent and continuing business for profit, performs a commercially
8 useful function, is owned and controlled by one or more women residing in the United States
9

10 APPROVED AS TO FORM:

11 LOUISE H. RENNE, City Attorney

12
13
14 By:  _____
15 Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Ordinance

File Number: 990266

Date Passed:

Ordinance amending Administrative Code by amending Sections 12D.A2 and 12D.A5 to amend Board findings to include Iranian Americans and to amend the definition of the terms minority, minorities, or minority person to include Iranian Americans.

July 12, 1999 Board of Supervisors — PASSED, ON FIRST READING

Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

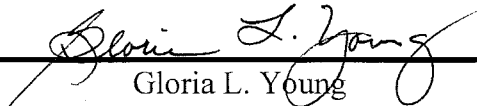
July 19, 1999 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Ammiano, Becerril, Bierman, Brown, Kaufman, Leno, Newsom, Teng, Yaki, Yee

Absent: 1 - Katz

File No. 990266

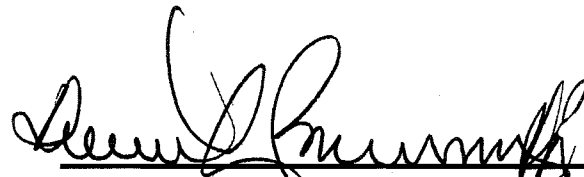
I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on July 19, 1999 by the Board of Supervisors of the City and County of San Francisco.



Gloria L. Young
Clerk of the Board

JUL 30 1999

Date Approved



Mayor Willie L. Brown Jr.