

LEGISLATIVE DIGEST

[Extending the expiration date of the MBE/WBE/LBE Ordinance.]

Ordinance extending the expiration date of Chapter 12D.A, the City's Minority/Women/Local Business Utilization program until one year after the injunction in *Coral Construction, Inc. v. City and County of San Francisco* (S.F. Sup. Ct. No. 421249) is lifted or stayed, and provides for retroactivity.

Existing Law

Chapter 12D.A of the San Francisco Administrative Code is due to sunset on June 30, 2008.

Amendments to Current Law

This legislation would extend the City's Minority/Women/Local Business Utilization program until one year after the injunction in *Coral Construction, Inc. v. City and County of San Francisco* is lifted or stayed. In addition, the continuation of Chapter 12D.A effected by this ordinance shall be retroactive to July 1, 2008.

Background Information

The Board of Supervisors enacted the Minority/Women/Local Business Utilization Ordinance (San Francisco Administrative Code Chapter 12D.A) to remedy identified discrimination in City contracting at both the prime contracting and subcontracting levels. The current version of the ordinance became effective in November 1998 and was reenacted based on updated findings in May 2003. The ordinance contains two major programs. First, at the prime contracting level, it requires City departments to award bid discounts to qualified MBEs and WBEs. Second, it requires prime contractors to show that they have made good faith efforts to provide subcontracting opportunities to MBEs and WBEs.

On July 26, 2004, the San Francisco Superior Court issued an order in *Coral Construction v. City and County of San Francisco* enjoining the City from enforcing the race and gender conscious provisions of Chapter 12D.A. The City appealed this ruling and the First District Court of Appeal reversed. (*Coral Construction, Inc. v. City and County of San Francisco* (2007) 149 Cal.App.4th 1218.) On August 22, 2007, the California Supreme Court granted review and the case is now pending before that Court.

Since the City is unable to predict when a decision will be issued, extending the program's expiration date to one year after the injunction is lifted or stayed would succinctly tie the program's expiration date to the court's decision and avoid the legislative task of continually extending the program's expiration date. It would also ensure that, if the City prevails, it will be able to implement the existing ordinance during the time it will take to conduct studies in support of an updated ordinance.