

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, and 3) residential projects; increasing the First Source
3 Hiring Administration's reporting requirements; deleting Purchaser's obligation to determine
4 applicability of ordinance to certain service contracts; deleting ten-day limit on interviewing
5 requirements; requiring developers to obtain first source hiring agreement before City can
6 approve development or issue applicable permit, imposing fee schedule on covered entities,
7 and extending the operative date of the ordinance to January 1, 2009.]

8 **Ordinance amending the San Francisco Administrative Code by amending sections**
9 **83.4, 83.5, 83.6, 83.7, 83.9, 83.11, and by adding section 83.12A to: (1) expand the**
10 **definition of contract to include sole source contracts and contracts, loans and grants**
11 **awarded by the City in excess of \$50,000; (2) include residential projects, as defined**
12 **herein, to be subject to first source hiring requirements; (3) 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; (4) delete the**
15 **requirement that the Purchaser shall determine the applicability of the first source**
16 **hiring requirements to certain service contracts; (5) delete the ten-day limit on the first**
17 **source interviewing requirement; (6) require developers to obtain a first source hiring**
18 **agreement or an exemption before the Planning Commission may approve**
19 **development projects or other City departments may issue permits subject to first**
20 **source requirements; (6) impose a fee schedule on covered entities; and (7) extend the**
21 **operative date to January 1, 2009.**

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-
25

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
25

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, community-based job training,
19 development and place-mended programs, and the private sector. While the City commits to
20 providing the support services necessary to ensure the successful transition to economic self-
21 sufficiency, the business community must be willing to offer these employment opportunities
22 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
25

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
24
25

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.

5
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.

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

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

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

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

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

11
12 **SEC. 83.4 DEFINITIONS.**

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

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

19 (c) "Commercial Activity" shall include retail sales and services, restaurant, hotel,
20 education, office uses, and other commercial uses.

21 (d) "Contract" shall mean an agreement for public works or improvements to be
22 performed, or for goods or services to be purchased, or grants to be provided, at the expense
23 of the City, or to be paid out of moneys deposited in the Treasury of the City, or out of trust
24 moneys under the control of, or collected by, the City involving an expenditure in excess of
25

1 \$350,000 for construction contracts, and in excess of ~~\$200,000~~50,000 for services. Contract
2 shall also mean loans or grants in excess of ~~\$200,000~~50,000 which are awarded by the
3 Mayor's Office of Housing, the Mayor's Office of Community Development, the Mayor's Office
4 of Children Youth and their Families, or by any other City department for work covered under
5 this Chapter.

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

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

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

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

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

25

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

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

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

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

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

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

23 (m) "Permit" shall mean, during Phase I, as defined in Section 83.4(n) below, either
24 or both of the following: (1) any building permit application for a commercial activity over
25

1 50,000 square feet in floor area and involving new construction, an addition, or alteration
2 which results in the expansion of entry level positions for a commercial activity; (2) any
3 application which requires discretionary action by the City's Planning Commission relating to a
4 commercial activity over 50,000 square feet including, but not limited to, a conditional use,
5 project authorization under San Francisco Planning Code Section 309, and office
6 development under San Francisco Planning Code Section 320, et seq.

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

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

18 (n) "Phase I" shall refer to the first stage of implementation of this Article which ~~shall~~
19 ~~become~~ became operative on October 20, 1998. ~~30 days after the ordinance adopting this Chapter~~
20 ~~becomes effective, and shall apply~~ Phase I applied to contracts for public works or improvements
21 to be performed, property contracts, grants or loans issued by the Mayor's Office of Housing,
22 or by the Mayor's Office of Community Development, and permits issued for commercial
23 activity over 50,000 square feet.

24

25

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

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

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

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

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

4 (st) "Retention" shall, when used in this Chapter, be construed to apply to the entry
5 level position, not to any particular individual.

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

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

13

14 **SEC. 83.5 SCOPE.**

15 The requirements of this Chapter shall apply to: (a) entry level positions for work
16 performed on the contract in the City; (b) entry level positions for work performed on the
17 contract in counties contiguous to the City; (c) entry level positions for work performed on the
18 contract on property owned by the City; and (d) entry level positions for work done under a
19 permit authorization on a development project in the City. (Added by Ord. 264-98, App.
20 8/21/98)

21

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

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

25

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

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

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

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

23
24
25

- 1 (3) Working with employers and unions to identify entry level positions for
2 qualified economically disadvantaged individuals, and to set appropriate recruitment, hiring
3 and retention goals;
- 4 (4) Managing the San Francisco Workforce Development System;
- 5 (5) Determining appropriate monitoring and enforcement mechanisms to
6 achieve the purpose of this Chapter, and consistent with Sections 83.10 and 83.12, below;
- 7 (6) Developing written regulations to implement first source hiring;
- 8 (7) Entering into cooperative agreements with other San Francisco
9 governmental agencies, including, but not limited to, the Housing Authority, the
10 Redevelopment Agency, the In-Home Supportive Services Public Authority, and the Parking
11 Authority, consistent with the laws governing such agencies and consistent with the purpose
12 of this Chapter;
- 13 (8) Conducting independent audits of City departmental implementation,
14 monitoring and enforcement of the requirements of this Chapter;
- 15 (9) Preparing an annual report on the progress of first source hiring for
16 presentation to the Mayor and the Board of Supervisors, that will include but not be limited to the
17 status of first source implementation by all City departments, the number of contractors subject to first
18 source requirements by department, the number and percent of contractors with signed first source
19 agreements on file, the number and percent of first source employers posting jobs, the number of jobs
20 posted and the wage data associated with those jobs, the number of job seekers referred to employers,
21 the number of job seekers hired by first source employers and the number and percent of first source
22 employers hiring job seekers. The Board of Supervisors shall hold a hearing on the report within 45
23 days of its submission to the Clerk of the Board of Supervisors.

24
25

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

3 (11) Developing effective outreach, education, support services for, and
4 recognition of, employers.

5 (c) The FSHA shall phase-in implementation of this Chapter in accordance with Section
6 83.18, below, and as defined in Sections 83.4 (n) and (o), above. The FSHA shall first
7 establish a schedule for assisting in the development of, or approving existing first source
8 hiring implementation and monitoring plans by the following City departments: Airport;
9 Department of Building Inspection; Department of Planning; Department of Public Health;
10 Mayor’s Office of Children, Youth and Families; Mayor’s Office of Community Development;
11 Mayor’s Office of Housing; Municipal Railway; Parks and Recreation; Port; Public Works, and
12 Purchasing. The FSHA shall also establish a schedule for the remaining City departments.

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

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

18

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

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

23 (b) City departments shall develop an overall first source hiring implementation and
24 monitoring plan (“plan”) with the assistance of the FSHA. Once the FSHA approves the plan

25

1 (“approved plan”), the department is not required to seek approval from the FSHA for specific
2 contracts, property contracts or permits unless otherwise instructed to do so in the approved
3 plan. If a department is required to comply with federal or state hiring program regulations
4 that meet or exceed the requirements of this Chapter, that department shall submit that
5 information as its plan. Compliance with such regulations shall be deemed to be an
6 “approved plan.” Compliance by a department with the approved plan shall be deemed to be
7 compliance with the requirements of this Chapter. The FSHA may require regular reports by
8 the department as part of the plan.

9 (c) In situations where both the Departments of Building ~~I~~nsp~~e~~ction and Planning grant
10 approval for a development project, the City’s Department of Planning shall have primary
11 jurisdiction for the conditions imposed on the permit required under this Chapter, and the role
12 of the Department of Building Inspection shall be limited to assisting in enforcement of the first
13 source hiring requirements.

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

19

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

21 There shall be established a Workforce Develop-mented Advisory Committee
22 (“Advisory Committee”) to advise the FSHA on workforce development, employ-mented
23 needs, program policy, design, implementation, oversight, and monitoring. This advisory
24 committee shall be appointed by the Mayor and shall include representatives of community-

25

1 based organizations, labor, the business community, and City departments. The members of
2 this advisory committee shall serve at will for a term of one year, and may be reappointed.
3 This Advisory Committee shall meet at least quarterly. (Added by Ord. 264-98, App. 8/21/98)
4

5 **SEC. 83.9. FIRST SOURCE HIRING REQUIREMENTS FOR CONTRACTS AND**
6 **PROPERTY CONTRACTS.**

7 (a) This Chapter applies to all contracts and property contracts, except where the
8 FSHA determines that application of the requirements of this Chapter is not feasible or
9 conflicts with applicable federal or State law.

10 (b) As an essential term of, and consideration for, any contract or property contract with
11 the City, not exempted by the FSHA, the contractor shall enter into a first source hiring
12 agreement ("agreement") with the City, on or before the effective date of the contract or
13 property contract. Such agreement shall:

14 (1) Set appropriate hiring and retention goals for entry level positions. The
15 employer shall agree to achieve these hiring and retention goals, or, if unable to achieve
16 these goals, to establish good faith efforts as to its attempts to do so, as set forth in the
17 agreement. The agreement shall take into consideration the employer's participation in
18 existing job training, referral and/or brokerage programs. Within the discretion of the FSHA,
19 subject to appropriate modifications, participation in such programs may be certified as
20 meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to
21 establish good faith efforts will constitute noncompliance and will subject the employer to the
22 provisions of Section 83.10 of this Chapter.

23 (2) Set first source interviewing, recruitment and hiring requirements, which will
24 provide the San Francisco Workforce Development System with the first opportunity to
25

1 provide qualified economically disadvantaged individuals for consideration for employment for
2 entry level positions. Employers shall consider all applications of qualified economically
3 disadvantaged individuals referred by the System for employment; provided however, if the
4 employer utilizes nondiscriminatory screening criteria, the employer shall have the sole
5 discretion to interview and/or hire individuals referred or certified by the San Francisco
6 Workforce Development System as being qualified economically disadvantaged individuals.
7 The duration of the first source interviewing requirement shall be determined by the FSHA and
8 shall be set forth in each agreement, ~~but shall not exceed 10 days~~. During that period, the
9 employer may publicize the entry level positions in accordance with the agreement. A need
10 for urgent or temporary hires must be evaluated, and appropriate provisions for such a
11 situation must be made in the agreement.

12 (3) Set appropriate requirements for providing notification of available entry level
13 positions to the San Francisco Workforce Development System so that the System may train
14 and refer an adequate pool of qualified economically disadvantaged individuals to
15 participating employers. Notification should include such information as employment needs
16 by occupational title, skills, and/or experience required, the hours required, wage scale and
17 duration of employment, identification of entry level and training positions, identification of
18 English language proficiency requirements, or absence thereof, and the projected schedule
19 and procedures for hiring for each occupation. Employers should provide both long term job
20 need projections and notice before initiating the interviewing and hiring process. These
21 notification requirements will take into consideration any need to protect the employer's
22 proprietary information.

23 (4) Set appropriate record keeping and monitoring requirements. The First
24 Source Hiring Administration shall develop easy-to-use forms and record keeping
25

1 requirements for documenting compliance with the agreement. To the greatest extent
2 possible, these requirements shall utilize the employer's existing record-keeping systems, be
3 non-duplicative, and facilitate a coordinated flow of information and referrals.

4 (5) Establish guidelines for employer good faith efforts to comply with the first
5 source hiring requirements of this Chapter. The FSHA will work with City departments to
6 develop employer good faith effort requirements appropriate to the types of contracts and
7 property contracts handled by each department. Employers shall appoint a liaison for dealing
8 with the development and implementation of the employer's agreement. In the event that the
9 FSHA finds that the employer has taken actions primarily for the purpose of circumventing the
10 requirements of this Chapter, that employer shall be subject to the sanctions set forth in
11 Section 83.10 of this Chapter.

12 (6) Set the term of the requirements.

13 (7) Set appropriate enforcement and sanctioning standards consistent with this
14 Chapter.

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

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

20 (c) The employer shall make the final determination of whether an economically
21 disadvantaged individual referred by the System is "qualified" for the position. Any qualified
22 economically disadvantaged individual who is hired by the employer shall have the same
23 rights and obligations as all other employees in similar positions. The employer shall not
24 discriminate against any employees on the basis of participation in the First Source Hiring
25

1 Program. Any such discrimination shall be considered a breach of the employer's "good faith"
2 obligations under the agreement, and shall be subject to the sanctions set forth in Section
3 83.10 of this Chapter.

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

6 (e) In any situation where the FSHA concludes based upon application by the employer
7 that compliance with this Chapter would cause economic hardship the FSHA may grant an
8 exception to any or all of the requirements of this Chapter. (Added by Ord. 264-98, App.
9 8/21/98)

10

11 **SEC. 83.10. VIOLATION OF FIRST SOURCE HIRING IN CONTRACTS AND PROPERTY**
12 **CONTRACTS.**

13 (a) Violation of the requirements of this Chapter is subject to an assessment of
14 liquidated damages as set forth below. Additionally, contractors, except property contractors,
15 may be subject to the provisions of Sections 6.52, 6.58, and/or 6.60 of the San Francisco
16 Administrative Code.

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

23 (c) Lack of referrals of qualified economically disadvantaged individuals, delay in
24 referrals due to causes beyond the reasonable control of the employer, emergency, or other

25

1 good cause as demonstrated by the employer to the FSHA may be a defense to the
2 assessment of liquidated damages under this Chapter.

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

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

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

12

13 **SEC. 83.11. FIRST SOURCE HIRING REQUIREMENTS FOR PERMITS FOR**
14 **COMMERCIAL DEVELOPMENT AND RESIDENTIAL PROJECTS.**

15 (a) Developers applying for permits as defined in Section 83.4(m) *and Section 83.4(s)*
16 shall cooperate with the FSHA in establishing first source hiring agreement(s) for the
17 development project. The Planning Commission shall not approve a development project, nor shall
18 any City department issue a permit subject to this Chapter unless the developer or contractor has
19 obtained approval from the FSHA of a first source hiring agreement applicable to the development
20 project or obtained an exemption from the requirements of Chapter 83 pursuant to Section 83.11(d).
21 The FSHA may condition approval of the first source hiring agreement on the City's approval of the
22 development project. In the event the development project approved by the Planning Commission
23 differs substantially from the development project assumed by the FSHA at the time it approved the
24 agreement, the FSHA may approve modifications to the first source hiring agreement if necessary for

25

1 the agreement to conform to the requirements of this Chapter. Such agreement shall become a
2 condition of the permit, and shall:

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

14 (2) Set first source interviewing, recruitment and hiring requirements for all
15 employers engaged in construction work on, and commercial activity(ies) to be conducted in,
16 the development project, including residential services, which will provide the San Francisco
17 Workforce Development System with the first opportunity to provide qualified economically
18 disadvantaged individuals for consideration for employment for entry level positions.
19 Employers subject to the agreement shall consider all applications of qualified economically
20 disadvantaged individuals referred by the System for employment; provided however, if the
21 employer utilizes nondiscriminatory screening criteria, the employer shall have the sole
22 discretion to interview and/or hire individuals referred or certified by the San Francisco
23 Workforce Development System as being qualified economically disadvantaged individuals.
24 The duration of the first source interviewing requirement shall be determined by the FSHA and
25

1 *shall be* set forth in each agreement ~~but shall not exceed 10 days~~. During that period, the
2 employer subject to the agreement may publicize the positions in accordance with the
3 agreement. A need for urgent or temporary hires must be evaluated, and appropriate
4 provisions for such a situation must be made in the agreement.

5 (3) Set appropriate requirements for providing notification of available entry level
6 positions to the San Francisco Workforce Development System so that the System may train
7 and refer an adequate pool of qualified economically disadvantaged individuals to employers
8 subject to the agreement. Notification should include such information as employment needs
9 by occupational title, skills, and/or experience required, the hours required, wage scale and
10 duration of employment, identification of entry level and training positions, identification of
11 English language proficiency requirements, or absence thereof, and the projected schedule
12 and procedures for hiring for each occupation. Employers subject to the agreement should
13 provide both long-term job need projections, and notice before initiating the interviewing and
14 hiring process. These notification requirements will take into consideration any need to
15 protect the employer's proprietary information.

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

21 (5) Establish guidelines for employer good faith efforts to comply with the first
22 source hiring requirements of this Chapter. The FSHA will work with City departments to
23 develop employer good faith effort requirements appropriate to the types of permits handled
24 by each department. Employers shall appoint a liaison for dealing with the development and
25

1 implementation of the employer's agreement. In the event that the FSHA finds that the
2 employer has taken actions primarily for purpose of circumventing the requirements of this
3 Chapter, that employer shall be subject to the sanctions set forth in Section 83.12 of this
4 Chapter.

5 (6) Set the term of the requirements.

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

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

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

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

14 (b) The employer subject to the agreement shall make the final determination of
15 whether an economically disadvantaged individual referred by the System is "qualified" for the
16 position. Any qualified economically disadvantaged individual who is hired by the employer
17 shall have the same rights and obligations as all other employees in similar positions. The
18 employer shall not discriminate against any employees on the basis of participation in the First
19 Source Hiring Program. Any such discrimination shall be considered a breach of the
20 employer's "good faith" obligations under the agreement, and shall be subject to the sanctions
21 set forth in Section 83.12 of this Chapter.

22 (c) Compliance by an employer subject to the agreement with a City department's
23 approved plan shall be deemed to be compliance with the requirements of this Chapter. In
24 situations where an employer must comply with the requirements of this Chapter as part of a
25

1 contract or property contract, and subsequently must apply for permits for the same project
2 that is the subject of the contract or property contract, the employer will be deemed to be in
3 compliance with this Chapter.

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

9

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

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

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

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

24

25

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

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

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

10
11 **SEC. 83.12A. FEE SCHEDULE.**

12 (a) A developer, contractor, or employer entering into a first source hiring agreement for
13 commercial activities that include from 25,000 square feet to 99,999 square feet shall pay a fee of
14 \$150.00 to defray the costs of administering the program. A developer, contractor, or employer
15 entering into a first source hiring agreement for commercial activities that include 100,000 square feet
16 or more shall pay a fee of \$250.00.

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

21 (c) All fees under this Section shall be due and payable within 30 days of the date of the
22 issuance of a notice of payment due. Delinquent fees shall be subject to a penalty of ten percent (10%)
23

1 plus interest at the rate of one percent (1%) per month on the outstanding balance which shall be
2 added to the amount of the fee collected from the date that payment is due.

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

5
6 **SEC. 83.13. RECORDS.**

7
8 The employers subject to provisions of this Chapter shall maintain and provide
9 the FSHA with the records necessary to document compliance with the requirements of this
10 Chapter as determined in the first source agreement. (Added by Ord. 264-98, App. 8/21/98)

11 **SEC. 83.14. GENERAL EXCLUSIONS AND LIMITATIONS.**

12
13 Nothing in this Chapter shall be interpreted to interfere with, or prohibit existing labor
14 agreements, nondiscrimination programs, workforce training pro-grams and agreements,
15 economically disadvantaged hiring and retention goals. This Chapter is to be implemented *in*
16 a manner that does not conflict with applicable federal or State laws.

17
18 Nothing in this Chapter shall be interpreted in a manner that would displace an
19 employer's existing workers.

20
21 The FSHA may reach agreements with other governmental agencies that have similar
22 programs in order to ensure that requirements imposed pursuant to this Chapter and by other
23 governmental agency authority do not create an undue burden or conflicting obligations on
24 employers, and to make the implementation of the purpose of this Chapter feasible where the
25 City and other jurisdictions have joined together to procure goods, services or public works.
(Added by Ord. 264-98, App. 8/21/98)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SEC. 83.15. COLLECTIVE BARGAINING AGREEMENTS.

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

SEC. 83.16. SEVERABILITY.

If any part or provision of this Chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Chapter are severable. (Added by Ord. 264-98, App. 8/21/98)

SEC. 83.17. LIMITED TO PROMOTION OF GENERAL WELFARE.

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

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

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

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

By: _____
JENNIFER WILLIAMS
Deputy City Attorney