

FILE NO. 98-1442

ORDINANCE NO. 322-98

1 [Price Adjustment for Local Sales and Business Tax Revenues]
 2 AMENDING PART I OF THE SAN FRANCISCO ADMINISTRATIVE CODE BY ADDING
 3 CHAPTER 21C, TO REQUIRE ADJUSTMENT OF PRICED OFFERS FOR THE PURPOSE
 4 OF EVALUATING PRICE CONTRACTS FOR THE PURCHASE OF COMMODITIES TO
 5 REFLECT DIRECT SALES TAX AND GROSS RECEIPTS TAX REVENUES PRODUCED BY
 6 THE PROCUREMENT FOR THE CITY, THE SAN FRANCISCO UNIFIED SCHOOL
 7 DISTRICT, THE SAN FRANCISCO COMMUNITY COLLEGE DISTRICT AND THE SAN
 8 FRANCISCO TRANSPORTATION AUTHORITY.

9 Note: This entire section is new.

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

11 Section 1. Part 1 of the San Francisco Administrative Code is hereby amended by
 12 adding Chapter 21C, to read as follows:

13 **CHAPTER 21C**

14 **PRICE ADJUSTMENTS IN THE AWARD OF CITY PROCUREMENT CONTRACTS TO**
 15 **REFLECT DIRECT SALES TAX AND BUSINESS TAX REVENUES FOR THE CITY, THE**
 16 **SAN FRANCISCO UNIFIED SCHOOL DISTRICT, THE SAN FRANCISCO COMMUNITY**
 17 **COLLEGE DISTRICT, AND THE SAN FRANCISCO TRANSPORTATION AUTHORITY**

18 **SEC. 21C.1 DEFINITIONS.**

19 (a) "City" means the City and County of San Francisco.

20 (b) "Contract" means an agreement for the purchase of commodities, including an
 21 agreement for services which includes the purchase of commodities, at the expense of the
 22 City, with an estimated value of commodities in excess of \$1,000.00, where any part of the
 23 transaction would be subject to sales tax. "Contract" shall not include purchases paid for
 24 with City Retirement or Health Services System trust funds.

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SUPERVISOR KAUFMAN, YEE, LENO, KATZ, BROWN, TENG, MEDINA, YAKI, NEWSOM, AMMIANO
 BOARD OF SUPERVISORS

1 (c) "Offer" means a bid or proposal submitted to the City in response to a
2 solicitation.

3 (d) "Offeror" means a person or entity that submits an offer to the City to provide
4 commodities or services.

5 (e) "Solicitation" means a written invitation for bids, request for quotations or
6 request for proposals issued by the City for the purpose of soliciting bids, quotations or
7 proposals to sell to the City commodities, alone or in conjunction with services, where the
8 proposed purchase of commodities would be subject to sales tax.

9 **SEC. 21C.2 POWERS AND DUTIES OF AUTHORITIES AWARDED CONTRACTS.**

10 (a) In determining the lowest responsible bidder or otherwise taking into account
11 the price contained in an offer subject to this chapter, the contract awarding authority shall
12 reduce the price contained in the offer according to the following criteria. The price contained
13 in an offer shall be reduced in an amount equal to the sum of (1) the direct sales tax revenue,
14 if any, that would be generated by the sale to the City that will be allocated to the City and
15 County of San Francisco, the San Francisco Unified School District, the San Francisco
16 Community College District, or the San Francisco Transportation Authority if that offer was
17 accepted; and (2) the incremental gross receipts tax revenue that would be generated by the
18 transaction if the City has jurisdiction to levy the City's Payroll Expense or Gross Receipts Tax
19 on that offeror as a result of the offeror's business related to the commodity sold to the City
20 and as if the offeror were required to pay the gross receipts tax.

21 (b) If a solicitation subject to this chapter involves the purchase of commodities of
22 an indefinite quantity, for the purpose of making the price adjustment required by paragraph
23 (a) the contract awarding authority shall select a fixed quantity of the identified commodity
24 based on the minimum amount of the commodity the contract awarding authority estimates
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1 will be purchased over the term of the contract, and shall evaluate all offers based on the
2 same fixed quantity for the purpose of comparing prices offered.

3 (c) The bid adjustment required by paragraph (a) shall be in addition to any other
4 discounts, preferences or adjustments required by City law and shall not be made where:

5 (1) the adjustment would conflict with conditions contained in federal or state grants
6 or violate preemptive federal or state law, or

7 (2) the City is entering into a cooperative procurement with one or more other
8 jurisdictions.

9 **SEC. 21C.3 CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**
10 **WELFARE.** In undertaking the adoption and enforcement of this chapter, this City is
11 assuming an undertaking only to promote the general welfare. It is not assuming, nor is it
12 imposing on its officers and employees, an obligation for breach of which it is liable in money
13 damages to any person who claims that such breach proximately caused injury.

14 **SEC. 21C.4. SEVERABILITY.**

15 This chapter shall be construed so as not to conflict with applicable federal or state
16 laws, rules or regulations. Nothing in this chapter shall authorize any City agency to impose
17 any duties or obligations in conflict with limitations on municipal authority established by
18 federal law at the time such agency action is taken.

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1 If any section, paragraph, sentence, clause or phrase of this chapter is for any reason
2 held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such
3 decision shall not affect the validity or effectiveness of the remaining portions of this chapter.
4 The Board of Supervisors declares that it would have passed each section, paragraph,
5 sentence, clause or phrase of this chapter irrespective of the fact that any portion of this
6 chapter could be declared unconstitutional, invalid or ineffective.

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8 APPROVED AS TO FORM:

9 LOUISE H. RENNE, City Attorney

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11 By:


12 DAVID A. GREENBURG
Deputy City Attorney

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SUPERVISOR KAUFMAN
BOARD OF SUPERVISORS



City and County of San Francisco

Veterans Building
401 Van Ness Avenue, Room 308
San Francisco, CA 94102-4532

Tails Ordinance

File Number: 981442²

Date Passed:

Ordinance amending Administrative Code by adding Chapter 21C, Sections 21C.1 through 21C.4, to require adjustment of priced offers for the purpose of evaluating price contracts for the purchase of commodities to reflect direct sales tax and gross receipts tax revenues produced by the procurement for the City, the San Francisco Unified School District, the San Francisco Community College District and the San Francisco Transportation Authority.

October 13, 1998 Board of Supervisors — PASSED ON FIRST READING

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

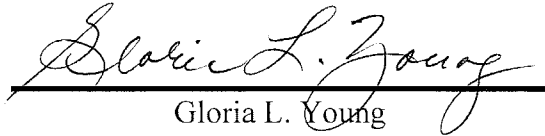
October 19, 1998 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Ammiano, Bierman, Brown, Katz, Kaufman, Leno, Medina, Teng, Yaki, Yee

Absent: 1 - Newsom

File No. 981442

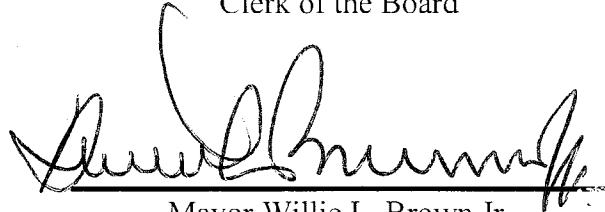
I hereby certify that the foregoing Ordinance
was FINALLY PASSED on October 19, 1998
by the Board of Supervisors of the City and
County of San Francisco.



Gloria L. Young
Clerk of the Board

OCT 30 1998

Date Approved



Mayor Willie L. Brown Jr.